

Regular Business Meeting

Tuesday, August 8, 2023 5:30 PM

Board Assembly Room, 1250 West Broadway Avenue, Minneapolis, Minnesota 55411

1) **Call to Order and Roll Call**

2) **Adoption of the Agenda**

3) **Acceptance of Minutes**

3)a. June 6, 2023 Special Meeting Minutes

3)b. June 13, 2023 Regular Business Meeting Minutes

4) **Public Comments**

5) **Recess**

6) **Reports and Recommendations from the
Superintendent of Schools**

6)a. Superintendent's Update; Year 1 Strategic Plan
Summary; School Readiness and Well-Being Update

7) **Action Items by the Board of Education**

7)a. Approval of the Consent Agenda

7)a.1. Personnel Items

7)a.1.a. Approval of List A personnel matters
(2023-08-ER-A)

7)a.1.b. Approval of List B personnel matters
(2023-08-ER-B)

7)a.2. Contracts

7)a.2.a. Contract with BH365, LLC

7)a.2.b. Amendment to contract COM0001489 with the
City of Minneapolis Elections and Voter Services

7)a.2.c. Authorization to contract with College
Nannies and Tutors

7)a.2.d. Authorization to contract with David Hoy
and Associates

7)a.2.e. Contract with Hand 2 Mind (2023)

7)a.2.f. Authorization to contract with Learning
Disabilities Associates

7)a.2.g. Contract with Muska Electric Co (2023-
14195)

7)a.2.h. Contract with North Central Bus &
Equipment (2023-14165)

7)a.2.i. Amendment to contract (2024-4400001748)
with Now Micro

7)a.2.j. Authorization to contract with Ricoh
Document Center

7)a.2.k. Authorization to contract with Rimini
Street

7)a.2.1. Contract with Savvas Learning

7)a.2.m. Authorization to contract with Text Help

7)a.2.n. Contract Amendment with Whelan Co., dba
GardaWorld Security Services

7)a.2.o. Contract with Xello

7)a.3. Resolutions

7)a.3.a. Resolution Appointing Responsible
Authority Under MN Government Data Practices Act
(2023-0048)

7)a.3.b. Amending resolution 2023-0017 to extend
the report due date of the committee to no later
than October 24, 2023

7)a.4. Agreements

7)a.4.a. Authorizing a lease agreement with
Minneapolis Nature Preschool (2023-0057)

7)b. Contract with The Regents of the University of
Minnesota, Center for Applied Research and
Educational Improvement (CAREI) (2023)

7)c. Policy Revisions and Adoptions Due to Legal
Changes

7)c.1. Revision of Policy 4200 (2023-0044)

7)c.2. Adoption of Policy 5610 (2023-0051)

7)c.3. Revision of Policy 5690 (2023-0045)

7)d. Revision of Policy 5210 (2023-0027)

7)e. Approving the Superintendent Leadership Profile

8) **New Business**

9) **Reports from Board of Education Directors**

10) **Adjournment**

**OFFICIAL MINUTES
MINNEAPOLIS BOARD OF EDUCATION (SPECIAL SCHOOL DISTRICT NO. 1)**

**SPECIAL MEETING
JUNE 6, 2023**

CALL TO ORDER

In accordance with applicable requirements, notice was provided to each member of the Board of Education and to the public not less than three days prior to the meeting. Board members met in a special meeting in the assembly room at the John B. Davis Educational Services Center (1250 West Broadway Ave. Minneapolis, MN) on June 6, 2023.

Chair Sharon El-Amin called the meeting to order at 5:01 p.m., a quorum being present.

ROLL CALL

Present: Directors Abdul Abdi, Sharon El-Amin, Fathia Feerayarre (arrived after roll call at 5:13 p.m.), Adriana Cerrillo, Lori Norvell, Ira Jourdain, Collin Beachy, Joyner Emerick (7); Ex Officio members Student Representative Halimah Abdullah, Student Representative Abdihafid Mohamed (2)

Directors Absent: Ira Jourdain, Kim Ellison (2)

APPROVAL OF AGENDA

Beachy moved to approve the agenda.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Beachy, Emerick, El-Amin (7)

Nay: (0)

Abstain: (0)

Absent: Jourdain, Ellison (2)

REPORTS AND DISCUSSION

El-Amin moved that BWP & Associates bring a draft leadership profile for board consideration at the June 13 regular business meeting.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Beachy, Emerick, El-Amin (7)

Nay: (0)

Abstain: (0)

Absent: Jourdain, Ellison (2)

El-Amin moved that the draft search calendar and timeline, as presented, be adopted.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Norvell, Beachy, Emerick, El-Amin (5)

Nay: Cerrillo (1)

Abstain: Feerayarre (1)

Absent: Jourdain, Ellison (2)

ADJOURNMENT

Without objection, Chair El-Amin adjourned the meeting at 6:59 p.m.

Secretary Notations:

- Minutes submitted by Ryan Strack, Assistant to the Superintendent and Board
- Meeting materials:
<https://meetings.boardbook.org/Public/Agenda/1807?meeting=585429>
- Minutes approved: DATE

Attachments:

- None

Approvals:

Sharon El-Amin, Chair

Lori Norvell, Clerk

**OFFICIAL MINUTES
MINNEAPOLIS BOARD OF EDUCATION (SPECIAL SCHOOL DISTRICT NO. 1)**

**REGULAR BUSINESS MEETING
JUNE 13, 2023**

CALL TO ORDER

In accordance with applicable requirements, notice was provided to each member of the Board of Education and to the public not less than three days prior to the meeting. Board members met in a regular meeting in the assembly room at the John B. Davis Educational Services Center (1250 West Broadway Ave. Minneapolis, MN) on June 13, 2023.

Chair Sharon El-Amin called the meeting to order at 5:36 p.m., a quorum being present.

ROLL CALL

Present: Directors Abdul Abdi, Sharon El-Amin, Fathia Feerayarre, Adriana Cerrillo, Lori Norvell, Ira Jourdain, Collin Beachy, Kim Ellison, Joyner Emerick (9); Ex Officio members Interim Superintendent Rochelle Cox, Student Representative Abdihafid Mohamed (2)

Absent: Student Representative Halimah Abdullah (1)

APPROVAL OF AGENDA

Beachy moved to approve the agenda.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)
Nay: (0)
Abstain: (0)
Absent: (0)

ACCEPTANCE OF MINUTES

Norvell moved to approve the minutes from the May 9 and May 16, 2023 meetings.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)
Nay: (0)

Abstain: (0)

Absent: (0)

PUBLIC COMMENTS

Comments were heard from members of the public.

RECESS

A ten-minute recess was taken.

REPORTS AND RECOMMENDATIONS FROM THE SUPERINTENDENT OF SCHOOLS

Interim Superintendent Rochelle Cox provided verbal updates.

No votes or action was taken on these informational items.

POLICY COMMITTEE REPORT

Policy Committee Chair Norvell provided the committee's report, which included a first reading of the proposed Revision of Policy 5210 (Student Personal Electronic Devices).

ACTION ITEMS BY THE BOARD OF EDUCATION

Approval of the Consent Agenda

Abdi moved to approve the consent agenda, which included the following items:

- Approval of List A personnel matters (2023-06-ER-A)
- Approval of List B personnel matters (2023-06-ER-B)
- Authorization to contract with AbsenceSoft
- Contract with Achieve Twin Cities (College and Career Centers)
- Authorization to contract with Al-Maa'uun Career Services
- Authorization to contract with Allovue Inc.
- Contract with Arch Language Network
- Authorization to contract with Apple Ford
- Contract with Amerigas Propane PL (2023-14067)
- Amendment to contract with Canvas Health
- Authorization to contract with Carahsoft Technology Corp.
- Authorization to contract with CAREI (Center for Applied Research and Educational Improvement)
- Contract Amendment with Change Inc.
- Final contract amendments with contract alternative schools for the 2022-2023 school year (2023-0039)

- Contracts with contract alternative schools for July 1, 2023 through June 30, 2026 (2023-0038)
- Authorization to contract with Culturally Responsive School Leadership
- Authorization to contract with Dreambox
- Authorization to contract with English Learning Center
- Contract with Ferndale Market LLC (2023-14090)
- Authorization to contract with Follett School Solutions, LLC
- Indianhead Foodservice Dist. Inc. (2023-14082)
- Authorization to contract with Groves Academy
- Authorization to contract with Heartland Business Systems (*Cisco ISE*)
- Authorization to contract with Hillyard Inc.
- Contract with Indrotec (2023-14086)
- Authorization to contract with Indrotec
- Authorization to contract with Info-Tech
- Authorization to contract with International Baccalaureate
- Authorization to contract with Illuminate Education (FastBridge)
- Authorization to contract with Illuminate Education (eduCLIMBER)
- Authorization to contract with Insight Public Sector (Microsoft EES Renewal)
- Authorization to contract with Insight Public Sector (Azure Overage for Microsoft Campus)
- Authorization to contract with Insight Public Sector (Google Workspace EDU)
- Contract with INGCO International
- Authorization to contract with Karin's Services, LLC
- Authorization to contract with Kendall Hunt Publishing Company
- Authorization to contract with Kognity USA, Inc.
- Contract with Language Line
- Authorization to contract with Lexia (Core 5)
- Authorization to contract with Lexia (LETRS)
- Contract amendment with Legal Rights Center (2023-4400001071)
- Authorization to contract with the Math Learning Center (Student Workbooks and Materials)
- Authorization to contract with the Math Learning Center (Professional Development)
- Authorization to contract with Matrix Communications
- Contract with Maxim Healthcare Staffing
- Amendment to contract 2022-4400001418 with Maxim Healthcare Staffing
- Contract with Mansfield Service Partners Midcon LLC (2023-14081)
- Contract with Metro Transit (2023-14043)
- Authorization to contract with Nearpod Contract
- Authorization to contract with Newsela Inc.

- Authorization to contract with Now Micro (Technology Infrastructure, Software, and Services)
- Authorization to contract with Now Micro (Chromebook & iPad accessories)
- Authorization to contract with Open Up Resources
- Contract with Pan O Gold (2023-14087)
- Authorization to contract with Paragon Development Systems (Cisco SmartNET)
- Authorization to contract with Paragon Development Systems (HPE Renewal)
- Authorization to contract with Paragon Development Systems (Backup Infrastructure)
- Authorization to contract with Project Success
- Authorization to contract with Ratwik, Roszak & Maloney
- Authorization to contract with Riverside Plaza
- Contract with Russ Davis Wholesale Inc (2023-14083)
- Authorization to contract with Savvas enVision (K-5)
- Authorization to contract with Savvas enVision (6-8)
- Authorization to contract with Savvas enVision (9-12)
- Authorization to contract with Seesaw
- Authorization to contract with Somali Success School
- Amendment to contract 2023-14131 with Stahl Construction Company
- Contract with Stepping Stone Staffing
- Authorization to contract with Summit Academy
- Contract with Sunbelt Staffing
- Contract with Titan School Solutions Inc (2023-14091)
- Amendment to contract 2023-14113 with Transit Team Inc
- Contract with Urban Debate League/Augsburg
- Contract with Veritiv Operating Company (2023-14084)
- Contract amendment with Washburn Center for Children
- Contract amendment with Watercourse Counseling Center (2022-4400001478-2)
- Authorization to contract with Wills Towers Watson Midwest Inc.
- Authorization to contract with Waste Management
- Memorandum of Understanding with Achieve Twin Cities (2023-0036)
- Lease agreement with the Bilingual Learning Center at Windom (2023-0047)
- Resolution Authorizing 2023-2024 Minnesota State High School League (MSHSL) membership and cooperative team applications (2023-0034)
- Resolution Confirming 2023-2024 school start and end times (2023-0040)
- Resolution Designating the Identified Official with Authority for Education Identity and Access Management (2023-0043)

On a voice vote, the motion to approve the consent agenda was adopted with the following result (applied to all consent agenda items):

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)
Nay: (0)
Abstain: (0)
Absent: (0)

Revision and Renaming of Policy 5635: Reporting Maltreatment of Minors and Vulnerable Adults and Adoption of Policy 5637: Mandated Reporting of Maltreatment of Vulnerable Adults (2023-0024)

Norvell moved to approve the revision and renaming of Policy 5635 and adoption of Policy 5637.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)
Nay: (0)
Abstain: (0)
Absent: (0)

Approving the 2023-2024 Fiscal Year District Budget (2023-0028)

Abdi moved to approve the 2023-2024 Fiscal Year District Budget.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)
Nay: (0)
Abstain: (0)
Absent: (0)

Approving the 2023-2024 Fiscal Year Capital Plan (2023-0032)

Abdi moved to approve the 2023-2024 Fiscal Year Capital Plan.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)
Nay: (0)
Abstain: (0)
Absent: (0)

Approving the Updated Long-Term Facilities Maintenance (LTFM) Plan and Bond (2023-0033)

Abdi moved to approve the updated Long-Term Facilities Maintenance (LTFM) Plan and Bond.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)

Nay: (0)

Abstain: (0)

Absent: (0)

Approving the Resolution Authorizing the Transfer of Capital Funds (2023-0041)

Abdi moved to approve the resolution authorizing the transfer of capital funds.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)

Nay: (0)

Abstain: (0)

Absent: (0)

Approving the Resolution Authorizing the Transfer of Capital Funds (2023-0042)

Abdi moved to approve the resolution authorizing the transfer of capital funds.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)

Nay: (0)

Abstain: (0)

Absent: (0)

Approving the Resolution Establishing 2023-2024 Board Priorities (2023-0035)

Beachy moved to approve the resolution establishing 2023-2024 Board priorities.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Feerayarre, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (9)

Nay: (0)

Abstain: (0)

Absent: (0)

Resolution Regarding the Creation of a Community Work Group on Special Education (2023-0037)

Emerick moved to approve the resolution establishing the creation of a community work group on Special Education.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Cerrillo, Norvell, Beachy, Ellison, Emerick, El-Amin (7)

Nay: Jourdain (1)

Abstain: (0)

Absent: Feerayarre (1)

NEW BUSINESS

Approve Draft Superintendent Leadership Profile

El-Amin moved to approve the draft Superintendent Leadership Profile.

On a voice vote, the motion was adopted with the following result:

Aye: Abdi, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick, El-Amin (8)

Nay: (0)

Abstain: (0)

Absent: Feerayarre (1)

REPORTS FROM BOARD OF EDUCATION DIRECTORS

The following directors and student representatives provided reports:

- Jourdain
- Ellison
- Feerayarre
- El-Amin
- Abdi
- Beachy
- Norvell
- Emerick
- Cerrillo

ADJOURNMENT

Without objection, Chair El-Amin adjourned the meeting at 7:58 p.m.

Secretary Notations:

- Minutes submitted by Ryan Strack, Assistant to the Superintendent and Board
- Meeting materials:
<https://meetings.boardbook.org/Public/Agenda/1807?meeting=583361>
- Minutes approved: DATE APPROVED (*applied upon approval*)

Attachments: (*added upon approval of minutes*)

- Draft Resolution from Policy Committee 2023-0027, Regarding the Revision of Policy 5210: Student Personal Electronic Devices
- Resolution 2023-0024, Approving the Revision and Renaming of Policy 5635 Mandated Reporting of Child Neglect or Physical or Sexual Child Abuse and Adoption of Policy 5637: Mandated Reporting of Maltreatment of Vulnerable Adults
- Resolution 2023-0024, Approving the 2023-2024 Fiscal Year District Budget
- Resolution 2023-0032, Approving the Fiscal Year 2023-2024 Capital Plan
- Resolution 2023-0033, Approving the Updated Long-Term Facilities Maintenance (LTFM) Plan and Bond
- Resolution 2023-0041, Authorizing Transfer of Capital Funds
- Resolution 2023-0042, Authorizing Transfer of Capital Funds
- Resolution 2023-0035, Establishing 2023-2024 Board Priorities
- Resolution 2023-0037, Approving the Creation of a Community Work Group on Special Education

Approvals:

Sharon El-Amin, Chair

Lori Norvell, Clerk



Superintendent's Report

Regular Business Meeting

August 8, 2023

Superintendent Update

Interim Superintendent Rochelle Cox

Year 1 Strategic Plan Summary

Executive Director Sarah Hunter

Goal 1: Academic Achievement

Provide standards-based core instruction with a focus on literacy and mathematics.

- Implemented or in the process of adopting new math and literacy curricula.
- Conducted professional development for teachers and principals.
- Started math intervention training.

Ensure all curriculum and instructional practices are anti-racist and sustain the cultures, languages, and experiences of students.

- Various departments supported anti-racist curriculum integration.
- Workshops and conferences focused on diverse histories and cultures.

Ensure all community schools provide access to STEM, music, art, language, ethnic studies, and college credit courses.

- Enhanced STEM education with new materials and curriculum.
- Supported arts education with training and funding.
- Provided professional development for world language teachers.
- Expanded IB and college credit programs in high schools.

Implement Professional Learning Communities (PLCs) to support academic support and intervention.

- Conducted PLC-focused sessions for instructional leadership teams.
- Supported schools in implementing PLCs.

Provide magnet school pathways with innovative thematic instruction and integrated learning opportunities.

- Adopted school-wide thematic approaches.
- Offered training and resources for integrated curriculum design.

Goal 2: Student Well-being

Provide equitable access to culturally responsive counseling and mental health services.

- Assigned school-linked mental health providers at each building.
- School social workers are in every building and provide comprehensive mental health services to students.
- Conducted caregiver institutes on mental health.

Fully implement a restorative approach to student support.

- Provided professional development for staff on restorative practices.
- Offered Family Group Conferences and Staff Circles for repair.

Integrate social and emotional practices into all classrooms and Out of School Time activities.

- Developed a comprehensive 5-year plan for integration.
- Collaborated with CASEL for social and emotional learning.
- Incorporated social and emotional learning sections into report cards.

Ensure physically safe and welcoming school environments.

- Trained emergency teams and conducted safety assessments.
- Provided training and support for staff on safety and security issues.

Support healthy child development through nutritious meals and promotion of physical activity.

- Dedicated additional funding to ensure students had access to nutritious meals.

Goal 3: Effective Staff

Strengthen pathways and reduce barriers for talented and diverse employees to become teachers.

- Implemented teacher residency programs and teacher apprenticeships.
- Expanded Future Educator Teacher Pathway for high school students.

Maintain Teacher Equity plan focused on staffing needs of high-need schools.

- Addressed staffing needs of high-need schools proactively.
- Established Teacher Cadre for support during long-term absences.

Deepen strategic recruitment of high-quality, diverse teachers and staff.

- Engaged with various community stakeholders for recruitment.
- Enhanced recruitment communications and branding.

Pursue negotiations strategies that address contractual barriers to equitable distribution and recruitment, hiring, and retention of diverse teachers and staff.

- Worked on improving teacher diversity and hiring practices.
- Established partnerships to support Black male teachers.

Pursue authentic engagement with parents around equitable HR policies and practices.

- Engaged parents through surveys, focus groups, and meetings.

Goal 4: School and District Climate

Fully implement the climate framework to ensure all district staff, parents, and students feel heard, valued, and respected.

- Onboarded new staff for equity and school climate.
- Provided ongoing professional development on equity.

Utilize district equity competencies to inform district hiring, professional development, and support systems.

- Revised Equity Competencies document for implementation.

Provide consistent opportunities for youth, parents, and community members to provide feedback on district policies and practices.

- Involved students, parents, and community members in evaluation and feedback initiatives.

Ensure student placement practices support integrated learning opportunities and increased enrollment and retention.

- Expanded enrollment lottery timeline for equitable access to schools.
- Increased the diversity of enrollment department staff to ensure that they were more reflective and could serve more families in their native language

Support community partnerships to enhance student experiences and learning opportunities.

- Encouraged and recruited BIPOC-led community organizations for support.
- Engaged community partners to provide diverse learning opportunities.

Questions

School Readiness Update

Senior Officer of Schools

Dr. Shawn Harris-Berry

Well-Being Update

Executive Director Dr. Meghan Hickey

Safety & Mental Health Updates

- Welcome, Ernest Sutton
- Investing in student well-being
 - Hiring eight additional EMSS specialists
 - Hiring additional Licensed Drug & Alcohol Counselor
 - Investing in Tier 3 interventions & building staff capacity

Questions

Minneapolis Public Schools

List A: All Employees: Tuesday, August 8 , 2023

Hiring - Licensed

Kimberlee Adams	Northeast Middle	Teacher, MS Advanced Learner	7/1/2023
Katherine Altenbach	Jenny Lind Elementary	Teacher, Interventionist (Math)	8/13/2023
James Barosko	Webster Elementary	Teacher, Psychology Services	7/1/2023
Immanda Bellm	Teaching & Learning	K-12 Content Lead	7/1/2023
Kimberly Bice	Teaching & Learning	K-12 Content Lead	7/10/2023
Ernest Bisong	Lucy Laney Elementary	Teacher, Music	7/1/2023
Katherine Bodurtha Bopp	Longfellow High	Teacher, Interventionist (Math)	7/1/2023
Micah Bonkoski	Waite Park Elementary	Teacher, Physical Education	8/13/2023
Elisabeth Braun	Longfellow High	Teacher, Counselor	7/1/2023
Justyn Burgess	Pratt Elementary	Principal, Elementary	7/1/2023
William Campbell	Olson Middle	Principal, Middle School	7/3/2023
Sean Casey	Burroughs Elementary	Teacher, Library Media Specialist	7/1/2023
Keandrea Chalbi	Pratt Elementary	Teacher, Elementary	8/13/2023
Abigail Cook	Anwatin Middle	Teacher, Library Media Specialist	7/1/2023
Rosa Costain	Henry High	Teacher, TOSA General	7/1/2023
Leah Couillard	Occupational, Physical Therapists	Teacher, Occupational Therapist	8/13/2023
Peter Crabtree	Sanford Middle	Teacher, MS Design	8/13/2023
Mary Croft	Ella Baker PK-8	Teacher, Interventionist (Elementary)	8/13/2023
Patricia Dejarlais	Hmong International Academy Elementary	Teacher, TOSA General	7/1/2023
Jeanne Dobson	Washburn High	Teacher, TOSA General	7/1/2023
Katherine Eiden	Occupational, Physical Therapists	Teacher, Occupational Therapist	7/1/2023

Minneapolis Public Schools

List A: All Employees: Tuesday, August 8 , 2023

Hiring - Licensed

Mahdi Elmi	Andersen Middle	Teacher, Math	8/13/2023
Corilynn Engen	Health Services	Teacher, School Nurse	8/1/2023
Charles Erlandson	Lake Harriet Lower Elementary	Teacher, TOSA Instructional Specialist	7/1/2023
Sizi Goyah	Teaching & Learning	Director, K12 Mathematics	7/5/2023
Andrea Greenheart	Occupational, Physical Therapists	Teacher, Occupational Therapist	7/1/2023
Alice Habel	Lake Harriet Upper Elementary	Teacher, English Second Language	7/1/2023
Sarah Haberman	Loring Elementary	Teacher, Social Worker	8/16/2023
Eric Hansen	Early Childhood Education Program 1	Teacher, ECFE	8/13/2023
Jennifer Hanzak	Teaching & Learning	K-12 Content Lead	7/3/2023
Leila Hassan	Accountability	School Improvement Specialist	7/5/2023
Memory Heille	Pratt Elementary	Teacher, Elementary	7/1/2023
Nikki Hoeneman	Lyndale Elementary	Teacher, Social Worker	8/13/2023
Caroline Hooper	Southwest High	Teacher, TOSA General	7/1/2023
Stephanie Kappel	Roosevelt High	Teacher, TOSA General	7/1/2023
Sean Keir	Southwest High	Teacher, TOSA General	7/1/2023
Rachel Krejci	Olson Middle	Teacher, Psychology Services	7/1/2023
Thomas Krueger	Accountability	School Improvement Specialist	7/1/2023
Kristine Lafollette	Andersen Middle	Teacher, Interventionist (Reading)	8/13/2023
Hannah Larson	Lyndale Elementary	Teacher, Elementary	8/13/2023
Jennifer Leazer	Wellstone High	Teacher, TOSA General	7/1/2023
Kelsie Leonard	Teaching & Learning	K-12 Content Lead	7/10/2023

Minneapolis Public Schools

List A: All Employees: Tuesday, August 8 , 2023

Hiring - Licensed

Jane Liepitz	Teaching & Learning	Teacher, TOSA General	7/1/2023
Jonathan Linne	Southwest High	Teacher, Social Studies	7/1/2023
Christina Maynor	Edison High	Teacher, World Languages (French)	7/1/2023
Kathryn Mcknight	Pillsbury Elementary	Teacher, Library Media Specialist	7/1/2023
Sheri Nelson	Pratt Elementary	Teacher, Library Media Specialist	8/13/2023
Stephanie Nordstog	Teaching & Learning	Director, K12 and Special Programs	7/1/2023
Chelsay Nordtvedt	Las Estrellas Elementary	Teacher, TOSA General	8/13/2023
Bobbi Pratt	Nellie Stone Johnson Elementary	Teacher, Interventionist (Elementary)	8/13/2023
Caroline Rasmussen	Andersen Middle	Teacher, English	8/13/2023
Rebecca Ruddle	Psychology Services	Teacher, Psychology Services	7/1/2023
Seth Salyers	Pratt Elementary	Teacher, Elementary	8/13/2023
Kellijo Schulte	Jenny Lind Elementary	Teacher, Elementary	8/13/2023
Carey Seeley	Webster Elementary	Principal, Elementary	7/1/2023
Laura Shakespeare	Teaching & Learning	K-12 Content Lead	7/10/2023
Andrew Sims	Northeast Middle	Teacher, Math	8/13/2023
Debra Snell	Hmong International Academy Elementary	Teacher, Library Media Specialist	7/1/2023
Sarah Spleiss	Teaching & Learning	Teacher, TOSA Literacy Specialist	7/1/2023
Kathryn Teeter	Southwest High	Teacher, Special Education	8/13/2023
Alexandra Thoen	Hall Academy Elementary	Teacher, Interventionist (Elementary)	8/13/2023
Nora Turnbloom	Special Ed Program 3	Teacher, Music Therapist	8/13/2023
Margaret Underwood	Psychology Services	Teacher, Psychology Services	8/13/2023

Minneapolis Public Schools

List A: All Employees: Tuesday, August 8 , 2023

Hiring - Licensed

Stephanie Verzal	Lyndale Elementary	Teacher, Elementary	8/13/2023
Sarah Wernimont	Roosevelt High	Teacher, TOSA General	7/1/2023
Ebony Williams	Lucy Laney Elementary	Teacher, Elementary	8/13/2023
Rachel Wixson	MPS Online 6-12	Teacher, Music	7/1/2023
Christine Yussen	Windom Elementary	Teacher, Elementary	8/13/2023

Hiring - Non Licensed

Shukri Ahmed	Southwest High	Security Monitor	6/12/2023
Eric Alexander	CWS, Site Group 4 - Central East	School Cook	8/2/2023
Alezah Ashby	Engineers, Zone 2	Custodian	7/12/2023
Lynea Bellfield	Payroll	Payroll Analyst	7/17/2023
Andrew Birkestrand	Hale Elementary	Associate Educator (Interventionist)	8/28/2023
Antoine Boswell	Anwatin Middle	Security Monitor	8/7/2023
Katee Brown	Transportation	Management Analyst, Transportation	7/10/2023
Seniyya Campbell	Engineers, Zone 2	Custodian	7/17/2023
Joseph Castleberg	Engineers, Zone 1	Custodian	6/14/2023
Michelle-Marie Cecena	South High	Associate Educator	8/31/2023
Augusto Chavez Arizabal	Adult Basic Education	Associate Educator	7/17/2023
Erin Crosby	Nellie Stone Johnson Elementary	Special Education Assistant	8/28/2023
Nancy Cuzco Paucar	Lyndale Elementary	Associate Educator	8/31/2023
Kayla Demery	Lucy Laney Elementary	Associate Educator (Interventionist)	8/28/2023
Anthony Donner	Engineers, Zone 2	Custodian	8/7/2023

Minneapolis Public Schools

List A: All Employees: Tuesday, August 8 , 2023

Hiring - Non Licensed

Anne-Marie Eckblad	Lake Nokomis Wenonah Elementary	Associate Educator (Interventionist)	8/31/2023
Angela Ellefson	Seward Elementary	Associate Educator	8/31/2023
Africa Fields	Minneapolis Kids	Child Care Assistant	7/10/2023
Ruth Fuentes Garcia	Green Central Elementary	Associate Educator (Interventionist)	7/1/2023
Haley Gilbertson	Windom Elementary	Associate Educator (Interventionist)	8/31/2023
Lisa Gintner	District Communications Center	District Communication Ctr Specialist	7/1/2023
Marcia Gomez Tigre	Las Estrellas Elementary	Associate Educator	8/31/2023
Jhonta Gonnigan	South High	Security Monitor	8/7/2023
Patrice Hammick	Loring Elementary	Account Clerk	8/13/2023
Rebecca Hancock	Armatage Elementary	Special Education Assistant	8/31/2023
Iris Hernandez Hernandez	Minneapolis Kids	Child Care Assistant	6/20/2023
Anthony Hines	Lucy Laney Elementary	Special Education Assistant	8/31/2023
Romina Hiti	Loring Elementary	Associate Educator	7/1/2023
Selena Holt	District Communications Center	District Communication Ctr Specialist	6/26/2023
Joey Huggins	Engineers, Zone 1	Custodian	7/26/2023
Ian Hunter	Roosevelt High	Associate Educator (Interventionist)	8/13/2023
Gale Jensen	Southwest High	Special Education Assistant	8/31/2023
Duane Johnson	Engineers, Zone 2	Custodian	7/17/2023
Valerie Johnson	Engineers, Zone 2	Custodian	6/20/2023
Tristen Kangas	Payroll	Supervisor, Payroll	7/10/2023
Nikolas Klinkner	Roosevelt High	Associate Educator (Interventionist)	7/1/2023

Minneapolis Public Schools

List A: All Employees: Tuesday, August 8 , 2023

Hiring - Non Licensed

Alaina Lankford	Nellie Stone Johnson Elementary	Office Specialist	8/13/2023
Harrell Mathieu	South High	School Success Program Assistant	8/31/2023
Margaret Mchugh	Dowling Elementary	Associate Educator (Interventionist)	8/28/2023
Naomi Mechels	AVID Tutors	AVID Assistant	8/23/2021
Elijah Montgomery-Murrell	Transportation	Bus Aide	6/12/2023
Kong Moua	Finance	Project Coordinator, Finance	3/27/2023
Seamus Murray	Washburn High	Special Education Assistant	10/18/2022
Carly Newhouse	Pillsbury Elementary	Special Education Assistant	8/13/2023
Reona Nowden	Risk Management	Risk Management Analyst	7/17/2023
Joanne Peltonen	Early Childhood Education Preschool	Associate Educator	8/31/2023
Lisa Potter	North High	Special Education Assistant	8/31/2023
Russell Purdy	Minneapolis Kids	Program Coordinator, Minneapolis Kids	6/1/2023
Alexander Reigelsperger	MPS Metro HA	Associate Educator (Interventionist)	8/13/2023
Jalisa Ross	North High	Associate Educator (Interventionist)	8/28/2023
Lourdes Sanango-T	Engineers, Zone 2	Custodian	7/31/2023
Scott Schmidt	Design & Training	Instructional Designer	7/17/2023
Christine Sennentz	Lake Nokomis Keewaydin Elementary	Associate Educator (Interventionist)	8/28/2023
Pamela Sparks	Anwatin Middle	School Secretary	7/10/2023
Sonja Swanson	Dowling Elementary	Associate Educator (Interventionist)	8/28/2023
Jerry Van Cleave	Kenwood Elementary	Associate Educator (Interventionist)	8/31/2023
Anne Vang-Lo	Teaching & Learning	Cultural Facilitator	7/10/2023

Minneapolis Public Schools

List A: All Employees: Tuesday, August 8 , 2023

Hiring - Non Licensed

Keturah White	Lucy Laney Elementary	Associate Educator (Interventionist)	8/31/2023
Gabrielle Williams	Engineers, Zone 1	Custodian	7/12/2023
Payong Yang	Special Ed Support	Account Clerk	7/26/2023
Margaret Zepp	Early Childhood Education Program 1	Program Coordinator	8/1/2023

Discharges**Licensed****Non-Licensed**

Food Service Assistant	06-14-2023	2023-08-ER-5712
Custodian	07-13-2023	2023-08-ER-5788
Food Service Assistant	06-12-2023	2023-08-ER-5775

Probationary Separations**Licensed****Licensed, Staff Reduction****Non-Licensed**

Child Care Assistant	06-14-2023	2023-08-ER-5775
District Communications Ctr. Specialist	07-12-2023	2023-08-ER-5801
Special Education Assistant	06-14-2023	2023-08-ER-5764
Special Education Assistant	06-15-2023	2023-08-ER-5765
Office Assistant	06-20-2023	2023-08-ER-5783

Non-Licensed, Staff Reduction**Licensed, Discontinuance of Contract****Layoffs****Licensed****Non-Licensed****Administrative Contract Non-Renewals**



MINNEAPOLIS PUBLIC SCHOOLS

Urban Education. Global Citizens.

CONTRACT FOR SERVICES – \$25,000 above

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and **BH365, LLC (Black History 365)**. “Contractor” (collectively “parties”) to provide **Ethnic Studies core and supplemental materials and professional development** to **Minneapolis Public Schools**.

TERM OF CONTRACT

- 1.1 This Contract is effective on **August 10th, 2023** or the date of the last signature of the parties, whichever is later, and shall remain in effect until **June 30th, 2024**, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

- 2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed **\$967,734.86**. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 Frequency of Invoicing and Terms of Payment

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 Taxes.

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 Fund Availability; Federal Funds Contingency.

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

- 4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

- 5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

- 6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

- 6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

- 8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

- 9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRACTOR

- 10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and

its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

- 13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

- 14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

- 15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

- 16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

- 17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended

during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of

business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: **Core Academics**
Attn: **Brandy Siddiqui**
1250 W Broadway
Minneapolis, MN 55411
Email **Brandy.Siddiqui@mpls.k12.mn.us**

CONTRACTOR

BH365, LLC
Phone: **217-220-2716**
Address: **4017 Bay Springs Ct., Arlington, TX 76016**
Email: **LPetros@blackhistory365education.com**

ACKNOWLEDGMENT

21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify

District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

- 21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

22 NON-WAIVER

- 22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

23 ASSIGNMENT

- 23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

- 24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

25 WARRANTY

- 25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District

as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: Dr. Aimee Fearing

(Printed)

Title: Senior Academic Officer

Date: _____

CONTRACTOR NAME

Signature:

Name: Henry Sandoval

(Printed)

Title: Executive Director of Sales

Date: _____

Exhibit A:

Deliverables:

6,355 physical textbooks with perpetual online access to ebooks. Professional development is included in purchase price.

Comments or special instructions: Quote includes 6,245 Textbooks, 6,245 **perpetual** eBooks (**No Annual eBook Licensing Fee**), Digital Music Album and Teacher Resource guide provided for each classroom set purchased.

Professional Development Included: *^ Textbook Facilitator Training, *Facilitator Summer Institute, *^On-demand Instructional Support Coaching, *On-Going Facilitator Check-ins, *BH365 Administrator Training. *9-12 ^3-8 Textbook Facilitator Training (1 Day) provided in person at no additional charge

Description	Qty
African American Life and Culture Textbook/eBook/Professional Development (3 rd Grade)	1,505
African Americans Shaping A Nation Textbook/eBook/Professional Development (4 th Grade)	1,505
African American and the Arts Throughout History Textbook/eBook/Professional Development (5 th Grade)	1,505
Modern Day Africa Textbook/eBook/Professional Development (6 th Grade)	440
Black Influence from Ancient Africa to Modern Times Textbook/eBook/Professional Development (7 th Grade)	440
The Black Experience in America (Early 1600s-Late 1800s) Textbook/eBook/Professional Development (8 th Grade)	440
BH365: An Inclusive Account of American History Textbook/eBook/Professional Development (9-12)	280
BH365: An Inclusive Account of American History Textbook (9-12)	120
120 Complimentary 9-12 eBooks \$16,798.80 Value	
Shipping	

TC

Service Outcome:

- A. Teachers and students will learn about Black History in authentic ways that promote and highlight the importance of Black History.
- B. Black History lessons are aligned with MN Social Studies and Ethnic Studies standards.

Method of Evaluation:

Collect qualitative feedback from PD attendees and ongoing usage of curriculum.

[The remainder of this page intentionally left blank.]

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

Comments or special instructions: Quote includes 6,245 Textbooks, 6,245 **perpetual** eBooks (**No Annual eBook Licensing Fee**), Digital Music Album and Teacher Resource guide provided for each classroom set purchased.
Professional Development Included: *[▲] Textbook Facilitator Training, *Facilitator Summer Institute, *[▲] On-demand Instructional Support Coaching, *On-Going Facilitator Check-ins, *BH365 Administrator Training. *9-12 [▲]3-8
Textbook Facilitator Training (1 Day) provided in person at no additional charge

Description	Qty	Unit Price	Total Price
African American Life and Culture Textbook/eBook/Professional Development (3 rd Grade)	1,505	\$ 139.99	\$ 210,684.95
African Americans Shaping A Nation Textbook/eBook/Professional Development (4 th Grade)	1,505	\$ 139.99	\$ 210,684.95
African American and the Arts Throughout History Textbook/eBook/Professional Development (5 th Grade)	1,505	\$ 139.99	\$ 210,684.95
Modern Day Africa Textbook/eBook/Professional Development (6 th Grade)	440	\$ 169.98	\$ 74,791.20
Black Influence from Ancient Africa to Modern Times Textbook/eBook/Professional Development (7 th Grade)	440	\$ 169.98	\$ 74,791.20
The Black Experience in America (Early 1600s-Late 1800s) Textbook/eBook/Professional Development (8 th Grade)	440	\$ 169.98	\$ 74,791.20
BH365: An Inclusive Account of American History Textbook/eBook/Professional Development (9-12)	280	\$ 259.99	\$ 72,797.20
BH365: An Inclusive Account of American History Textbook (9-12)	120	\$ 159.99	\$ 19,198.80
<i>120 Complimentary 9-12 eBooks \$16,798.80 Value</i>			
Shipping			\$ 19,410.41
TOTAL COST			\$ 967,834.86

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MINNEAPOLIS
PUBLIC SCHOOLS

Urban Education. Global Citizens.

CONTRACT FOR SERVICES – \$25,000 above

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and College Nannies & Tutors “Contractor” (collectively “parties”) to provide Title I instructional services to eligible students at Cristo Rey Jesuit High School to D-AO-Funded Programs and School Improvement.

TERM OF CONTRACT

- 1.1 This Contract is effective on 08/09/2023 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 06/30/2024, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

- 2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*



MINNEAPOLIS
PUBLIC SCHOOLS
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1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

www.mpls.k12.mn.us

SRM: 44xxxxxx

Page | 1

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$139,733.72. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 Frequency of Invoicing and Terms of Payment

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 Taxes.

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 Fund Availability; Federal Funds Contingency.

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

- 4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

- 5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

- 6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

- 6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

- 8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

- 9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRACTOR

- 10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and

its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

- 13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

- 14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

- 15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

- 16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

- 17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended

during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of

business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: D-AO-Funded Programs and School Improvement
Attn: Sarah Hunter
Address: 1250 W Broadway, Minneapolis, MN 55411
Email: sarah.hunter@mpls.k12.mn.us

CONTRACTOR

College Nannies & Tutors; Laura Davis
Phone: 952-285-7667
Address: 2400 W Lake of the Isles Pkwy, Minneapolis, MN 55405
Email: ldavis@collegenannies.com

ACKNOWLEDGMENT

21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to

backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

- 21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

22 NON-WAIVER

- 22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

23 ASSIGNMENT

- 23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

- 24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

25 WARRANTY

- 25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and

representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

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SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: Kim Ellison

(Printed)

Title: Board of Education, Chair

Date: _____

CONTRACTOR NAME

Signature:

Name: Laura Davis

(Printed)

Title: Franchise Group Owner

Date: _____

Exhibit A:

Deliverables:

To provide Title I instructional services to Title eligible students in the nonpublic schools for the purpose of accelerating reading, and math proficiency for participating students. Services are provided to Title I eligible students attending Cristo Rey Jesuit High School and designed to help students achieve grade level proficiency, based on standardized assessments, in the areas of reading, and math proficiency.

Service Outcome:

- A. Community Partner. PROVIDER shall apply and become certified as a Minneapolis Public Schools Community Partner prior to providing any services under this contract and provide evidence of certification.
- B. Instructional Services. PROVIDER shall provide educational services to students which services are reasonably calculated to help students achieve, as a minimum goal, one year's growth as determined by the standardized test that the nonpublic school uses. DISTRICT expects PROVIDER to provide accelerated instruction that assists students in achieving a gain greater than one year's expected growth.
- C. Tutor Absences. PROVIDER shall make a good faith effort to provide a substitute teacher/tutor for any absence by the originally scheduled teacher/tutor only for any absence over three days, or as agreed upon by DISTRICT and/or nonpublic school officials.
- D. Family Communication. PROVIDER shall ensure families are notified regarding their child's eligibility for service and provided information regarding their child's progress including, but not limited to the following:
 - 1. PROVIDER shall notify families of their child's Title I eligibility in the form of a MPS Title I Parent Notification Letter by October 20th, 2022.
 - 2. Families of students who are identified as eligible for and provided Title I services after October 20th, 2022 will be notified via letter by PROVIDER no more than two weeks after PROVIDER has received notice of the student's Title I eligibility.
 - 3. PROVIDER will hold an annual MPS Title I Parent/Family Information Meeting with parents of Title I students by October 20th, 2022.
 - 4. PROVIDER will give written progress reports and results of any testing it administered to that student at quarterly intervals to the student's parent/guardian at a minimum of four (4) times per year.

5. PROVIDER shall attend nonpublic school conferences and other scheduled school/family events whenever practicable. These services shall be billed as instructional services.
6. PROVIDER will send letters of invitation, coordinate outreach, and contact families via phone, meeting or home visit as appropriate to notify eligible families at each of the nonpublic schools listed in Attachment B of their child's eligibility for MPS Title I programs.
7. Provider will work with nonpublic administrators and DISTRICT to coordinate and plan the scope of services for Title I programs.
- E. Cooperation. PROVIDER shall cooperate with DISTRICT, nonpublic officials, and each student's parent/guardian to develop an instructional program for the student. In cases where the instructional program has not been clearly defined, the PROVIDER will work with DISTRICT, in consultation with nonpublic school administrators, to develop a specific program at the nonpublic site within the parameters of the needs of the eligible students and the budget allocated at that site.
- F. Identification of Students. PROVIDER shall provide services to all students who have been determined eligible and placed by DISTRICT with PROVIDER. For purposes of this Contract, a student will be deemed active once the student has been determined eligible for services by DISTRICT in collaboration with nonpublic officials.
- G. Site Access. PROVIDER shall allow DISTRICT representatives and the student's parents or guardians' reasonable access to the site where PROVIDER provides educational services.
- H. Equipment. All equipment purchased with Title I funds are the property of the DISTRICT, not the PROVIDER.
- I. Neutrality. Classroom space, instruction, and materials and supplies are to be secular, neutral, and non-ideological.
- J. Tutor Certification. Title I tutors are to be qualified in the content area and grade level for which they are tutoring students.
- K. Compliance. PROVIDER will comply with all applicable state and federal laws including Title I statutory and regulatory requirements.
- L. Instruction. PROVIDER shall provide both Title I instructional services to eligible students. Subjects to be covered shall include reading and math proficiency. PROVIDER will ensure instructional group sizes are at appropriate levels to ensure student learning is accelerated and reasonably calculated to help students achieve, as a minimum goal, one year's growth as determined by the standardized tests that the nonpublic school uses.

M. Eligible Student. DISTRICT shall determine each student's eligibility in consultation with the nonpublic school administrators according to the use of multiple, educationally related objective selection criteria.

N. Reports and Documentation. PROVIDER shall provide DISTRICT with the following reports:

1. PROVIDER shall submit to the DISTRICT appropriate documentation of MPS Title I Parent/Family meetings such as MPS Title I flyers, sign-in sheets, and parent/student surveys upon request.
2. PROVIDER shall submit to the DISTRICT copies of written progress reports and results of any testing it administered to students upon request.
3. Beginning September 2022, PROVIDER shall submit its invoices by the 15th of each month following services to DISTRICT in the previous month as described in Exhibit A of this contract, including daily attendance records.
4. PROVIDER shall maintain proper and current documentation, including but not limited to: annual background checks; a list of approved tutors, employees, and/or agents providing services to students; schedules for services provided to each nonpublic school site, daily records of student services rendered including the name and address of student; the name of the PROVIDER'S tutor, employee, and/or agents who rendered the service; and the amount of time of such service.

Method of Evaluation:

A. Evaluation. PROVIDER is responsible for evaluating the effectiveness of the Title I Programs. This includes but is not limited to the use of MPS provided benchmark assessments to monitor student progress in reading and math.

B. Site Review. DISTRICT may conduct an on-site review and/or instructional observations of PROVIDER. On-site reviews may be announced or unannounced. DISTRICT may request monthly meetings with PROVIDER, in person or by telephone, on services provided by PROVIDER. PROVIDER shall cooperate with all such reviews and requests.

C. Quality of Services and Contract Renewal. In contemplating renewal of this contract in successive years, DISTRICT shall analyze the number of eligible students who achieve greater than one year's growth, with the target of grade level proficiency.

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EXHIBIT B: PAYMENT TERMS

Rates shown below are inclusive of materials. Services will be billed based on the type of session offered.

Site and Service Limits (College Nannies and Tutors 2023-24)

School	Services to be Provided	Number of Title I Instructional Hours	Title I	Estimated # of Family Inv. Hours	Title I Family Involvement	Total
Cristo Rey	Academic Services	2366.11	\$ 127,030.65	N/A	\$ -	\$ 127,030.65
REA	10% Admin		\$ 12,703.07			\$ 12,703.07
Total			\$ 139,733.72	0	\$ -	\$ 139,733.72
	Average Hourly Rate	\$53.69				
	One-on-one Tutoring Hourly Rate	\$39.25				
	In-home Remote Tutoring Hourly Rate	\$50.25				
	2:1 or 3:1 Small Group Hourly Rate	\$63.75				
	Small Group Weekly Session Hourly Rate	\$61.50				

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MINNEAPOLIS
PUBLIC SCHOOLS

Urban Education. Global Citizens.

CONTRACT FOR SERVICES – \$25,000 above

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and David Hoy and Associates “Contractor” (collectively “parties”) to provide provide Title I instructional and counseling services to eligible students at Ascension Catholic School, DeLaSalle High School, and Risen Christ Catholic School to D-AO-Funded Programs and School Improvement.

TERM OF CONTRACT

- 1.1 This Contract is effective on 08/08/2022 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 06/30/2024, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

- 2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed 458,617.50. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 *Frequency of Invoicing and Terms of Payment*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 Fund Availability; Federal Funds Contingency.

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with

applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

- 6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

- 8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

- 9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRACTOR

- 10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding,

worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

- 10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

- 11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

- 12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

- 13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.
- 13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in

providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: D-AO-Funded Programs and School Improvement
Attn: Sarah Hunter
Address: 1250 W Broadway, Minneapolis, MN 55411
Email: sarah.hunter@mpls.k12.mn.us

CONTRACTOR

David Hoy & Associates; Sandy Hoy
Phone: 763-370-0940
Address: 8401 Wayzata Blvd., Suite #150, Golden Valley, MN 55426
Email: sandy@davidhoy.com

ACKNOWLEDGMENT

21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup

withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

- 21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

22 NON-WAIVER

- 22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

23 ASSIGNMENT

- 23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

- 24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

25 WARRANTY

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: Sharon El-Amin

(Printed)

Title: Board of Education, Chair

Date: _____

CONTRACTOR NAME

Signature:

Name: Sandra M. Hoy (Printed)

Title: Chief Financial Officer

Date: _____

Exhibit A:

Deliverables:

To provide Title I instructional services to Title eligible students in the nonpublic schools for the purpose of accelerating reading, math, and English language proficiency for participating students. Services are provided to Title I eligible students attending Ascension Catholic School, Cristo Rey Jesuit High School, DeLaSalle High School, and Risen Christ Catholic School Nonpublic schools in grades K-12 and designed to help students achieve grade level proficiency, based on standardized assessments, in the areas of reading, math, and English proficiency.

Service Outcome:

- A. Community Partner. PROVIDER shall apply and become certified as a Minneapolis Public Schools Community Partner prior to providing any services under this contract and provide evidence of certification.
- B. Instructional Services. PROVIDER shall provide educational services to students which services are reasonably calculated to help students achieve, as a minimum goal, one year's growth as determined by the standardized test that the nonpublic school uses. DISTRICT expects PROVIDER to provide accelerated instruction that assists students in achieving a gain greater than one year's expected growth.
- C. Tutor Absences. PROVIDER shall make a good faith effort to provide a substitute teacher/tutor for any absence by the originally scheduled teacher/tutor only for any absence over three days, or as agreed upon by DISTRICT and/or nonpublic school officials.
- D. Family Communication. PROVIDER shall ensure families are notified regarding their child's eligibility for service and provided information regarding their child's progress including, but not limited to the following:
 - 1. PROVIDER shall notify families of their child's Title I eligibility in the form of a MPS Title I Parent Notification Letter by October 20th, 2022.
 - 2. Families of students who are identified as eligible for and provided Title I services after October 20th, 2022 will be notified via letter by PROVIDER no more than two weeks after PROVIDER has received notice of the student's Title I eligibility.
 - 3. PROVIDER will hold an annual MPS Title I Parent/Family Information Meeting with parents of Title I students by October 20th, 2022.
 - 4. PROVIDER will give written progress reports and results of any testing it administered to that student at quarterly intervals to the student's parent/guardian at a minimum of four (4) times per year.

5. PROVIDER shall attend nonpublic school conferences and other scheduled school/family events whenever practicable. These services shall be billed as instructional services.
6. PROVIDER will send letters of invitation, coordinate outreach, and contact families via phone, meeting or home visit as appropriate to notify eligible families at each of the nonpublic schools listed in Attachment B of their child's eligibility for MPS Title I programs.
7. Provider will work with nonpublic administrators and DISTRICT to coordinate and plan the scope of services for Title I programs.
- E. Cooperation. PROVIDER shall cooperate with DISTRICT, nonpublic officials, and each student's parent/guardian to develop an instructional program for the student. In cases where the instructional program has not been clearly defined, the PROVIDER will work with DISTRICT, in consultation with nonpublic school administrators, to develop a specific program at the nonpublic site within the parameters of the needs of the eligible students and the budget allocated at that site.
- F. Identification of Students. PROVIDER shall provide services to all students who have been determined eligible and placed by DISTRICT with PROVIDER. For purposes of this Contract, a student will be deemed active once the student has been determined eligible for services by DISTRICT in collaboration with nonpublic officials.
- G. Site Access. PROVIDER shall allow DISTRICT representatives and the student's parents or guardians' reasonable access to the site where PROVIDER provides educational services.
- H. Equipment. All equipment purchased with Title I funds are the property of the DISTRICT, not the PROVIDER.
- I. Neutrality. Classroom space, instruction, and materials and supplies are to be secular, neutral, and non-ideological.
- J. Tutor Certification. Title I tutors are to be qualified in the content area and grade level for which they are tutoring students.
- K. Compliance. PROVIDER will comply with all applicable state and federal laws including Title I statutory and regulatory requirements.
- L. Instruction. PROVIDER shall provide both Title I instructional services to eligible students which are secular in nature. Subjects to be covered shall include reading and math proficiency. PROVIDER will ensure instructional group sizes are at appropriate levels to ensure student learning is accelerated and reasonably calculated to help students achieve, as a minimum goal, one year's growth as determined by the standardized tests that the nonpublic school uses.

M. Eligible Student. DISTRICT shall determine each student's eligibility in consultation with the nonpublic school administrators according to the use of multiple, educationally related objective selection criteria.

N. Reports and Documentation. PROVIDER shall provide DISTRICT with the following reports:

1. PROVIDER shall submit to the DISTRICT appropriate documentation of MPS Title I Parent/Family meetings such as MPS Title I flyers, sign-in sheets, and parent/student surveys upon request.
2. PROVIDER shall submit to the DISTRICT copies of written progress reports and results of any testing it administered to students upon request.
3. Beginning September 2022, PROVIDER shall submit its invoices by the 15th of each month following services to DISTRICT in the previous month as described in Exhibit A of this contract, including daily attendance records.
4. PROVIDER shall maintain proper and current documentation, including but not limited to: annual background checks; a list of approved tutors, employees, and/or agents providing services to students; schedules for services provided to each nonpublic school site, daily records of student services rendered including the name and address of student; the name of the PROVIDER'S tutor, employee, and/or agents who rendered the service; and the amount of time of such service.

Method of Evaluation:

A. Evaluation. PROVIDER is responsible for evaluating the effectiveness of the Title I Programs. This includes but is not limited to the use of MPS provided benchmark assessments to monitor student progress in reading and math.

B. Site Review. DISTRICT may conduct an on-site review and/or instructional observations of PROVIDER. On-site reviews may be announced or unannounced. DISTRICT may request monthly meetings with PROVIDER, in person or by telephone, on services provided by PROVIDER. PROVIDER shall cooperate with all such reviews and requests.

C. Quality of Services and Contract Renewal. In contemplating renewal of this contract in successive years, DISTRICT shall analyze the number of eligible students who achieve greater than one year's growth, with the target of grade level proficiency.

Fees:

DISTRICT and PROVIDER have agreed that the PROVIDER's hourly rate for Title I services is \$157.46 per hour.

- A. Administrative Costs:** In all cases described in Exhibit A, the DISTRICT shall pay PROVIDER administrative costs in an amount not exceeding 10% of the total for Title I instructional services.
- B. Family Involvement Costs:** DISTRICT shall pay PROVIDER \$150.00 per hour for services related to family involvement and family involvement activities. The provision of services related to family involvement is subject to the expectations set forth in Exhibit A.
- C. Invoices:** PROVIDER shall submit an invoice on its organizational letterhead for each month of service. From September 15, 2022 to June 15, 2023 PROVIDER shall submit invoices by the 15th of the month following the previous month of service for which it is billing DISTRICT based on the hourly rates listed above and listed in Exhibit B. Invoices must delineate services provided and fees billed for instructional services, family involvement services, professional development services, and administration services for each nonpublic school. PROVIDER shall submit its final invoice for fiscal year 2022-23 so that it is received by DISTRICT no later than July 9, 2023. PROVIDER understands that DISTRICT will make no payment on any invoice for the 2022-23 fiscal year if it receives after invoices July 10, 2023. DISTRICT reserves the right to request additional information from PROVIDER.

Invoices and related attached attendance sheets must include the following information:

1. Names of the school(s) where the service was provided;
 2. Name of student(s) served;
 3. Date(s) of service;
 4. A detailed summary of the services provided;
 5. Number of students served per week;
 6. Number of minutes of service per student per session;
 7. Subject area of service provided to student (e.g., math, reading, etc.);
 8. Monthly expenses per school category (Instructional Services, Professional Development, and/or Administration);
 9. Total expenditures for each school for the year.
- D. Payment:** DISTRICT shall pay PROVIDER within thirty (30) days of receipt of each complete invoice submitted in compliance with this Contract. DISTRICT does not pay in advance for services.
- E. Allowable Costs:** For the purposes of this Contract, costs are defined by the DISTRICT as:
1. **Instructional:** PROVIDER costs for teacher and instructional aide salaries, including fringe benefits; instructional materials, including items such as books, computers and software for student use, workbooks, and supplies.
 2. **Administrative:** PROVIDER costs incurred to administer the program, including but not limited to: salaries and fringe benefits of the Director, computer assistants, area supervisors, and support staff; office rent and utilities; office equipment and supplies; postage and mailings; telephone; travel; special capital expenses; professional development for Title I teachers and supervisors who are employees of the PROVIDER; and the PROVIDER'S fee.
 3. **Professional Development:** PROVIDER costs incurred to provide professional development activities to the private school teachers of active students.

- F. Site and Service Limits. The sites to be serviced by PROVIDER are listed in Exhibit B and incorporated herein. DISTRICT shall not pay an amount greater than what is listed in Exhibit B per school and shall not pay an amount greater than what is delineated by each particular budget line for services at each listed school.

[The remainder of this page intentionally left blank.]

EXHIBIT B: PAYMENT TERMS

Site and Service Limits (David Hoy and Associates 2023-2024)

School	Services to be Provided	Number of Title I Instructional Hours	Title I	Estimated # of Family Inv. Hours	Title I Family Involvement	Total
Ascension	Academic Services	528	83,250.00			83,250
Cristo Rey	Academic Services	797	\$ 125,550			125,550
DeLaSalle	Academic Services	440	69,375			69,375
Risen Christ	Academic Services	881	\$138,750			138,750
REA	10% Admin		41,692.50			21,267,24
Total		2646	458,618			458,617.50
	Hourly Rate	\$ 157.46		Fam Inv. Rate	\$ 150.00	

[The remainder of this page intentionally left blank.]



CONTRACT FOR SERVICES – \$25,000 above

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and **hand 2 mind**. “Contractor” (collectively “parties”) to provide **Word Work Magnetic Boards and Tiles, Boards and Blank Dry Erase Magnet Boards**. to **Minneapolis Public Schools**.

TERM OF CONTRACT

- 1.1 This Contract is effective on **July 1, 2023**, or the date of the last signature of the parties, whichever is later, and shall remain in effect until **June 30, 2024**, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

- 2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed **\$146,015.05**. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 *Frequency of Invoicing and Terms of Payment*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 *Fund Availability; Federal Funds Contingency.*

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

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7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any

representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRACTOR

10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

- 13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.
- 13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.
- 13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.
- 13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is canceled or revised.

14 INDEMNIFICATION

- 14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

- 15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

- 16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

- 17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

- 18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.
- 18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination

is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such

other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: Core Academics: Literacy
Attn: Megan Rangel
1250 W Broadway
Minneapolis, MN 55411
Email: megan.rangel@mpls.k12.mn.us

CONTRACTOR

hand 2 mind
Phone: 800.445.5985
Address: 500 GREENVIEW COURT VERNON HILLS, IL 60061-1862
Email:

ACKNOWLEDGMENT

- 21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to backup withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.
- 21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

22 NON-WAIVER

22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

23 ASSIGNMENT

23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

25 WARRANTY

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold

harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: Dr. Aimee Fearing

(Printed)

Title: Senior Academic Officer

Date: _____

CONTRACTOR NAME

Signature:

Name: Click or tap here to enter text.

(Printed)

Title: Click or tap here to enter text.

Date: _____

Exhibit A:

Deliverables:

Item number	Description	Quantity	Unit
96858	WORD WORK MAGNETIC BOARDS AND TILES SET/6	1,550.00	EA
87513	BOARDS, DRY ERASE, MAGNETIC, BLANK PK/10	210.00	EA

Service Outcome:

To provide Word Work Magnetic Boards and Tiles and Dry Erase, Magnetic and Blank Boards

Method of Evaluation:

Leadership Evaluation and Completion of Deliverables and Service Outcomes

[The remainder of this page intentionally left blank.]

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:



hand2mind
500 GREENVIEW COURT
VERNON HILLS, IL 60061-1862
USA

Telephone 800.445.5985
Fax 847-968-5200

Bill to:
MINNEAPOLIS PUBLIC SCHOOL
1250 W. Broadway Ave.
Minneapolis, MN 55411
USA

Quotation

Page	1 of 1
Number	QUO013254-2
Date	6/30/2023
Requisition	
Your ref.	Megan Rangel
Prepared By	Ebony Steward
Quotation deadline	8/10/2023
Payment	Net 30 days
Invoice Acct #	CUST000000326

Ship to:
MINNEAPOLIS PUBLIC SCHOOL
1250 W. Broadway Ave.
Minneapolis, MN 55411
USA

Item number	Description	Quantity	Unit	Sales price	Discount percent	Discount	Price after discount	Amount
96858	WORD WORK MAGNETIC BOARDS AND TILES SET/6	1,550.00	EA	\$ 99.99	15.00%	\$ 15.00	\$ 84.99	\$ 131736.83
87513	BOARDS, DRY ERASE, MAGNETIC, BLANK PK/10	210.00	EA	\$ 79.99	15.00%	\$ 12.00	\$ 67.99	\$ 14278.22

Sales subtotal							
Currency	amount	Total discount	Charges	Net amount	Sales tax	Round-off	Total
USD	146,015.05	25770.00	0.00	146,015.05	0.00	0.00	146,015.05

[The remainder of this page intentionally left blank.]



MINNEAPOLIS PUBLIC SCHOOLS

Urban Education. Global Citizens.

CONTRACT FOR SERVICES – \$25,000 above

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Learning Disabilities Association “Contractor” (collectively “parties”) to provide provide Title I instructional services to eligible students at DeLaSalle High School D-AO-Funded Programs and School Improvement.

TERM OF CONTRACT

1.1 This Contract is effective on 08/09/2023 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 06/30/2024, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

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The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$151,250.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

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Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

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- 6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

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- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

- 8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

- 9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRACTOR

- 10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

- 10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

- 11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

- 12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

- 13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.
- 13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.
- 13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and

its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

- 13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

- 14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

- 15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

- 16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

- 17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the

event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

- 18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.
- 18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.
- 18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

- 19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

- 20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State

Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: D-AO-Funded Programs and School Improvement
Attn: Sarah Hunter
Address: 1250 W Broadway, Minneapolis, MN 55411
Email: sarah.hunter@mpls.k12.mn.us

CONTRACTOR

Learning Disabilities Association; Martha Moriarty
Phone: 952-582-6001
Address: 6100 Golden Valley Rd, Minneapolis, MN 55422
Email: mm@ldaminnesota.org

ACKNOWLEDGMENT

- 21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return.

Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

- 21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

22 NON-WAIVER

- 22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

23 ASSIGNMENT

- 23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

- 24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

25 WARRANTY

- 25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations

(including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name:

(Printed)

Title: Board of Education, Chair

Date: _____

CONTRACTOR NAME

Signature: 

Name: Martha Moriarty

(Printed)

Title: Executive Director

Date: June 30, 2023

Exhibit A:

Deliverables:

To provide Title I instructional services to Title eligible students in the nonpublic schools for the purpose of accelerating reading, math, and English language proficiency for participating students. Services are provided to Title I eligible students attending DeLaSalle High School Nonpublic school in grades 9-12 and designed to help students achieve grade level proficiency, based on standardized assessments, in the areas of reading, math, and English proficiency.

Service Outcome:

- A. Community Partner. PROVIDER shall apply and become certified as a Minneapolis Public Schools Community Partner prior to providing any services under this contract and provide evidence of certification.
- B. Instructional Services. PROVIDER shall provide educational services to students which services are reasonably calculated to help students achieve, as a minimum goal, one year's growth as determined by the standardized test that the nonpublic school uses. DISTRICT expects PROVIDER to provide accelerated instruction that assists students in achieving a gain greater than one year's expected growth.
- C. Tutor Absences. PROVIDER shall make a good faith effort to provide a substitute teacher/tutor for any absence by the originally scheduled teacher/tutor only for any absence over three days, or as agreed upon by DISTRICT and/or nonpublic school officials.
- D. Family Communication. PROVIDER shall ensure families are notified regarding their child's eligibility for service and provided information regarding their child's progress including, but not limited to the following:
 - 1. PROVIDER shall notify families of their child's Title I eligibility in the form of a MPS Title I Parent Notification Letter by October 20th, 2023.
 - 2. Families of students who are identified as eligible for and provided Title I services after October 20th, 2023 will be notified via letter by PROVIDER no more than two weeks after PROVIDER has received notice of the student's Title I eligibility.
 - 3. PROVIDER will hold an annual MPS Title I Parent/Family Information Meeting with parents of Title I students by October 20th, 2023.
 - 4. PROVIDER will give written progress reports and results of any testing it administered to that student at quarterly intervals to the student's parent/guardian at a minimum of four (4) times per year.
 - 5. PROVIDER shall attend nonpublic school conferences and other scheduled school/family events whenever practicable. These services shall be billed as instructional services.

6. PROVIDER will send letters of invitation, coordinate outreach, and contact families via phone, meeting or home visit as appropriate to notify eligible families at each of the nonpublic schools listed in Attachment B of their child's eligibility for MPS Title I programs.
7. Provider will work with nonpublic administrators and DISTRICT to coordinate and plan the scope of services for Title I programs.
- E. Cooperation. PROVIDER shall cooperate with DISTRICT, nonpublic officials, and each student's parent/guardian to develop an instructional program for the student. In cases where the instructional program has not been clearly defined, the PROVIDER will work with DISTRICT, in consultation with nonpublic school administrators, to develop a specific program at the nonpublic site within the parameters of the needs of the eligible students and the budget allocated at that site.
- F. Identification of Students. PROVIDER shall provide services to all students who have been determined eligible and placed by DISTRICT with PROVIDER. For purposes of this Contract, a student will be deemed active once the student has been determined eligible for services by DISTRICT in collaboration with nonpublic officials.
- G. Site Access. PROVIDER shall allow DISTRICT representatives and the student's parents or guardians' reasonable access to the site where PROVIDER provides educational services.
- H. Equipment. All equipment purchased with Title I funds are the property of the DISTRICT, not the PROVIDER.
- I. Neutrality. Classroom space, instruction, and materials and supplies are to be secular, neutral, and non-ideological.
- J. Tutor Certification. Title I tutors are to be qualified in the content area and grade level for which they are tutoring students.
- K. Compliance. PROVIDER will comply with all applicable state and federal laws including Title I statutory and regulatory requirements.
- L. Instruction. PROVIDER shall provide both Title I instructional services and academic counseling to eligible students which are secular in nature. Subjects to be covered shall include reading and math proficiency. PROVIDER will ensure instructional group sizes are at appropriate levels to ensure student learning is accelerated and reasonably calculated to help students achieve, as a minimum goal, one year's growth as determined by the standardized tests that the nonpublic school uses.
- M. Eligible Student. DISTRICT shall determine each student's eligibility in consultation with the nonpublic school administrators according to the use of multiple, educationally related objective selection criteria.

N. Reports and Documentation. PROVIDER shall provide DISTRICT with the following reports:

1. PROVIDER shall submit to the DISTRICT appropriate documentation of MPS Title I Parent/Family meetings such as MPS Title I flyers, sign-in sheets, and parent/student surveys upon request.
2. PROVIDER shall submit to the DISTRICT copies of written progress reports and results of any testing it administered to students upon request.
3. Beginning September 2023, PROVIDER shall submit its invoices by the 15th of each month following services to DISTRICT in the previous month as described in Exhibit A of this contract, including daily attendance records.
4. PROVIDER shall maintain proper and current documentation, including but not limited to: annual background checks; a list of approved tutors, employees, and/or agents providing services to students; schedules for services provided to each nonpublic school site, daily records of student services rendered including the name and address of student; the name of the PROVIDER'S tutor, employee, and/or agents who rendered the service; and the amount of time of such service.

Method of Evaluation:

- A. Evaluation. PROVIDER is responsible for evaluating the effectiveness of the Title I Programs. This includes but is not limited to the use of MPS provided benchmark assessments to monitor student progress in reading and math.
- B. Site Review. DISTRICT may conduct an on-site review and/or instructional observations of PROVIDER. On-site reviews may be announced or unannounced. DISTRICT may request monthly meetings with PROVIDER, in person or by telephone, on services provided by PROVIDER. PROVIDER shall cooperate with all such reviews and requests.
- C. Quality of Services and Contract Renewal. In contemplating renewal of this contract in successive years, DISTRICT shall analyze the number of eligible students who achieve greater than one year's growth, with the target of grade level proficiency.

Fees:

DISTRICT and PROVIDER have agreed that the PROVIDER's rate for a 1.0 full time equivalent (FTE) for Title I instructional services and Title IV services is \$89,280 which equals an hourly rate of \$62.00. It is understood that a 1.0 FTE is equal to 40 hours per week for 36 weeks which includes but is not limited to instructional services, instructional preparation, consultation and coordination of Title services, and tutor professional development.

- A. Administrative Costs: In all cases described in Exhibit A, the DISTRICT shall pay PROVIDER administrative costs in an amount not exceeding 10% of the total for Title I instructional services.
- B. Family Involvement Costs. DISTRICT shall pay PROVIDER \$150.00 per hour for services related to family involvement and family involvement activities. The provision of services related to family involvement is subject to the expectations set forth in Exhibit A.
- C. Invoices. PROVIDER shall submit an invoice on its organizational letterhead for each month of service. From October 15, 2023 to June 15, 2024 PROVIDER shall submit invoices by the 15th of the month following the previous month of service for which it is billing DISTRICT based on the hourly rates listed above and listed in Exhibit B. Invoices must delineate services provided and fees billed for instructional services, family involvement services, professional development services, and administration services for each nonpublic school. PROVIDER shall submit its final invoice for fiscal year 2023-24 so that it is received by DISTRICT no later than July 9, 2024. PROVIDER understands that DISTRICT will make no payment on any invoice for the 2023-24 fiscal year if it receives after invoices July 10, 2024. DISTRICT reserves the right to request additional information from PROVIDER.

Invoices and related attached attendance sheets must include the following information:

1. Names of the school(s) where the service was provided;
 2. Name of student(s) served;
 3. Date(s) of service;
 4. A detailed summary of the services provided;
 5. Number of students served per week;
 6. Number of minutes of service per student per session;
 7. Subject area of service provided to student (e.g., math, reading, etc.);
 8. Monthly expenses per school category (Instructional Services, Professional Development, and/or Administration);
 9. Total expenditures for each school for the year.
- D. Payment. DISTRICT shall pay PROVIDER within thirty (30) days of receipt of each complete invoice submitted in compliance with this Contract. DISTRICT does not pay in advance for services.
- E. Allowable Costs: For the purposes of this Contract, costs are defined by the DISTRICT as:
1. Instructional: PROVIDER costs for teacher and instructional aide salaries, including fringe benefits; instructional materials, including items such as books, computers and software for student use, workbooks, and supplies.
 2. Administrative: PROVIDER costs incurred to administer the program, including but not limited to: salaries and fringe benefits of the Director, computer assistants, area supervisors, and support staff; office rent and utilities; office equipment and supplies; postage and mailings; telephone; travel; special capital expenses; professional development for Title I teachers and supervisors who are employees of the PROVIDER; and the PROVIDER'S fee.
 3. Professional Development: PROVIDER costs incurred to provide professional development activities to the private school teachers of active students.
- F. Site and Service Limits. The sites to be serviced by PROVIDER are listed in Exhibit B and incorporated herein. DISTRICT shall not pay an amount greater than what is listed in Exhibit B

per school and shall not pay an amount greater than what is delineated by each particular budget line for services at each listed school.

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EXHIBIT B: PAYMENT TERMS

Site & Service Limits (LDA 2022-23)

School	Services to be Provided	Number of Title I Instructional Hours	Title I	Estimated # of Family Inv. Hours	Title I Family Involvement	Total
DeLaSalle	Academic Services	2,193.54	\$ 137,500.00	10	\$ 1,500.00	\$ 137,500.00
						\$ -
REA	10% Admin		\$ 13,750.00			\$ 13,750.00
Total			\$ 151,250.00	5	\$ 1,500.00	\$ 151,250.00
	Hourly Rate	\$ 62.00		Fam Inv. Rate	\$ 150.00	

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Special School District No. 1
Official Publication No. 23-2324
Low Voltage Improvements Phase 5

Contract Sum: \$ 1,193,000.00

Contractor: Muska Companies
 1985 Oakcreat Ave.
 Roseville, MN. 55113
 P (651) 636-5820, F (651) 636-0916
 Matt Gilbert, (651) 639-5122

Project Name and Number:

Official Publication No. 23-2324
 Low Voltage Improvements Phase 5

Description:

To furnish all labor, materials, equipment, and incidentals to complete all work for Low Voltage Improvements Phase 5 project, in accordance with Drawings and Specifications prepared by: Wold Architects and Engineers, 332 Minnesota Street, Suite W2000, Saint Paul, MN. 55101
 Article 9.5 Drawings: June 19, 2023
 9.6 Specifications dated: June 19, 2023
 9.7 Addenda dated: Addendum #1 dated 06/29/2023,
 Addendum #2 dated 07/05/2023

LV Improvements at South high school to include upgraded clocks, PA system, and fire alarm system.

Contract Sum Details

Item	Price	Status
Base Bid	\$ -	Accepted
Alt #1: (enter brief name)	\$ -	N/A
Alt #2: (enter brief name)	\$ -	N/A
Alt #3: (enter brief name)	\$ -	N/A
Alt #4: (enter brief name)	\$ -	N/A
Alt #5: (enter brief name)	\$ -	N/A
TOTAL CONTRACT AMOUNT \$		- \$ 1,193,000.00

Contract Documents:

AIA Document A101-2017
 AIA Document A101 Exhibit A-2017
 Exhibit B - Project Charter
 Exhibit C - Owner Insurance
 Exhibit D - Project Schedule
 AIA Document A201-201
 AIA Document E203-2013

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 13 day of July in the year 2023
(In words, indicate day, month and year.)

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

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

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

Muska Companies
1985 Oakcrest Ave.
Roseville, MN. 55113
P (651) 636-5820, F (651) 636-0916

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

Low Voltage Improvements Phase 5
South High School
3131 19th Ave. S. Minneapolis, MN. 55407

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

Wold Architects and Engineers
332 Minnesota Street, Suite W2000
Saint Paul, MN. 55101
(651) 227-7773

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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.

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.

☒ 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 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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User Notes:

(3B9ADA38)

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

[X] By the following date: Defined in EXH-D Project Schedule

§ 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 as defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

(Table Deleted)

§ 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 as defined in EXH-B Project Charter, 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 are defined in EXH-B Project Charter.

(Table Deleted)

§ 4.2.2 Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Paragraph Deleted)

(Table Deleted)

§ 4.3 Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

(Paragraph Deleted)

(Table Deleted)

§ 4.4 Unit prices, if any are defined in EXH-B Project Charter.

(Paragraph Deleted)

(Table Deleted)

§ 4.5 Liquidated damages

Init.

Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated

damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

(Paragraph Deleted)

After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

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.

§ 5.1.3 When an Application for Payment is received by the Architect, payment of the amount certified shall be made by the Owner not later than 45 (forty-five) days after the Architect receives the Application for Payment.

(Paragraph Deleted)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the 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:

Init.

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User Notes:

(3B9ADA38)

- .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:

(Paragraph Deleted)

5% (five percent)

§ 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.)

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as

determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

(Paragraph Deleted)

§ 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 or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

§ 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.
- .3 all lien waivers and IC134 forms have been delivered to the Owner.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

(Paragraph Deleted)

§ 5.4 Prompt Payment to Subcontractors

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

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.

§ 6.1.1 Mediation

Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201–2017.

§ 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

☒ 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.)

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

§ 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)

Kanjana Foster
1250 West Broadway Avenue
Minneapolis, MN 55411

§ 8.3 The Contractor's representative:

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

Matt Gilbert
1989 Oakcrest Ave.
Roseville, MN. 55113
Fax: (651) 636-0916 | Main Office: (651) 636-5820
mgilbert@muskacompanies.com

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document 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 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

§ 8.7 Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

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

January 31, 2020

- .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:

(Paragraphs Deleted)

EXH-B Project Charter

(Paragraph Deleted)

EXH-C Owner Insurance
EXH-D Project Schedule

(Paragraph Deleted)

(Table Deleted)

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
.9 Other documents, if any, listed below: <i>(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.)</i>			

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

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

Chad McNitt Project Manager

(Printed name and title)

Init.

/

Additions and Deletions Report for

AIA® Document A101® – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:52:41 CT on 07/14/2023.

PAGE 1

AGREEMENT made as of the 13 day of July in the year 2023

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Muska Companies
1985 Oakcrest Ave.
Roseville, MN. 55113
P (651) 636-5820, F (651) 636-0916

...

Low Voltage Improvements Phase 5
South High School
3131 19th Ave. S. Minneapolis, MN. 55407

...

Wold Architects and Engineers
332 Minnesota Street, Suite W2000
Saint Paul, MN. 55101
(651) 227-7773

PAGE 2

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

...

§ 3.3.1 ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, the~~ The Contractor shall achieve Substantial Completion of the entire Work:

PAGE 3

[X] By the following date: Defined in EXH-D Project Schedule

...

§ 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~~:dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

...

Portion of Work

Substantial Completion Date

...

§ 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 (\$),~~ Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

§ 4.2.1 Alternates, if any, included in the Contract ~~Sum~~:Sum are defined in EXH-B Project Charter.

...

Item

Price

...

§ 4.2.2 Subject to the conditions noted ~~below,~~ the following in EXH-B Project Charter, 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~~:Sum are defined in EXH-B Project Charter.

...

(Identify each allowance.)

...

Item

Price

...

§ 4.4 Unit prices, if ~~any~~ any are defined in EXH-B Project Charter.

...

(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~~ damages

PAGE 4

(Insert terms and conditions for liquidated damages, if any.) Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated

...

damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the

...

Owner.

...

§ 4.6 Other:

...

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.) After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.

...

§ 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:

...

month.

...

§ 5.1.3 ~~Provided that~~ When an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 45 (forty-five) days after the Architect receives 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 on AIA G702 Application and Certificate for Payment in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

PAGE 5

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

...

5% (five percent)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

...

(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.) Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as

...

§ 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: determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

(Insert any other conditions for release of retainage upon Substantial Completion.)

...

§ 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~~ site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

PAGE 6

.3 all lien waivers and IC134 forms have been delivered to the Owner.

...

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~ 45 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~ Payment.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

...

(Insert rate)

...

§ 5.4 Prompt Payment to Subcontractors

...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of interest agreed upon, if any.) payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for

an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless A201–2017.

...

§ 6.1.1 Mediation

...

the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

...

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

...

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.) If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.

...

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201–2017.

PAGE 7

[X] Litigation in a court of competent jurisdiction

...

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

...

Kanjana Foster
1250 West Broadway Avenue
Minneapolis, MN 55411

...

Matt Gilbert
1989 Oakcrest Ave.
Roseville, MN. 55113
Fax: (651) 636-0916 | Main Office: (651) 636-5820
mgilbert@muskacompanies.com

PAGE 8

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

...

January 31, 2020

...

(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:

...

[EXH-B Project Charter](#)

PAGE 9

(Insert the date of the E204-2017 incorporated into this Agreement.)

...

[EXH-C Owner Insurance](#)

...

[EXH-D Project Schedule](#)

...

~~[]~~ The Sustainability Plan:

...

Title

Date

Pages



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:52:41 CT on 07/14/2023 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Project Manager

(Title)

7/31/2023

(Dated)



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 **07** day of **July** in the year **2023**
(In words, indicate day, month and year.)

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

Low Voltage Improvements Phase 5
South High School, 3131 19th Ave. S. Minneapolis, MN. 55407

THE OWNER:
(Name, legal status and address)

Minneapolis Public Schools Special School District #1
1250 West Broadway Ave. Minneapolis, MN. 55411

THE CONTRACTOR:
(Name, legal status and address)

Muska Companies
1985 Oakcrest Ave. Roseville, MN. 55113

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 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.

ADDITIONS AND DELETIONS:

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

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

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

§ 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 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.

§ 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 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 as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the 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.)

§ 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 as defined is ECH-C Owner Insurance, 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 as defined in EXH-C Owner Insurance .

§ 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. Umbrella coverage as defined in EXH-C Owner Insurance

§ A.3.2.5 Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability Coverage B as defined in EXH-C Owner Insurance .

(Paragraph deleted)

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance .

.

(Paragraphs deleted)

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

§ 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.)

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

§ 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 as defined in EXH-C Owner Insurance.

(Paragraphs deleted)

§ 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	Full contract value
Performance Bond	Full contract value

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:

None

Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:54:01 CT on 07/14/2023.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 07 day of July in the year 2023

...

Low Voltage Improvements Phase 5
South High School, 3131 19th Ave. S. Minneapolis, MN. 55407

...

Minneapolis Public Schools Special School District #1
1250 West Broadway Ave. Minneapolis, MN. 55411

...

Muska Companies
1985 Oakcrest Ave. Roseville, MN. 55113

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§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~—(\$ —) each occurrence, —(\$ —) general aggregate, and —(\$ —) aggregate for products-completed operations hazard,~~ as defined is ECH-C Owner Insurance, providing coverage for claims including

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§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~—(\$ —) 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,~~ as defined in EXH-C Owner Insurance.

§ 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. Umbrella coverage as defined in EXH-C Owner Insurance

§ A.3.2.5 Workers' Compensation at statutory limits: limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability with policy limits not less than ~~—(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit.~~ Coverage B as defined in EXH-C Owner Insurance.

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

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate, as defined in EXH-C Owner Insurance .

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate, as defined in EXH-C Owner Insurance.

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If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

§ 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.3.3.1 as defined in EXH-C Owner Insurance.

☐ **§ 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 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

...

Payment Bond

Full contract value

Performance Bond

Full contract value

...

None

AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

THE ARCHITECT:
(Name, legal status and address)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
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- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the Work.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.

§ 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 intended results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.4.2

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

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

§ 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. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

§ 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.

§ 1.5.3 The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

§ 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 may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, 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 or other 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.

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 thirty (30) 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

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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 and other obligations, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

§ 2.3.4 If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor 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. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

§ 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 three-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 and expenses 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 within ten (10) days following written request for payment delivered by the Owner to the Contractor. 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.

§ 3.1.2

The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

§ 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 The Contractor

shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.

§ 3.2.1.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

§ 3.2.1.2 The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's

warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

§ 3.2.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

§ 3.2.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.7 The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

§ 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. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

§ 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 The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

§ 3.4.5 The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

§ 3.4.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such
Substitutions.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

§ 3.5.3 Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its

responsibilities.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

§ 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 or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and 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 or any other management personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of 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, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, 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 and accepted by the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and 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 as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor, and delivered to the Architect for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

§ 3.11.1 No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance 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 acceptance 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 acceptance 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 acceptance of a resubmission shall not apply to such revisions.

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

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. 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 continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the 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 which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

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

§ 3.18.3 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

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.

§ 4.1.3 In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

§ 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 the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 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 Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when 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. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

§ 4.2.2.2 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

§ 4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with 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 performing portions of the Work.

§ 4.2.4 Communications

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

§ 4.2.5 Based on the Architect's observations and valuations of the Work and 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 will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional 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 and the Owner may 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 or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals by the Architect or the Owner 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 or the Owner'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 or the Owner's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's or Owner's acceptance of a specific item shall not indicate acceptance 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 the requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

§ 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 so rendered in good faith.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing 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. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

§ 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.

§ 5.2.2.1 The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

§ 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. The Contract Sum shall be increased or decreased by the difference, in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

§ 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. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

§ 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 shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

§ 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. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The

Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

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

§ 6.2 Mutual Responsibility

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

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

§ 6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

§ 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 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

§ 6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 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 as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

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.

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

§ 7.1.4 The amount of credit to be allowed by the contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after

consultation with the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

§ 7.1.5 In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.
5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.2 Change Orders

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

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

§ 7.2.2 Change Orders shall be prepared on AIA Document G701.

§ 7.3 Construction Change Directives

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

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

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

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

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);
- .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.

§ 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 up to and not exceeding \$25,000. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. 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. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 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" shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

§ 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 and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the 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

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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; or (4) by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

§ 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.

§ 8.3.4 The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article 15.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. The 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. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

§ 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 for operations completed in accordance with the Schedule of Values. Such application shall be notarized 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 material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

§ 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 Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

§ 9.3.1.2 Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

§ 9.3.1.3 Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

§ 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.

§ 9.3.4 In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of 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. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

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

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If

approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be accomplished as provided in Article 7.

§ 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 and when the Architect issues a certificate of Substantial Completion.

§ 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. The Contractor shall proceed promptly to complete and correct items on the list.

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. 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 in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

§ 9.8.6.1 The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

§ 9.8.6.2 Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

§ 9.8.7 The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

§ 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 observations, 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 and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner, (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, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

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

§ 9.11 DAMAGES FOR DELAY

§ 9.11.1 The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1.1 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.

§ 10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

§ 10.2 Safety of Persons and Property

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

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

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

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, 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 ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or

contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

§ 10.3.2 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner 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 which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.

§ 10.3.4 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

§ 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. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a 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 verify that it has been rendered harmless.

§ 10.3.6 Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

§ 10.3.7 The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

§ 10.3.8 The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 MISCELLANEOUS GENERAL PROVISIONS

§ 10.5.1 In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

§ 10.5.2 The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

§ 10.5.3 Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

§ 10.5.4 The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

§ 10.5.5 The Contractor shall not sue any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

§ 10.5.6 If, without negligence on the part of the Contractor, the Contractor is held liable 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 indemnify the Contractor for all reasonable costs and expenses thereby incurred.

§ 10.6 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act 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, in EXH-C.3 Owner Insurance, 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 and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.3.1 Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

§ 11.1.4 In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

§ 11.1.5 Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

§ 11.1.6 The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

§ 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

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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. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

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

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

§ 11.3 Waivers of Subrogation

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

(Paragraph Deleted)

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

Init.

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 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.

§ 11.6.1 Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

§ 11.6.2 In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

§ 11.6.3 The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

§ 11.6.4 The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear 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.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 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 (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect shall give such notice promptly after discovery of the condition. This period of one year 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 performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation from the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

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

§ 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

§ 12.2.6 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 time period of one year as described in Subparagraph 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 the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 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.

§ 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. The Owner 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. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give a minimum of two (2) working days' notice to the Architect of when and where tests and inspections are to be made so that the Architect may observe procedures. The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

§ 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 NON-DISCRIMINATION

§ 13.5.1 All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.5.2 During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.6 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the

representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

(Paragraph Deleted)

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 ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the

condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

§ 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 written 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. Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

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

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

§ 15.2 Initial Decision

§ 15.2.1 Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of
(Paragraph Deleted)

Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. 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 Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or

requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.

§ 15.2.3 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

§ 15.2.4 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.

§ 15.2.5 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to action at law. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

(Paragraph Deleted)

§ 15.3 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.

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

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

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Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

PAGE 2

EXH-A Project Charter

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EXH-C.3 Owner Insurance

PAGE 10

§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the

...

§-Work.

...

§ 1.1.2 The Contract

...

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.~~ Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.

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§ 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-intended~~ results.

...

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

...

In the interest of brevity the Contract Documents frequently omit modifying words such as ~~"all" and "any,"~~ "all" and "any" and articles such as ~~"the" and "an,"~~ "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.~~statement.

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§ 1.4.2

...

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

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

...

In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

...

§ 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. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

PAGE 12

§ 1.5.3 The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

...

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~~may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit, Exhibit or other form,~~ to establish the protocols for the development, use, transmission, and exchange of digital data.

...

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, Form or other 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.

...

§ 2.1.2 The Owner shall furnish to the Contractor, within ~~fifteen~~thirty (30) 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.

PAGE 13

§ 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, 3.7.1 and other obligations,~~ 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.

...

§ 2.3.4 ~~The~~If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The 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. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

PAGE 14

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~three-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 and expenses 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.~~Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. 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.

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§ 3.1.2

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The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

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

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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 shall carefully study and compare the Contract Documents with each other and with 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 Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.~~

...

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.§ 3.2.1.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

...

§ 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. 3.2.1.2 The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

PAGE 15

§ 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 discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

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Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor § 3.2.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

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shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. § 3.2.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

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§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

...

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

...

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

...

§ 3.3.7 The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's

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§-operations.

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§ 3.4 Labor and Materials

PAGE 16

§ 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. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

...

§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

...

§ 3.4.5 The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

...

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state

the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

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§ 3.4.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such

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§ Substitutions.

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§ 3.5 Warranty

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§ 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. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

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§ 3.5.3 Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its

PAGE 17

§ responsibilities.

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§ 3.6 Taxes

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§ 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. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

§ 3.7.3 If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume appropriate full responsibility for such Work and shall bear the costs attributable to correction. attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ten (10) 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.

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§ 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.~~Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and Contractor.

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§ 3.9.3 The Contractor shall not employ a proposed superintendent or any other management personnel 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.

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§ 3.9.4 If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the

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§-Owner.

§ 3.10 Contractor's Construction and Submittal Schedules

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§ 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, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, 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.

...

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

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The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently updated daily to indicate field changes and selections made during construction, and the and in addition accepted and 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~~, Owner as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor, and delivered to the Architect for submittal to the Owner upon completion of the ~~Work as a record Work.~~ The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

...

§ 3.11.1 ~~No review or receipt of the Work as constructed,~~ such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with 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~~ accepted by the Architect.

PAGE 20

§ 3.12.8 The Work shall be in accordance with ~~approved~~ accepted 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~~ acceptance 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~~ acceptance 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~~ acceptance 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~~ acceptance of a resubmission shall not apply to such revisions.

...

§ 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 hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. the Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

...

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

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts 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 which~~ would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

...

§ 3.18.3 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys'

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ARTICLE fees.

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ARTICLE 4 ARCHITECT

PAGE 22

§ 4.1.3 In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

...

§ 4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

...

§ 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 the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

...

§ 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, of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, 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. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

...

§ 4.2.2.2 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

...

Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the **§ 4.2.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for 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. Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to perform carry out 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.

...

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.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect and the Contractor to comply with Owner requirements in regards to public communications and site signage.

...

§ 4.2.5 Based on the Architect's ~~evaluations~~ observations and valuations of the Work and 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 will have~~ authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional 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.

PAGE 23

§ 4.2.7 The Architect will and the Owner may 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 or~~ Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals ~~by the Architect or the Owner~~ 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 ~~or the Owner'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 ~~or the Owner's~~ review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's ~~approval or Owner's acceptance of~~ a specific item shall not indicate ~~approval~~ acceptance of an assembly of which the item is a component.

...

§ 4.2.11 The Architect will interpret and decide matters concerning performance ~~under, and under the~~ 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 with reasonable promptness and within any time limits agreed upon.~~ If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

...

§ 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 so rendered in good faith.

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§ 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 in writing 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. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

...

§ 5.2.2.1 The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

...

§ 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~~ The Contract Sum shall be increased or decreased by the difference, if any, in cost 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. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

...

§ 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. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the

Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

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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~~ shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

§ 5.3.2 The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the

...

§ Contractor.

...

§ 5.4 Contingent Assignment of Subcontracts

PAGE 26

§ 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. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

...

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

for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent; reasonably discoverable.~~

...

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

...

§ 6.2.5 ~~Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.~~

...

§ 6.2.6 ~~The Owner and each Separate Contractor~~ separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in ~~Section~~ Paragraph 3.14.

...

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~~, rubbish as described in Paragraph 3.15, the Owner may clean up and ~~the Architect will allocate the cost among those responsible.~~ responsible as the Architect determines to be just.

...

§ 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.~~

PAGE 27

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

...

§ 7.1.5 ~~In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:~~

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.

5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

...

§ 7.2.2 Change Orders shall be prepared on AIA Document G701.

PAGE 28

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others; others~~ (at rates approved by the Owner);

...

§ 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.~~

...

§ 7.3.9 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. Payment up to and not exceeding \$25,000.~~ 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.

...

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~~ writing and approved by the Owner. 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.

...

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

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§ 8.1.4 The term "day" as used in the Contract Documents shall ~~mean calendar day unless otherwise specifically defined~~ shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

...

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

...

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

...

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

...

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

...

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

§ 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) ~~or (4)~~ by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, expect for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

...

§ 8.3.4 The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article

...

ARTICLE 15.

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ARTICLE 9 PAYMENTS AND COMPLETION

PAGE 31

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 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This The 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. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

§ 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, for operations completed in accordance with the Schedule of Values.~~ Such application shall be notarized 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 material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.~~ The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

...

§ 9.3.1.2 ~~Applications for Payment~~ Such applications shall not include requests for payment for portions of the Work ~~for which of amounts~~ the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

...

§ 9.3.1.2 Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

...

or supplier, unless such Work has been performed by others whom the Contractor intends to

pay. **§ 9.3.1.3** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the pervious payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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§ 9.3.4 In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

...

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

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§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of 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. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

...

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

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven-thirty (30)~~ days after the date established in the Contract Documents, the amount certified by the Architect ~~awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven-ten (10)~~ additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, ~~plus interest as provided for in the Contract Documents.~~ which shall be accomplished as provided in Article 7.

...

§ 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 ~~use and when the Architect issues a certificate of Substantial Completion.~~

...

§ 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.~~ The Contractor shall proceed promptly to complete and correct items on the list. 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. 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 in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document 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,~~ **§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

PAGE 35

§ 9.8.6.1 The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

...

~~shall make payment of retainage applying to the Work or designated portion thereof. Such payment~~ **§ 9.8.6.2** Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

...

~~shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~ **§ 9.8.7** The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

...

§ 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 observations, 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.

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§ 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, ~~effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner,~~ (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) if required by the Owner, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~

...

§ 9.11 DAMAGES FOR DELAY

...

§ 9.11.1 The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

...

§ 9.11.2 If the Contractor is delayed by the Owner, Architect, or any agent or employee of any of the foregoing, the Contractor's sole and exclusive remedy for the delay shall be the right to a time extension for completion of the Contract and not damages. This paragraph does not preclude Contractor's recovery of damage for contractor-caused delays under other provisions of the Contract

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ARTICLE Documents.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

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§ 10.1.1 Safety Precautions and Programs

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§ 10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone

...

§ else.

...

§ 10.2 Safety of Persons and Property

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If either party suffers injury or ~~damaged~~damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, 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. ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

...

§ 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. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the

...

~~§ 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 affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor. By Change Order, the Contract Time-~~

1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

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~~§ 10.3.2 The Contractor 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 not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)~~

...

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner 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 which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.~~

...

§ 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. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

...

§ 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. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a 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 verify that it has been rendered harmless.

...

§ 10.3.6 Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

...

§ 10.3.7 The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

...

§ 10.3.8 The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

...

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

...

[§ 10.5 MISCELLANEOUS GENERAL PROVISIONS](#)

...

[§ 10.5.1 In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the](#)

construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

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§ 10.5.2 The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

...

§ 10.5.3 Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

...

§ 10.5.4 The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

...

§ 10.5.5 The Contractor shall not sue any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

...

§ 10.5.6 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~~ indemnify the Contractor for all ~~cost and expense thereby incurred~~ reasonable costs and expenses thereby incurred.

...

~~§ 10.4 Emergencies~~ 10.6 EMERGENCIES

...

In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act 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.

...

§ 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~~ Agreement, in EXH-C.3 Owner Insurance, 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~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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§ 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. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

...

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

...

§ 11.1.3.1 Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

...

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

...

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

...

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

§ 11.1.4 In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

...

§ 11.1.5 Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

...

§ 11.1.6 The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

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§ 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. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

...

§ 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.

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§ 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.

...

§ 11.6.1 Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

...

§ 11.6.2 In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

...

§ 11.6.3 The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

...

§ 11.6.4 The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear 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 thereby.

...

§ 12.2.2.1 ~~In addition to the Contractor's obligations under Section 3.5, if, 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~~ promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect 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. This period of

...

§ 12.2.2.2 ~~The one year period for correction of Work one year~~ shall be extended with respect to portions of Work first performed after Substantial Completion ~~completion~~ by the period of time between Substantial Completion and the actual completion of that portion of the Work ~~completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the~~

...

§ 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. condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.~~

...

§ 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after

deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

...

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

...

§ 12.2.5 12.2.6 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~~ contract documents. Establishment of the time period of one year as described in Subparagraph 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 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 Contractor's~~ liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 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~~ The Owner 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. ~~authority.~~ 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 observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely a minimum of two (2) working days' 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-observe procedures.~~ The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

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§ 13.5 InterestNON-DISCRIMINATION

...

~~Payments due and unpaid under the Contract Documents shall bear interest~~ **§ 13.5.1** All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:

...

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from the date payment full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

...

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

~~due at~~ This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

...

~~the rate the parties agree upon~~ § 13.5.2 During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

~~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** No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

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

...

~~**§ 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.~~

§ 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 ~~24~~ten (10) days after occurrence of the event giving rise to such Claim or within ~~24~~ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

...

§ 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 written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

§ 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. -Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

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

...

§ 15.1.7 Waiver of Claims for Consequential Damages15.2 Initial Decision

...

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~§ 15.2.1 Claims, including those alleging an error or omission by the Architect, shall be referred initially to

...

- ~~1~~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 the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of

...

- ~~2~~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. a Claim between the Contractor and Owner as to all such matters arising prior to the

...

~~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. date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of~~

...

§ 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. Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. 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.

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§ 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: Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) 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 part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.

...

§ 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. If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

...

§ 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. If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.

...

§ 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 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which 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 to action at law. Upon expiration of such time period, the Architect will render to the parties

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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. the Architect's written decision relative to the

...

§ 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. Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

...

§ 15.2.7 ~~In 15.2.6~~ 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~~ Contractor's default, the Owner may, but is not obligated to, notify the surety and request the ~~surety's~~ 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.

PAGE Error! Bookmark not defined.

§ 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.

...

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

...

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

...

§ 15.4.4 Consolidation or Joinder

...

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

...

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

constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

...

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Minneapolis Public Schools, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:38:16 ET on 11/28/2018 under Order No. 8259021829 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document E203® – 2013

Building Information Modeling and Digital Data Exhibit

This Exhibit dated the 24 day of July in the year 2023 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:
(*Name and location or address of the Project*)

Low Voltage Improvements Phase 5
South High School, Minneapolis, MN.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA**
- 3 DIGITAL DATA PROTOCOLS**
- 4 BUILDING INFORMATION MODELING PROTOCOLS**
- 5 OTHER TERMS AND CONDITIONS**

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project.

§ 1.2.1 The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

§ 1.3 Adjustments to the Agreement

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be incorporated into an agreement between the parties and used in conjunction with AIA Documents G201™–2013, Project Digital Data Protocol Form, and G202™–2013, Building Information Modeling Protocol Form. It is anticipated that other Project Participants will incorporate a project specific E203–2013 into their agreements, and that the Parties and other Project Participants will set forth the agreed-upon protocols in AIA Documents G201–2013 and G202–2013.

§ 1.3.2 Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

§ 1.3.3 Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)

§ 1.4 Definitions

§ 1.4.1 **Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets .

§ 1.4.2 **Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

§ 1.4.3 **Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

§ 1.4.4 **Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

§ 1.4.5 **Authorized Uses.** The term "Authorized Uses" refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

§ 1.4.6 **Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. 3.

§ 1.4.7 **Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

§ 1.4.8 **Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as "confidential."

§ 1.4.9 **Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written" or "in writing" shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

§ 1.4.10 **Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, "written notice" shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

§ 1.4.11 **Party and Parties.** The terms "Party" and "Parties" refer to the signing parties to the Agreement.

§ 1.4.12 **Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital

Data established pursuant to the terms of this Exhibit.

§ 2.2 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

§ 2.2.1 The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

§ 2.3 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 2.4 Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

ARTICLE 3 DIGITAL DATA PROTOCOLS

§ 3.1 Anticipated Types of Digital Data. The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

Anticipated Digital Data	Applicability to the Project <i>(Indicate Applicable or Not Applicable)</i>	Location of Detailed Description <i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i>
Project Agreements and Modifications	Applicable	MPS Central Files
Project communications	Applicable	MPS Central Files
Architect's pre-construction submittals	Applicable	MPS Central Files
Contract Documents	Applicable	MPS Central Files
Contractor's submittals	Applicable	Contractor/Architect
Subcontractor's submittals	Applicable	Contractor/Architect
Modifications	Applicable	Architect
Project payment documents	Applicable	MPS Central Files
Notices and claims	Applicable	MPS Central Files
Building Information Modeling	Applicable	Architect
All other construction related documents	Applicable	Contractor

§ 3.1.1 Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

MPS Central files are the digital project files kept on the MPS server

§ 3.2 As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

§ 3.2.1 Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.

(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)

(Paragraph deleted)

§ .

§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols.

§ 3.4 Unauthorized Use

§ 3.4.1 Prior to Establishment of Digital Data Protocols

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 3.4.2 Following Establishment of Digital Data Protocols

Following agreement to, and documentation of, the Digital Data protocols, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

§ 3.5 Digital Data Management

§ 3.5.1 Centralized electronic document management system use on the Project shall be:

(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)

☒ [X] The Parties intend to use a centralized electronic document management system on the Project.

☐ [] The Parties do not intend to use a centralized electronic document management system on the Project.

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth d by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)

Responsible Project Participant
Contractor

Project Milestone
Project Construction begins

ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:

[] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[X] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

§ 4.2 Anticipated Building Information Modeling Scope. Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

Project Portion for Modeling	Responsible Project Participant
Project design	Architect

§ 4.3 Anticipated Model Authorized Uses. Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

§ 4.4 Ancillary Modeling Activities. Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.

(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

§ 4.5 Modeling Protocols. As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

§ 4.5.1 The Modeling protocols shall address the following:

- .1 Identification of the Model Element Authors;
- .2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
- .3 Identification of the required LOD of each Model Element at each identified Project milestone;
- .4 Identification of the construction classification systems to be used on the Project;
- .5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
- .6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
- .7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
- .8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
- .9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

§ 4.5.2 Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval.

(If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)

(Paragraph deleted)

§ .

§ 4.5.4 The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

§ 4.6 The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

§ 4.7 Unauthorized Use

§ 4.7.1 Prior to Establishment of Modeling Protocols

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 4.7.2 Following Establishment of Modeling Protocols

Following agreement to, and documentation of, the Modeling protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

§ 4.8 Model Management

§ 4.8.1 The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

Responsible Project Participant

Project Milestone

§ 4.8.2 **Model Management Protocol Establishment.** The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- .1 Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum
- .2 Model file storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Naming conventions as defined in the MPS Revit and Drafting Standards document.
- .5 Processes for aggregating Model files from varying software platforms
- .6 Model access rights
- .7 Identification of design coordination and clash detection procedures.
- .8 Model security requirements
- .9 Other: *(Identify additional Model management protocols to be addressed.)*

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

§ 4.8.3 **Ongoing Responsibilities.** The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- .1 Collect incoming Models:
 - .1 Coordinate submission and exchange of Models
 - .2 Create and maintain a log of Models received

- .3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
- .4 Maintain a record copy of each Model file received
- .2 Aggregate Model files and make them available for Authorized Uses
- .3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
- .4 Manage Model access rights
- .5 Other: *(Identify additional responsibilities.)*

§ 4.8.4 Model Archives. The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

§ 4.8.4.1 Additional Model Archive requirements, if any, are as follows:

§ 4.8.4.2 The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

Transmit to MPS the model in PDF, Revit and AutoCAD

§ 4.9 Post-Construction Model. The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party's responsibility.

(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)

Post-Construction Model	Applicability to Project <i>(Applicable or Not Applicable)</i>	Responsible Project Participant	Location of Detailed Description of Requirements and Services <i>(Section 4.10 below or in an attachment to this exhibit and identified below)</i>
§ 4.9.1 Remodeling	Applicable	Owner	
§ 4.9.2 Wayfinding and Mapping	Applicable	Architect	
§ 4.9.3 Asset/FF & E Management	Applicable	Owner	
§ 4.9.4 Energy Management	Applicable	Owner	
§ 4.9.5 Space Management	Applicable	Owner	
§ 4.9.6 Maintenance Management	Applicable	Owner	

§ 4.10 Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

Additions and Deletions Report for AIA® Document E203® – 2013

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:43:21 CT on 07/24/2023.

PAGE 1

This Exhibit dated the 24 day of July in the year 2023 is incorporated into the agreement (the "Agreement") between the Parties for the following Project:

...

Low Voltage Improvements Phase 5
South High School, Minneapolis, MN.

...

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, ~~and agreed to the most recent Project specific versions of AIA Document G201™ 2013, Project Digital Data Protocol Form and AIA Document G202™ 2013, Project Building Information Modeling Protocol Form.~~ Project.

...

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and ~~memorialized in AIA Documents G201–2013 and G202–2013,~~ will result in a change in the Party's scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party's waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

PAGE 2

§ 1.4.1 **Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the "Model," which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets ~~identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.~~

...

§ 1.4.6 **Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. ~~Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.~~ 3.

PAGE 3

Project Agreements and Modifications	<u>Applicable</u>	<u>MPS Central Files</u>
Project communications	<u>Applicable</u>	<u>MPS Central Files</u>
Architect's pre-construction submittals	<u>Applicable</u>	<u>MPS Central Files</u>

Contract Documents	<u>Applicable</u>	<u>MPS Central Files</u>
Contractor's submittals	<u>Applicable</u>	<u>Contractor/Architect</u>
Subcontractor's submittals	<u>Applicable</u>	<u>Contractor/Architect</u>
Modifications	<u>Applicable</u>	<u>Architect</u>
Project payment documents	<u>Applicable</u>	<u>MPS Central Files</u>
Notices and claims	<u>Applicable</u>	<u>MPS Central Files</u>
Building Information Modeling	<u>Applicable</u>	<u>Architect</u>
All other construction related documents	<u>Applicable</u>	<u>Contractor</u>

...

MPS Central files are the digital project files kept on the MPS server

PAGE 4

§ 3.2.2 ~~The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.~~

§ .

§ 3.3 ~~The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants protocols.~~

...

Following agreement to, and documentation of, the Digital Data ~~protocols in AIA Document G201–2013, protocols,~~ if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

...

[☒] The Parties intend to use a centralized electronic document management system on the Project.

...

§ 3.5.2 ~~If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, protocols,~~ the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth ~~in the latest version of G201–2013 approved_d~~ by the Project Participants.

...

Contractor
PAGE 5

Project Construction begins

[☒] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

...

Project design

Architect

§ 4.3 Anticipated Model Authorized Uses. Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants and further described for each LOD in AIA Document G202–2013.

Participants.

Authorized users of the model are defined in Article 7 of the AIA B101 agreement

...

Defined in Exhibit B Project Milestones & Deliverables of the AIA B101 agreement

PAGE 6

~~§ 4.5.3 The agreed-upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.~~

~~§ .~~

...

Following agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, protocols, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

...

- .1 Model origin point, coordinate system, precision, file formats and units. The model shall be accurately geo-located to agreed-upon reference datum

...

- .4 Naming conventions as defined in the MPS Revit and Drafting Standards document.

...

Project participants responsible for the model shall use the MPS Revit template and comply with MPS Revit and Drafting standards.

PAGE 7

Transmit to MPS the model in PDF, Revit and AutoCAD

...

§ 4.9.1	Remodeling	<u>Applicable</u>	<u>Owner</u>	
§ 4.9.2	Wayfinding and Mapping	<u>Applicable</u>	<u>Architect</u>	
§ 4.9.3	Asset/FF & E Management	<u>Applicable</u>	<u>Owner</u>	
§ 4.9.4	Energy Management	<u>Applicable</u>	<u>Owner</u>	
§ 4.9.5	Space Management	<u>Applicable</u>	<u>Owner</u>	
§ 4.9.6	Maintenance Management	<u>Applicable</u>	<u>Owner</u>	

...

As part of Basic Services, the Architect shall produce wayfinding floor plans for use by the Owner. Floor plans shall be provided in PDF and AutoCAD formats.

...

As part of Basic Services, the Architect shall provide the Owner with Revit files that were created for the project. The files shall include the as-designed project.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:43:21 CT on 07/24/2023 under Order No. 4104240957 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document E203™ – 2013, Building Information Modeling and Digital Data Exhibit, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Executive Director

(Title)

7/24/2023

(Dated)

Exhibit B - Project Charter

Project Name and Number:

Low Voltage Improvements Phase 5
Official Publication No. 23-2324

Contractor:

Muska Companies
1985 Oakcreat Ave.
Roseville, MN. 55113

Description:

To furnish all labor, materials, equipment, and incidentals to complete all work for
Low Voltage Improvements Phase 5
project, in accordance with Drawings and Specifications prepared by:
Wold Architects and Engineers, 332 Minnesota Street, Suite W2000, Saint Paul, MN. 55101

Article 9.5 Drawings: June 19, 2023
9.6 Specifications dated: June 19, 2023
9.7 Addenda dated: Addendum #1 dated 06/29/2023,
Addendum #2 dated 07/05/2023

Contract Sum:

The total contract sum shall be:

\$ 1,193,000.00

Alternates: N/A

Item	Price	Status
Alt #1: (enter brief name)	\$ -	N/A
Alt #2: (enter brief name)	\$ -	N/A
Alt #3: (enter brief name)	\$ -	N/A
Alt #4: (enter brief name)	\$ -	N/A
Alt #5: (enter brief name)	\$ -	N/A

Unit Prices:

Item	Price per Unit
1) Manual Fire-Alarm Boxes	\$ 940.00
2) Speaker/Strobe Appliances	\$ 875.00
3) Visible Notification Appliances	\$ 800.00
4) Duct Smoke Detectors	\$ 2,040.00
5) Magnetic Door Holders	\$ 900.00

Exhibit C - Owner's Insurance

Project Name and Number:

Special School District No. 1
Official Publication No. 23-2324
Low Voltage Improvements Phase 5

Contractor: Muska Companies
1985 Oakcreat Ave.
Roseville, MN. 55113

Insurance Requirements for Contractors

1. CONTRACTOR'S INSURANCE – to be used with AIA A101-2017

The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

a. Commercial General Liability

i. General Aggregate	\$ 1,500,000
ii. Products/Completed Operations Aggregate	\$ 1,500,000
iii. Per Occurrence	\$ 1,500,000

The Owner shall be named as additional insured for Commercial General Liability Insurance.

b. Automobile Insurance

i. Per Occurrence	\$ 1,000,000
ii. PIP	Basic
iii. Underinsured Motorist	\$ 1,000,000
iv. Uninsured Motorist	\$ 1,000,000

c. Workers Compensation

i. Coverage A is statutory.	
ii. Coverage B	\$500,000 Each Accident
iii. \$500,000 Each Employee	

d. Professional Liability (if the Contractor is hiring professionals)

i. Per Claim	\$ 2,000,000
--------------	--------------

For Projects with an estimated construction cost of over \$10,000,000 or major structural work, additional Aggregate coverage of \$4,000,000 is required.

Exhibit C Owner's Insurance

e. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim	\$ 1,000,000
ii. Aggregate	\$ 1,000,000

f. Property Insurance

i. Per Claim	\$ 1,000,000
ii. Aggregate	\$ 1,000,000

This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

i. Per Claim	\$ 2,000,000
ii. Aggregate	\$ 4,000,000

This insurance is only required for additions exceeding \$10,000,000. Renovations to existing schools are not required to have builders "all risk" insurance.

h. Umbrella Liability

i. Aggregate limit	\$ 5,000,000
--------------------	--------------

This insurance is required only for projects larger than \$10,000,000 in total construction costs.

Exhibit D - Project Schedule

Project Name and Number:

Special School District No. 1
Official Publication No. 23-2324
Low Voltage Improvements Phase 5

Contractor:

Muska Companies
Roseville, MN. 55113
P (651) 636-5820, F (651) 636-0916

Description:

LV Improvements at South high school to include upgraded clocks, PA system, and fire alarm system.

Schedule:

Description	Date
School Starts	September 5, 2023
Construction Commences	October 3, 2023
Substantial Completion	December 22, 2023
Final Completion	February 22, 2024
1-year Warranty Inspection	January 2025

CONTRACT FOR SERVICES

(\$25,000+)

This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and North Central Bus & Equipment, "Contractor" (collectively "parties") to provide To Purchase 2 Blue Bird BBCV-E Electric Bus 71 Passenger Hyd Brake w/Fast Charger & Seon Camera System to D-Ops-Transportation.

1 *TERM OF CONTRACT*

1.1 This Contract is effective on 07/01/2023 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 06/30/2024, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District's Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor's OWN RISK and as a volunteer.

2 *SCOPE OF WORK*

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as Exhibit A ("Scope of Work"). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 *CONSIDERATION AND TERMS OF PAYMENT*

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation.*

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses, shall not exceed \$1,004,718.57. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 *Frequency of Invoicing and Terms of Payment.*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable Exhibit B. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 *Fund Availability; Federal Funds Contingency.*

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRATOR

10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except

as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

- 10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

- 11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

- 12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

- 13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.
- 13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in

providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

- 17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

- 18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.
- 18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.
- 18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

- 19.1 Within ten (10) days of the completion, termination of this Contract, or upon request of the District, whichever occurs first; Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Or, Contractor, upon the request of the

District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

- 19.2 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

- 20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1
D-Ops-Transportation
Attn: Lisa Beck
1250 W Broadway
Minneapolis, MN 55411
Email: lisa.beck@mpls.k12.mn.us
Fax:

North Central Bus & Equipment

Attn: Bus Sales Paul Fiereck

Address: 25112 22nd Ave St. Cloud, mn 56379

Email: paulf@northcentralinc.com

Fax: Ø

22 ACKNOWLEDGMENT

22.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to backup withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

22.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

23 NON-WAIVER

23.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

24 ASSIGNMENT

24.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment,

shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

25 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

25.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

26 WARRANTY

26.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

27 SEVERABILITY

27.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

28 SURVIVABILITY

28.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

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SPECIAL SCHOOL DISTRICT NO. 1

By: _____

Name: Ibrahima Diop
(Printed)

Title: Senior Finance & Operations Officer

Date: _____

North Central Bus & Equipment

By: Paul Fiereck

Name: Paul Fiereck
(Printed)

Title: Sales Rep

Date: 7/10/2023

EXHIBIT A: SCOPE OF WORK

Description of Services and Service Delivery

Purchase 2 Blue Bird BBCV-E Electric Bus 71 Passenger Hyd Brake
for Transportation using 7 Trade In's. Trade In value \$29,500.

Service Outcome

Buses delivered as ordered and accepted by shop foreman.

Method of Evaluation

Thorough Use and Maintenance of the Buses.

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

The payment terms are as follows:

If there are no exhibits:

This Exhibit and page have been intentionally left blank.

AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND
Now Micro Inc.

This Amendment ("Amendment") to the Contract between Special School District No. 1 and **Now Micro Inc.** dated 6/30/2023 ("Contract") is made and entered into by and between Special School District No.1 ("District") and **Now Micro Inc.** ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and **Now Micro Inc.** ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 6/30/2026 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: #4400001748

1. *Original contract amount:* \$599,357.00
2. *Accumulative contract amount:* \$1,799,357.00

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section: 3.1 Total Obligation

Description: District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$1,799,357.00. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

SPECIAL SCHOOL DISTRICT NO. 1

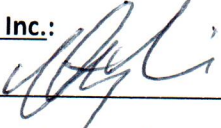
Signature: _____

Name: Justin Hennes

Title: Senior Information Officer

Date: _____

Now Micro Inc.:

Signature: 

Name: Click or tap here to enter text.

Marty Linden

Title: Click or tap here to enter text.

V.P. Sales

Date:

7-13-2023



MINNEAPOLIS
PUBLIC SCHOOLS

Urban Education. Global Citizens.

CONTRACT FOR SERVICES – \$25,000 above

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Savvas. “Contractor” (collectively “parties”) to provide **core curriculum and supplemental materials for grades 6-12**. to **Minneapolis Public Schools**.

TERM OF CONTRACT

- 1.1 This Contract is effective on **July 1, 2023**, or the date of the last signature of the parties, whichever is later, and shall remain in effect until **June 30, 2024**, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

- 2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*



MINNEAPOLIS
PUBLIC SCHOOLS
Urban Education. Global Citizens.

1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

www.mpls.k12.mn.us

SRM: 44xxxxxx

Page | 1

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed **\$454,520.40**. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 Frequency of Invoicing and Terms of Payment

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 Taxes.

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 Fund Availability; Federal Funds Contingency.

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

- 6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.
- 7.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign **Exhibit C** (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student's dedicated personal use, and includes devices issued through a one-to-one program.

8 OWNERSHIP OF MATERIAL

- 8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor’s obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

- 9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRACTOR

10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is canceled or revised.

14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: **Core Academics: Social Studies**

Attn: **Brandy Siddiqui**

1250 W Broadway

Minneapolis, MN 55411

Email: **Brandy.siddiqui@mpls.k12.mn.us**

CONTRACTOR

Kelly Kukull

Phone: **1-800-848-9500**

Address: **PO Box 6820, Chandler, AZ, 85246**

Email: **kelly.kukull@savvas.com**

ACKNOWLEDGMENT

1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

www.mpls.k12.mn.us

SRM: 44xxxxxx

Page | 8

21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

22 NON-WAIVER

22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

23 ASSIGNMENT

23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

25 WARRANTY

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: Dr. Aimee Fearing

(Printed)

Title: Senior Academic Officer

Date: _____

CONTRACTOR NAME

Signature:

Name: Click or tap here to enter text.

(Printed)

Title: Click or tap here to enter text.

Date: _____

Exhibit A:

Deliverables:

6-12 Core Curriculum, Supplemental Materials, and professional development

Service Outcome:

6-12 teachers have content materials and training in how to use them

Method of Evaluation:

Leadership Evaluation per Curriculum Adoption Pilot

[The remainder of this page intentionally left blank.]

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

Minneapolis_6-12 Social Studies_1year

Price Quote Summary

Solution	Base Amount	Free Amount	Total
Minter: Psychology	\$ 9,880.00	\$ 333.00	\$ 9,880.00
Rubenstein: Contemporary Human	\$ 181,690.00		\$ 181,690.00
US History Professional Development	\$ 13,200.00		\$ 13,200.00
World History	\$ 129,130.00	\$ 5,664.00	\$ 129,130.00
myWorld Interactive World Geography	\$ 101,470.00	\$ 4,650.00	\$ 101,470.00
myWorld Social Studies for	\$ 6,600.00		\$ 6,600.00
Solution Subtotal	\$ 441,970.00	\$ 10,647.00	\$ 441,970.00
Shipping & Handling			\$ 25,750.40
Total			\$ 467,720.40

[The remainder of this page intentionally left blank.]

EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.

3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
 - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
 - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.
7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.
8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.

[CONTRACTOR NAME]

Signature

Name

Title

Date



1250 West Broadway Ave. Minneapolis, MN 55411-2533
Phone: 612.668.0000
www.mpls.k12.mn.us
SRM: 44xxxxxx

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**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND
Whelan Security Co., dba GardaWorld Security Services**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Whelan Security Co., dba GardaWorld Security Services dated 11/9/2022 ("Contract") is made and entered into by and between Special School District No.1 ("District") and ., dba GardaWorld Security Services ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and and Whelan Security Co., dba GardaWorld Security Services ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2023 through 11/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 13078

1. *Original contract amount:* \$430,000.00
2. *Accumulative contract amount:* \$476,757.92

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section: Exhibit A and Section 3.

Description: Section: Mobile patrol services will be added to current contract for Security Officers and Supervisors providing security services throughout the district.

Description: Security Mobile Patrol will be provided throughout the district Monday through Friday, between the hours of 6:00am and 10:00 pm and any additional coverage as requested. Security personnel will follow procedures within their post orders that will be written in partnership with MPS and the security provider. Scope of work will be 1 roving mobile patrol officer.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

Updated January, 2020

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: Ryan Strack

Title: Assistant to the Superintendent & Board

Date: _____

Whelan Security Co., dba GardaWorld Security Services:

Signature: _____

Name: Luke Hutsell

Title: Regional Vice President

Date: _____



CONTRACT FOR SERVICES – \$25,000 above

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and **Xello** “Contractor” (collectively “parties”) to provide engaging college and career readiness software that ensures all students have equitable access to local work-based learning opportunities. to **District-wide**.

TERM OF CONTRACT

- 1.1 This Contract is effective on **August 4, 2023** or the date of the last signature of the parties, whichever is later, and shall remain in effect until **June 30 2025**, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

- 2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*

District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed **\$329,977.30**. Contractor shall

not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 Frequency of Invoicing and Terms of Payment

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 Taxes.

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 Fund Availability; Federal Funds Contingency.

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations

are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.
- 7.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign **Exhibit C** (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student’s dedicated personal use, and includes devices issued through a one-to-one program.

8 OWNERSHIP OF MATERIAL

- 8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor’s obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

- 9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRACTOR

- 10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding,

worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

- 10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

- 11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

- 12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

- 13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.
- 13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government.

Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items

available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: **Communications**
Attn: **Sharifa Urey**
1250 W Broadway
Minneapolis, MN 55411
Email: **Sharifa.urey@mpls.k12.mn.us**

CONTRACTOR

XelloPhone: **800-965-8541 Ext 161**
Address: **1867 Young Street Suite 700 Toronto, ON M4S 1Y5. Canada**
Email: **Kateyw@xello.world**

ACKNOWLEDGMENT

- 21.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if

Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

- 21.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

22 NON-WAIVER

- 22.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

23 ASSIGNMENT

- 23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

- 24.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

25 WARRANTY

- 25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or

in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

26 SEVERABILITY

26.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

27 SURVIVABILITY

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: Ryan Strack

(Printed)

Title: Assistant to the Superintendent & Board

Date: _____

CONTRACTOR NAME

Signature:

Name: Jeff Harris

(Printed)

Title: Contractor

Date: _____

Exhibit A:

Deliverables:

OR STUDENTS

Students can discover relevant work-based opportunities as they investigate their careers of interest. By integrating opportunities into a student's exploration journey, they can see the relevance of their schooling and develop more meaningful career goals and plan.

FOR WORK-BASED LEARNING COORDINATORS

Reach more students and increase engagement with an online experience that meets students where they are. Save time and stay organized with a system to manage your database of contacts and access the data you need to meet state mandates, apply for grants, and track the success of your WBL program.

FOR DISTRICT LEADERS

Save your district time and budget by using a single program that covers all your College and Career Readiness needs, increases collaboration among your staff, and reduces time spent on internal training. With local opportunities a click away, students can begin applying their knowledge out of the classroom, resulting in better engagement and graduation rates.

Service Outcome:

Xello's simple interface makes it easy for all students to discover local companies and express interest in virtual and in-person opportunities as a fundamental step in their exploration journey.

Simple and Relevant Search Options

Easy-to-use filters enable students to search opportunities by career cluster, location, and type, so they can easily identify those that are relevant to them, in a platform they already know and love.

Increased Educator Engagement

Educators gain visibility into student requests and access to opportunities to develop their

own industry knowledge – creating a comprehensive program, and allowing for additional student support.

Method of Evaluation:

A variety of measurements are used: family feedback, accuracy of reports, and fulfillment of interpreting requests, staffing training and customer service.

[The remainder of this page intentionally left blank.]

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

Payments will be completed when services are complete.

[The remainder of this page intentionally left blank.]

EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
 - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
 - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.

7. Contractor's employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.
8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a "technology provider" for purposes of Section 13.32.

BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.

[CONTRACTOR NAME]

Signature

Name

Title

Date

**Special School District Number 1
Board of Education Resolution**



Resolution No. 2023-0048

August 8, 2023

**Resolution Appointing Responsible Authority for Special School District No. 1, Minneapolis
Public Schools**

WHEREAS, under Minnesota Statutes Section 13.02, the District must appoint a Responsible Authority who will be charged with taking actions necessary to ensure that the District complies with the Minnesota Government Data Practices Act in particular.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of Special School District No. 1 (Minneapolis Public Schools) hereby appoints Rochelle Cox as Responsible Authority for the Special School District No. 1, Minneapolis Public Schools, and that Rochelle Cox is hereby authorized to take all actions necessary to ensure that all programs, administrative procedures and forms used within Special School District No. 1, Minneapolis Public Schools, comply with all applicable laws and rules as promulgated by the Commissioner of Administration.

ADOPTED this 8th day of August 2023.

Sharon El-Amin, Chair

Lori Norvell, Clerk

RECORD OF BOARD VOTE (2023-0048)				
DIRECTOR	AYE	NAY	ABSTAIN	ABSENT
Abdi				
El-Amin				
Feerayarre				
Cerrillo				
Norvell				
Jourdain				
Beachy				
Ellison				
Emerick				

Special School District Number 1
Board of Education Resolution



Resolution No. 2023-0017
March 14, 2023

Resolution establishing an advisory committee on the board student representative program

WHEREAS, Board resolution 2022-0003 directed the board's policy committee to develop and propose an advisory committee to review the board student representative program and make any recommendations for changes; and

WHEREAS, policy 1320 (Board Of Directors Advisory Committees) prescribes the parameters and guidelines for board advisory committees; and

WHEREAS, advisory committee should review the program and discuss topic areas including but not limited to recruiting strategies, school rotation/representation, timing (school year versus calendar year), role clarity and definition; and

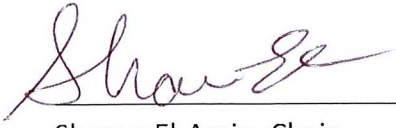
WHEREAS, the committee should conclude its work and report back any recommendations to board's policy committee no later than August 22, 2023; and

WHEREAS, advisory appointment shall be as follows:

MEMBER	NUMBER	APPOINTING AUTHORITY
Former Board Student Representative	1	Board Clerk
CityWide Student Leadership Board Member Representative	1	CityWide Student Leadership Board
Current Board Student Representative	1	N/A
High School Principal	1	Superintendent
High School Social Studies Teacher	1	Superintendent
CityWide Student Leadership Board Staff Advisor	1	Superintendent
Community member (MPS parent/guardian)	1	Board Clerk
Community member (youth development expertise)	1	Board Chair
Ex-Officio (Non-voting) Board Member Liaison	1	Board Chair

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of Special School District No. 1 (Minneapolis Public Schools) hereby establishes the aforementioned advisory committee as detailed and authorizes appointments to be made.

ADOPTED this 14th day of March 2023.



Sharon El-Amin, Chair



Lori Norvell, Clerk

RECORD OF BOARD VOTE (2023-0017)				
DIRECTOR	AYE	NAY	ABSTAIN	ABSENT
Abdi	X			
El-Amin	X			
Feerayarre	X			
Cerrillo				X
Norvell	X			
Jourdain	X			
Beachy	X			
Ellison	X			
Emerick	X			

LEASE AGREEMENT

This Lease Agreement (“Lease”) is made this 1 day of August, 2023, by and between Special School District No. 1, a public body corporate and politic under the laws of the State of Minnesota (“Landlord”) and Minneapolis Nature Preschool, a Minnesota non-profit organization (“Tenant”).

1. LEASED PREMISES. Landlord does hereby lease to Tenant and Tenant does hereby take from Landlord one or multiple sites, which are located at one or multiple facilities/properties each owned by Landlord (individually and collectively, the “Leased Premises”). Each site that Tenant leases from Landlord pursuant to this Lease is listed and described on the attached Exhibit A. Tenant shall only be permitted to use the site during the days of the week and times stated in “Use Schedule” column set forth in Exhibit B.

2. TERM; EARLY TERMINATION.

(A) Term and Expiration. The term of this Lease shall commence on September 1, 2023 and shall expire on August 31, 2026, or such earlier date as provided herein (the “Term”). Tenant shall have the right to renew the Lease for three additional three-year terms (each such renewal term hereinafter referred to as the “Renewal Term”). Tenant must notify the Landlord in writing of Tenant’s intent to renew no later than 60 days prior to the expiration of the Term or the Renewal Term.

(B) Early Termination. This Lease may or Tenant’s lease of any individual site listed on Exhibit A may be cancelled with or without cause by either party upon 45 days’ written notice.

3. RENT. Tenant shall pay Landlord rent in monthly installments on the first day of each month starting September 1, 2023. The amount of the monthly rent shall be as listed in Exhibit B for the assigned space of the Leased Premises. Tenant shall pay rent on a monthly basis regardless of specific use of the leased premises. Monthly rent shall not apply during the months of June through August, unless summer programming is conducted.

4. USE RESTRICTIONS.

(A) The Leased Premises must only be used by Tenant as facilities for a preschool program. Tenant must not occupy the Leased Premises during any weather-related school cancellations by Landlord. Tenant must comply with all applicable laws, ordinances, governmental regulations, and Landlord’s policies and rules in using the Leased Premises. Tenant shall not do anything in or about the Leased Premises which would in any way impair or invalidate the obligation of the insurer under any policy of insurance required by this Lease.

(B) Tenant shall not place or permit signs on the exterior or that are visible from the exterior of the Leased Premises, on the exterior of the building in which the Leased Premises is located, or elsewhere on the property in which the Leased Premises is located, unless otherwise approved in writing by Landlord.

(C) In the event of an emergency, as determined by Landlord in its sole discretion, Landlord shall have the right and privilege to enter and use any of the Leased Premises for the duration of the emergency. Following Landlord's emergency use of the Leased Premises, possession of the Leased Premises during the designated times set forth in the Use Schedule attached as Exhibit B shall be returned to Tenant. Landlord reserves the right to close some or all of the Leased Premises due to inclement weather or maintenance or repair of the Leased Premises. Landlord will attempt to provide reasonable advance notice to Tenant of such closure, however, due emergency circumstances such as weather conditions, advance notice of the closure may not be feasible.

(D) Tenant and its officials, employees, agents, contractors, and invitees may use the bathrooms on the Leased Premises during the operating hours of the buildings in which the Leased Premises are located.

5. ENVIRONMENTAL. Tenant agrees that throughout the term of the Lease, it shall not use the Leased Premises for the storage, handling, transportation, or disposal of any Hazardous Substances. "Hazardous Substances" for purposes of this Lease shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under any Environmental Law or other applicable federal, state or local laws and the regulations promulgated thereunder as: (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921, as now or hereafter amended; (iii) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. "Hazardous Substances" shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but is not limited to, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

Tenant will be solely liable for and will defend, indemnify, and hold Landlord, its officials, employees, contractors, and agents harmless from and against any and all claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with Tenant's use, storage, handling, transportation, or disposal of Hazardous Substances on, at or under the Leased Premises, including cleanup or restoration of the Leased Premises if such cleanup or

restoration is required by a governmental agency and directly related to the acts or omissions of Tenant. In no event will Tenant be responsible for the pre-existing condition of the Leased Premises.

The obligations of this paragraph shall survive the expiration or other termination of this Lease.

6. UTILITIES AND TAXES. Landlord shall pay all charges for all utilities, including water, sewer, gas, electric, garbage and refuse removal, Internet service, and cable/satellite television services to the Leased Premises. Landlord shall be responsible for paying all taxes, special assessments, or similar charges which are assessed, levied, charged, or imposed by any public authority upon the Leased Premises.

7. MAINTENANCE AND REPAIR OF THE PROPERTY. Landlord shall maintain the Leased Premises and the facilities and grounds of which the Leased Premises are a part in a safe and sanitary condition. Landlord shall be responsible for the operation, maintenance, and security of the Leased Premises, all wages, salaries, and related expenses of all on-site employees engaged in these activities, and all supplies and materials used in its operation and maintenance of the Leased Premises. Landlord shall be responsible for charges rendered under any maintenance and service agreements for the Leased Premises and the equipment therein and administrative costs for services that are directly connected to the operation of the Leased Premises. Landlord shall be responsible for any and all maintenance costs related to public areas of the buildings in which the Leased Premises are located, including all bathrooms, hallways, entrances, sidewalks, landscaping, parking lots, driveways, and service areas.

Tenant shall, at all times throughout the term of this Lease, and at its sole expense, clean, keep the Leased Premises and fixtures in at least as good condition as existed on the date of this Lease, reasonable wear and tear excepted. Tenant shall not allow any liens or encumbrances to be placed on the Leased Premises.

8. CONDITION OF LEASED PREMISES. Tenant agrees that by executing this Lease that it is accepting the Leased Premises in its present condition "AS IS" and that Landlord has made and makes no representations or warranty of any kind about the condition of the Leased Premises or its fitness for Tenant's use. Tenant agrees that it will return the Leased Premises to the condition found at the commencement of this Lease, reasonable wear and tear excepted.

9. ALTERATION OR IMPROVEMENT OF THE LEASED PREMISES. Tenant may make alterations or improvements in or to the Leased Premises upon obtaining Landlord's prior written consent. Any approved alterations or improvements shall be made at Tenant's expense unless Landlord has agreed to pay for them. If an improvement or alteration is authorized by Landlord, the parties shall execute an amendment to this Lease that includes an improvement schedule that includes a description of the improvement or alteration, the value of the improvement or alteration and the date that the improvement or alteration was made. Any alterations or improvements made to the Leased Premises during the term of this Lease shall become the sole property of Landlord upon termination or expiration of the Lease term. Tenant agrees to pay all sums of money in respect of any labor, service, materials, supplies, or equipment furnished or alleged to have been furnished to Tenant in or about the Leased Premises, and not furnished on order of Landlord.

10. INDEMNIFICATION; COVENANTS TO DEFEND AND HOLD HARMLESS.

(A) To the fullest extent permitted by law, Tenant agrees to indemnify Landlord, its officials, employees, contractors, agents, and others acting on its behalf, to hold them harmless, and to defend and protect them, from and against any and all loss, damage, liability, cost, and expense (specifically including reasonable attorneys' fees and other costs and expenses of defense), of any sort whatsoever, based upon, resulting from, or otherwise arising out of and in connection with any actions, claims or proceedings (from any source whatsoever) brought, or any loss, damage or injury of any type whatsoever sustained, by reason of any act or omission of Tenant, its officers, employees, contractors, invitees, or agents, or any other persons or entities for whose acts or omissions Tenant is legally responsible, in the performance of any of Tenant's obligations (whether express or implied) under this Lease.

(B) Tenant, its officers, employees, contractors, agents, and others acting on its behalf agree to indemnify, defend, and hold harmless Landlord, its officials, employees, contractors, agents, and other acting on its behalf from any and all claims, losses, damages, liabilities, causes of action, judgments, costs or expenses, including reasonable attorneys' fees which may be imposed upon or incurred by or asserted against Landlord or its officials, employees, contractors, agents, and others acting on its behalf with respect to any use, nonuse, or condition of the Leased Premises created by the Tenant or its invitees or attributable to the Tenant's use or manner of use of the Leased Premises.

(C) Notwithstanding anything to the contrary in this Lease, Landlord does not waive any statutory limited immunity from municipal tort liability available to it under Minnesota Statutes, Chapter 466 or as otherwise provided. Such statutory limited immunity shall apply whether an action, claim, demand, or lawsuit is initiated by Tenant or by any third party. In no event, shall Tenant assert or rely upon such statutory limited liability of Landlord to avoid liability for any act for which Tenant would otherwise be legally responsible.

(D) Nothing in this Lease shall be deemed to limit Landlord's right to have access to the Leased Premises, or to exercise its remedies under the Lease, or to make applications to a governmental entity with respect to the Leased Premises, or to protest taxes or assessments related to the Leased Premises, or to take other similar action with respect to the Leased Premises as a responsible landlord would elect.

(E) The obligations of this paragraph shall survive the expiration or other termination of this Lease.

11. CASUALTY INSURANCE AND WAIVERS OF CLAIMS.

(A) Personal Property Insurance: All personal property kept, maintained, or stored on the Leased Premises shall be kept, maintained, or stored at the sole risk of Tenant. Tenant shall carry insurance for the full insurable value of Tenant's supplies, materials, furnishings, vehicles, equipment, and all other items of personal property of Tenant located on or within the Leased Premises

(B) Liability Insurance. Tenant will keep in force general commercial liability insurance in amount not more than \$1,000,000 per claimant for death, bodily injury, personal injury, property loss, and damages and \$2,000,000 for total personal injury, bodily injury, property loss and damages.

(C) Property Insurance. Landlord will carry insurance during the term of this Lease at its expense for the full insurable value of the Leased Premises, including the buildings, with the exception of any tenant improvements, fixtures, and Tenant's personal property located on or within the Leased Premises. Tenant hereby waives and releases all claims, liabilities, and causes of action against Landlord and its officials, employees, contractors, and agents for loss or damage to, or destruction of any tenant improvements, fixtures, and personal property of Tenant, located in, upon or about the Leased Premises.

12. QUIET ENJOYMENT. Landlord warrants that it has full right to execute and to perform this Lease and to grant the rights contained herein, and that Tenant, upon its performance of all of the terms, conditions, covenants and agreements on its part to be observed and performed under this Lease and notwithstanding the use restrictions set forth in paragraph 4 of this Lease and Landlord's shared use of the Leased Premises as detailed on Exhibit A may peaceably and quietly enjoy the Leased Premises subject to the terms and conditions of this Lease.

13. ASSIGNMENT OR SUBLETTING. Tenant shall not sublet any portion of the Leased Premises or transfer or assign this Lease without obtaining the prior written consent of Landlord. Landlord's right to assign this Lease is and shall remain unqualified.

14. SALE OR ENCUMBRANCE OF THE PROPERTY. If Landlord sells or otherwise voluntarily conveys the Leased Premises during the term of this Lease, this Lease shall terminate.

15. HOLDING OVER. If Tenant remains in possession of the Leased Premises after the expiration or termination of this Lease, it shall be deemed to be occupying the Leased Premises as a tenant at sufferance, subject to all the conditions, provisions, and obligations of this Lease insofar as the same can be applicable to a tenancy at sufferance.

16. SURRENDER. Upon expiration or termination of this Lease, Tenant shall peaceably surrender the Leased Premises and remove all debris and personal property from the Leased Premises. Tenant shall not remove any of the immovable fixtures. Tenant shall be conclusively

deemed to have abandoned any personal property not removed prior to the effective date of the termination of this Lease or Tenant's surrender of the Leased Premises. All debris and personal property may be disposed of by Landlord. Tenant shall be responsible for any disposal costs.

17. ACCESS TO PROPERTY. Tenant agrees to permit Landlord and the authorized representatives of Landlord to enter the Leased Premises at all times during usual business hours (upon 24 hours' notice to Tenant) for the purpose of inspecting the same and conducting such maintenance and repairs to the Leased Premises as may be desired by Landlord. In the event of a bona fide emergency, Landlord need not provide notice to Tenant if doing so would be impractical.

18. DEFAULT OF TENANT.

(A) Events of Default: The occurrence of any one or more of the following events shall constitute an Event of Default:

(1) Tenant's failure to operate a preschool program set forth in Exhibit B at the Leased Premises for a period of 60 consecutive days, with the exception that the period that Tenant does not operate the preschool program during the months of July and August of each year shall not constitute a failure by Tenant to operate the program for 60 consecutive day period.;

(2) Tenant's failure to maintain the insurance required herein, which failure remains uncured for 15 days following the written notice to Tenant of Tenant's failure to perform such obligation;

(3) Tenant's attempt to sublet any portion of the Leased Premises, or assign its interest under this Lease without the written permission of Landlord;

(4) Tenant files or has filed against it any bankruptcy, receivership, or other creditor's action or makes an assignment for the benefit of creditors;

(5) Tenant's failure to fully perform any of its obligations, other than the obligations referenced in subsections (1), (2), (3), or (4) above, which failure remains uncured for 30 days following Landlord's written notice to Tenant of its failure to perform such obligation.

(B) Landlord's Remedies: If an Event of Default occurs, Landlord shall have the following remedies:

(1) Landlord may, but shall not be obligated to, and without notice to or demand upon Tenant and without waiving or releasing Tenant from any obligations of Tenant under this Lease, pay or perform any obligations of Tenant; pay any cost or expense to be paid by Tenant; obtain any insurance coverage and pay premiums therefor; and make any other payment or perform any other act on the part of Tenant to be made and performed as provided for in this Lease, in such manner and to such extent as Landlord may deem

desirable, and in exercising any such right, may also pay all necessary and incidental costs and expenses, employ counsel and incur and pay attorneys' fees.

(2) Neither the passage of time after the occurrence of an Event of Default nor Landlord's exercise of any other remedy with regard to such Event of Default shall limit Landlord's right to terminate the Lease by written notice to Tenant.

(3) Landlord may, whether or not Landlord has elected to terminate this Lease, immediately commence summary proceedings in unlawful detainer to recover possession of the Leased Premises. In the event of the issuance of a writ of restitution in such proceeding, upon Landlord's reentry upon and repossession of the Leased Premises, Landlord may remove Tenant and all other persons from the Leased Premises (subject to Tenant's right and responsibility to remove its personal property pursuant to paragraph 16). In the event Landlord reenters the Leased Premises pursuant to this paragraph and Tenant fails to remove its personal property within the time period provided in paragraph 16, all items of personal property not removed by Tenant within said period shall be deemed abandoned, and title thereto shall transfer to Landlord at the expiration of such period or, upon Tenant's vacation of the Leased Premises. These items may be disposed of by Landlord. Tenant shall be responsible for all disposal costs.

(4) In addition to all other remedies of Landlord, Landlord shall be entitled to reimbursement upon demand of all reasonable attorneys' fees which Landlord incurs in connection with any Event of Default.

(5) Landlord may initiate legal proceedings to enforce the provisions of this Lease.

No remedy provided for herein or elsewhere in this Lease or otherwise available to Landlord by law, statute, or equity, shall be exclusive of any other remedy, but all such remedies shall be cumulative and may be exercised from time to time and as often as the occasion may arise.

19. DAMAGE OR DESTRUCTION. If any of the Leased Premises is damaged or destroyed, Landlord has no obligation to repair or rebuild the Leased Premises and may instead opt to terminate this Lease or amend this Lease so that it no longer includes that facility.

20. EMINENT DOMAIN. If the whole or any part of the Leased Premises shall be taken by any public authority under the power of eminent domain, Tenant shall have no claim to, nor shall Tenant be entitled to, any portion of any award, for damages or otherwise. In the event only a portion of the Leased Premises are taken, the Lease shall terminate as to the part taken, and the rent and other charges herein reserved shall be adjusted for the remainder of the Leased Premises.

21. GENERAL.

(A) Relationship of Landlord and Tenant: The Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord

and Tenant, the sole relationships between the parties hereto being that of landlord and tenant under this Lease.

(B) Waiver: No waiver of Landlord's remedies upon the occurrence of an Event of Default shall be implied from any omission by Landlord to take any action on account of such Event of Default, and no express waiver shall affect any Event of Default other than the Event of Default specified in the express waiver and such an express waiver shall be effective only for the time and to the extent expressly stated. One or more waivers by Landlord shall not then be construed as a waiver of a subsequent Event of Default.

(C) Choice of Law: The laws of the State of Minnesota shall govern the validity, performance, and enforcement of this Lease.

(D) Time: Time is of the essence in the performance of all obligations under this Lease.

(E) Notices and Demands. Except as otherwise expressly provided in this Lease, any notice, demand, or other communication under the Lease any related document by either party to the other shall be sufficiently given or delivered if it is dispatched by certified mail, return receipt requested or delivered personally to:

- | | |
|------------------------------|--|
| (1) in the case of Tenant: | Minneapolis Nature Preschool
314 Washburn Ave. N.
Minneapolis, MN 55405
Attn: Director, Minneapolis Nature Preschool |
| (2) in the case of Landlord: | Minneapolis Public Schools
Special School District No. 1
1250 West Broadway Avenue
Minneapolis, MN 55411
Attn: Real Estate Manager |

With a copy to:	General Counsel Minneapolis Public Schools 1250 West Broadway Avenue Minneapolis, MN 55411
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or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph 20.

(F) Entire Agreement and Amendment: This Lease constitutes the entire agreement between Landlord and Tenant affecting the Leased Premises and there are no other agreements, either oral or written, between the parties other than said documents and as are herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and executed in the same form and manner in which this Lease is executed. If Tenant either leases an additional site from Landlord or vacates a site listed on Exhibit A, this Lease will need to be amended and Exhibit A replaced.

(G) Successors and Assigns: The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto

(H) Severability. Each provision of this Lease is intended to be severable. If a provision of this Lease is held by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Lease.

(I) Authority to Execute. Each party represents and warrants to the other that (i) it has the full right, power and authority to execute this Lease and has the power to grant all rights hereunder; (ii) its execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on said party; and (iii) the execution and delivery of this Lease, and the performance of its obligations hereunder, have been duly authorized by all necessary personnel or corporate officers and do not violate any provision of law or the party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.

IN WITNESS WHEREOF, Landlord and Tenant have caused these presents to be executed in form and manner sufficient to bind them at law, as of the day and year first above written.

MINNEAPOLIS NATURE PRESCHOOL

SPECIAL SCHOOL DISTRICT NO. 1

By: Alyson K Quinn 

Its: Director

Date: August 31, 2023

By: _____
Ibrahima Diop

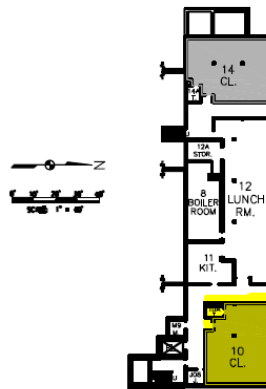
Its: Senior Finance & Operations Officer

Date: _____

EXHIBIT A
Leased Premises

BRYN MAWR SCHOOL

DATE: 11/2004



GROUND FLOOR PLAN

BRYN - A - 001

SCALE: ONE INCH = 30 FEET

SHEET: 1 of 1

FLOOR PLANS

MINNEAPOLIS PUBLIC SCHOOLS

SPECIAL SCHOOL DISTRICT NO.1

MINNEAPOLIS, MN. 55413

DATE: 3//93

Bryn Mawr School

EXHIBIT B

Use Schedule

Leased Room/Space	School Year Use Schedule (September – May)	Cost Per Hour	2023 Monthly Total	2024 Monthly Total	2025 Monthly Total	2026 Monthly Total
Room 10	8:00 am – 4:00 pm (8 hr) Monday – Friday	\$15.00	\$1,400.00	\$2,000.00	\$2,400.00	\$2,400.00
Lunchroom	11:00 am – 12:00 pm (1 hr)	N/A	N/A	N/A	N/A	N/A
Playground	N/A	N/A	N/A	N/A	N/A	N/A
Parking	Use of lot for staff and child drop-off/pick-up	N/A	N/A	N/A	N/A	N/A

Leased Room/Space	Summer Use Schedule (June)	Cost Per Hour	2023 Monthly Total	2024 Monthly Total	2025 Monthly Total	2026 Monthly Total
Room 10	8:30 am – 12:30 pm (4 hr) Monday – Thursday	\$15.00	\$700.00	\$1,000.00	\$1,200.00	\$1,200.00
Lunchroom	11:00 am – 12:00 pm (1 hr)	N/A	N/A	N/A	N/A	N/A
Playground	N/A	N/A	N/A	N/A	N/A	N/A
Parking	Use of lot for staff and child drop-off/pick-up	N/A	N/A	N/A	N/A	N/A

To make this lease equitable with other lease holders and consistent with rate changes, a gradual increase will be made each year.



For Internal Use Only Depts must provide:	
ESAF #	21
Chart/Field Account No.	1026-11242-20109
Customer ID #	5005211

For Internal Use Only OES must provide:	
OES Contract #	OES000000016631
Analyst	rb

UNIVERSITY OF MINNESOTA SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the “Agreement”) is between the Regents of the University of Minnesota (the “University”), a Minnesota constitutional corporation, and Special School District No. 1, Minneapolis Public Schools (the “Company”). This Agreement is entered into by University through its Center for Applied Research and Educational Improvement.

The parties agree as follows:

1. Description of Services. University shall perform the following services for Company:

See attached description of work and invoicing schedule.

(“Services”). Reference to Services in this Agreement shall be deemed to include any deliverables provided to Company in connection with the Services, including without limitation, reports, results, materials, products, and information.

2. Compensation. For the Services performed under Section 1, Company shall pay University one hundred forty eight thousand five hundred and 00/100 Dollars (\$148,500.00), plus any sales or use tax if applicable.

2.1 The compensation shall be paid in the following manner (check one of the following):

- ☐ 0% upon the signing of this Agreement, with the balance payable monthly after prepayment is applied; or
- ☒ monthly, based on any work completed in that month.

2.2 Invoices shall be payable net 30 days from date of invoice and sent to:

Minneapolis Public Schools
Attn: Accounts Payable
1250 West Broadway
Minneapolis, MN 55411

Phone No.: 612-688-0386
Email: MPS_InvoiceCapture@concursolutions.com

In the event the compensation is not a fixed firm price for the services, but instead is set forth on an attached schedule and contains published rates, the University reserves the right to modify the fees set forth thereon effective July 1 of each year of this Agreement.

3. Term. The term of this Agreement shall commence on **August 11, 2023** (“Effective Date”) and shall expire on **June 30, 2025** unless terminated earlier as provided in Section 4.

4. Termination. Either party may terminate this Agreement if the other party (i) fails to perform any material obligation under this Agreement and (ii) does not correct such failure within seven (7) days after having received written notice of such failure. Additionally, either party may terminate this Agreement for its convenience upon thirty (30) days’ prior written notice to the other party. Upon any termination under this Section 4, Company shall promptly pay University for all Services rendered and costs incurred up to and including the effective date of termination.

5. DISCLAIMER OF WARRANTIES. UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION, ORIGINALITY OR ACCURACY OF THE SERVICES PERFORMED OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT. UNIVERSITY EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT. IN NO EVENT SHALL EITHER PARTY’S LIABILITY FOR BREACH OF THIS AGREEMENT INCLUDE DAMAGES FOR WORK STOPPAGE, LOST DATA, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT), OF ANY KIND. EXCEPT FOR EACH PARTY’S OBLIGATIONS UNDER SECTIONS 8.1 AND 8.2, EACH PARTY’S LIABILITY TO THE OTHER FOR BREACH OF THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE MONETARY CONSIDERATION PAID TO UNIVERSITY UNDER THIS AGREEMENT.

7. Use of University Name or Logo. Company agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University or the name of any representative of University in any sales promotion work or advertising, or in any form of publicity, without the prior written permission of University in each instance. However, Company may use the name of University in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements. Company agrees to provide University with a copy of any such document.

8. Indemnification.

8.1 Except as provided in Section 8.2, each party shall be responsible for its own acts and omissions and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Liability of University is subject to the terms and limitations of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, as amended.

8.2 In the event of (i) use by Company (or any third party acting on behalf of or under authorization from Company) of the Services or any information, reports, deliverables, materials, products or other results of University's work under this Agreement or (ii) Company's infringement of a third party's intellectual property rights or Company's violation of any law, rule, or regulation in the provision of any materials to University, then Company shall indemnify, defend, and hold harmless University, its regents, faculty members, students, employees, agents, contractors, and authorized volunteer workers against any and all claims, costs, or liabilities, including attorneys' fees and court costs at both trial and appellate levels, for any loss, damage, injury, or loss of life (other than that attributable to willful, wanton or grossly negligent acts or omissions of University) arising out of such events. The University shall provide Company with prompt written notice of any such claim and reasonably work with Company in any defense of such claim. Company shall obtain consent from University's Office of General Counsel for any settlement to which the University would be a party.

8.3 Each party represents that it has and will continue to have at least the following levels of insurance during the term of this Agreement: (i) as to University, Workers' Compensation in statutory compliance with Minnesota law and General Liability insurance in an amount not less than \$1,000,000 each claim/\$3,000,000 each occurrence; and (ii) as to Company, General Liability insurance in an amount not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate. Certificates of all insurance detailed above shall be furnished to the other party upon request.

9. Export Controls.

9.1 Company shall not convey export-controlled technical data, technology, commodities, or software on the U.S. Munitions List, 22 C.F.R. pt. 121, or the Commerce Control List, 15 C.F.R. pt. 774, to University without the prior written consent of University's Export Controls Officer (J. Patrick Briscoe, bris0022@umn.edu, 612-625-3860). University shall have the right to decline export controlled information or tasks requiring production of such information. If the Services cannot reasonably be performed without University access to export-controlled items, the Agreement may be terminated by either party for convenience in accordance with Section 4, except that such termination shall occur immediately upon written notice to the other instead of at the end of the 30-day period set forth in Section 4.

9.2 Company represents that the items being procured (a) are not specifically designed or modified for military purposes or specifications, and (b) will not be used in connection with the development or use of any missiles or chemical, biological, or nuclear weapons.

10. General Provisions.

10.1 Amendment. This Agreement shall be amended only in writing duly executed by all the parties to this Agreement.

10.2 Assignment. The parties may not assign any rights or obligations of this Agreement without the prior written consent of the other party. Any assignment attempted to be made in violation of this Agreement shall be void.

10.3 Entire Agreement. This Agreement (including all documents attached or referenced) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement, including without limitation, any non-disclosure agreements. The terms and conditions of any purchase order or similar document submitted by Company in connection with the services provided under this Agreement shall not be binding upon University.

10.4 Force Majeure. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties' duty to perform obligations shall be suspended.

10.5 Governing Law and Jurisdiction. The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

10.6 Independent Contractor. In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint ventures, or employees. Each party's employees (i) shall be regarded as the employees of such party and shall not be regarded as the employees of the other party; (ii) shall be subject to the employment policies and procedures of such party and shall not be subject to the employment practices and procedures of the other party; and (iii) shall not be entitled to any employment benefits of the other party. Neither party shall have the right or power to bind the other party and any attempt to enter into an agreement in violation of this Section 10.6 shall be void. Neither party shall take any actions to bind the other party to an agreement.

10.7. Notices. All notices and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally or by a recognized courier service or by United States Mail (first-class, postage pre-paid, certified return receipt requested) to the other party at the following addresses. Such notices and other communications shall be deemed made when delivered; submitted to the courier service; or, with respect to U.S. mail, three days after mailing.

If to University:

Attn: Wendy Stuttgen
CAREI
1954 Buford Ave; Suite 425
St. Paul, MN 55108
Phone No.: 612-624-0300
E-mail Address: stuttgen@umn.edu

With a copy to:

University of Minnesota
Office of the General Counsel
Attn: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
E-Mail: contracts@mail.ogc.umn.edu

With a copy to:

University of Minnesota
Office of External Sales
295 West Bank Office Building
1300 South Second Street
Minneapolis, MN 55454
E-Mail: extsales@umn.edu

If to Company:

Minneapolis Public Schools
Attn: Aimee Fearing
1250 West Broadway
Minneapolis, MN 55411
Phone No.: 612-668-5300
E-mail Address: Aimee.Fearing@mpls.k12.mn.us

10.8 Taxes and Similar Fees. In addition to the payment obligation in Section 2, Company is responsible for the payment of any and all income, sales, use, consumption, value added, excise, custom duties or other taxes and similar fees in connection with this Agreement, levied or required to be withheld from payment(s) to University by any taxing authority or any other body having jurisdiction under any present or future laws. To the extent that Company is required to withhold or deduct taxes or similar fees on any payment to be made to University, then the amount payable shall be increased by the amount that will result in University receiving a net payment in the amount it would have received absent such withholding or deduction. If University is required to pay any of such fees and/or taxes or any related penalties or interest, then any such payments shall be reimbursed to University by Company.

10.9. Breach; Attorneys' Fees. In the event it fails to perform any of its obligations under this Agreement, Company shall reimburse University for all University's costs and expenses (including reasonable attorneys' fees, court costs, and costs of investigation) to enforce this Agreement, regardless of whether a suit or action had been commenced or concluded.

10.10. Survival. Upon termination or expiration of this Agreement, Sections 2, 5, 6, 7, 8, 9, and 10 shall survive.

IN WITNESS WHEREOF, the parties have entered into the Agreement as of the dates indicated below. Each individual signing below represents that they have the authority to bind the party on whose behalf they are signing.

Regents of the University of Minnesota

Minneapolis Public Schools

By: _____

Name: Gail Renteria

Title: Chief Financial Officer and Chief of
Operations

Date: _____

By: _____

Name: Dr. Aimee Fearing

Title: Senior Academic Officer

Date: _____

Twin Cities Campus

Center for Applied Research and Educational
Improvement (CAREI)

College of Education and Human Development

1954 Buford Avenue, Suite 425
St. Paul, MN 55108-1062

Office: 612-624-0300
Fax: 612-625-3086
cehd.umn.edu/CAREI
Email: carei@umn.edu

Proposal for Minneapolis Public Schools, School Years 2023-25

Date: 05/18/23

Elementary Literacy Curriculum Selection Consulting

Fiscal Year 2024

ELEMENTARY LITERACY CURRICULUM SELECTION CONSULTING	
SCHOOL YEAR 2023-24	
<u>August 2023</u> Steering Committee • Build foundational knowledge of SOR through group reading/listening tasks with synopsis review structure through jigsaw activities or other similar approaches ○ Overall SOR ○ Phonemic Awareness ○ Phonics ○ Fluency ○ Vocabulary ○ Comprehension ○ Writing ○ Cultural Responsiveness <u>August-September 2023</u> • Co-create ELA Evaluation Tool Rubric ○ Review CAREI curriculum review rubric and co-create contextual indicators specific to MPS	Facilitated Meeting Hours SOR Professional Learning • Up to 20 hours of meeting time Co-Create ELA Eval Tool Rubric • Up to 12 hours of meeting time

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• MPS will draft and send out RFP	
<u>September-December 2023</u> • Request curricula samples • Narrow down proposals using rubric ◦ Examine sample content in detail for equity review to expand on the rubric criteria. • Select 4-6 curricula • Compile questions for current local users of pilot curriculum and schedule meetings to answer questions • Compile questions for vendors and submit to vendors	Narrow down proposals using rubric • Up to 48 hours of meeting time Questions for Current Users • Up to 6 hours of meeting time Questions for Vendors • Up to 6 hours of meeting time
<u>January-February 2024</u> • Get interested parties input ◦ Educators, community, parents, students	Focus groups, town hall meetings, and surveys • Up to 40 hours of meeting time
<u>February-March 2024</u> • Presentations with selected vendors ◦ Must have answered our questions we submitted in order to be selected	Presentations • Up to 20 hours of meeting time
<u>March-April 2024</u> • Determine strengths and weaknesses of each curriculum and if any adaptations/supplements will be needed • Steering committee establishes goals and expected outcomes for pilot	Comparison across curricula • Up to 12 hours of meeting time Pilot Sites and Curriculum • Up to 12 hours of meeting time

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○ Identifies how many pilot sites needed and what the process is for selection ■ Strategic assignment ensures we capture its value with student populations that are typically marginalized ○ Identify data to be collected by pilot sites ■ Student data ● survey and outcomes ■ Strengths and barriers to implementation ○ Identify training that will be provided to each pilot site ○ Identify how pilot sites will be supported with implementation questions	
Total Facilitated Meeting Hours	168
Total	\$82,500

Fiscal Year 2025

CONTINUED <i>ELEMENTARY LITERACY CURRICULUM SELECTION CONSULTING</i>	
SCHOOL YEAR 2024-25	
<u>September 2024 - April 2025</u> ● Steering Committee will meet monthly during the school year to review pilot data, barriers to implementation, etc	Facilitated Meeting Hours Pilot Review ● Up to 14 hours of meeting time

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<u>April-June 2025</u> • Select program for fall 2024-25 • Create framework for initial and ongoing pd • Purchase materials • Train staff	Selection and Planning • Up to 6 hours of meeting time
Total Facilitated Meeting Hours	20
Total	\$66,000

Invoicing Schedule

Due net 30 days

Invoice Issue Date	Invoice Amount
August 15, 2023	\$7,500
September 1, 2023	\$7,500
October 1, 2023	\$7,500

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November 1, 2023	\$7,500
December 1, 2023	\$7,500
January 1, 2024	\$7,500
February 1, 2024	\$7,500
March 1, 2024	\$7,500
April 1, 2024	\$7,500
May 1, 2024	\$7,500
June 1, 2024	\$7,500
<i>Subtotal FY24</i>	<i>\$82,500</i>
July 1, 2024	\$5,500
August 1, 2024	\$5,500
September 1, 2024	\$5,500
October 1, 2024	\$5,500
November 1, 2024	\$5,500
December 1, 2024	\$5,500
January 1, 2025	\$5,500
February 1, 2025	\$5,500

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Email: carei@umn.edu*

March 1, 2025	\$5,500
April 1, 2025	\$5,500
May 1, 2025	\$5,500
June 1, 2025	\$5,500
<i>Subtotal FY25</i>	<i>\$66,000</i>
Total Contract Invoiced	\$148,500

**MINNEAPOLIS PUBLIC SCHOOLS
RESOLUTION 2023-0044**

RESOLUTION AMENDING POLICY 4200

WHEREAS, The proposed revisions are required to align to a recent change in state or federal law.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

SECTION 1: **AMENDMENT** “Policy 4200: Personnel Data” of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

AMENDMENT

Policy 4200: Personnel Data

1. PURPOSE

The purpose of this policy is to provide guidance to school district employees as to the data the school district collects and maintains regarding its employees, volunteers, independent contractors, and applicants ("personnel").

2. GENERAL STATEMENT OF POLICY

- a. All data on individuals collected, created, received, maintained or disseminated by the school district, which is classified by statute or federal law as public, shall be accessible to the public pursuant to the procedures established by the school district.
- b. All other data on individuals is private or confidential

3. DEFINITIONS

- a. “*Public*” means that the data is available to anyone who requests it.
- b. “*Private*” means the data is not public and is accessible only to the following: the subject of the data, as limited by any applicable state or federal law; individuals within the school district whose work assignments reasonably require access; entities and agencies as determined by the responsible authority who are authorized by law to gain access to that specific data; and entities or individuals given access by the express written direction of the data subject.
- c. “*Confidential*” means the data are not public and are not accessible to the subject.
- d. “*Parking space leasing data*” means the following government data on an applicant for, or lessee of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, location of parking space, and work telephone number.
- e. “*Personnel data*” means government data on individuals maintained because

they are or were employees, applicants for employment, or volunteers or independent contractors for the school district. Personnel data include data submitted by an employee to the school district as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or to improve school district operations.

- f. “*Finalist*” means an individual who is selected to be interviewed by the appointing authority prior to selection.
- g. “*Protected health information*” means individually identifiable health information as defined in 45 C.F.R. § 160.103 that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium by a health care provider, in connection with a transaction covered by 45 C.F.R. Parts 160, 162 and 164. “Protected health information” excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, employment records held by a school district in its role as employer; and records regarding a person who has been deceased for more than fifty (50) years.
- h. “*Public officials*” means business managers; human resource directors; athletic directors whose duties include at least fifty (50) percent of their time spent in administration, personnel, supervision, and evaluation; chief financial officers; directors; and individuals defined as superintendents and principals.

4. PUBLIC PERSONNEL DATA

- a. The following information on current and former employees, and independent contractors of the school district, is public:
 - i. name;
 - ii. employee identification number, which may not be the employee’s Social Security number;
 - iii. actual gross salary;
 - iv. salary range;
 - v. terms and conditions of employment relationship;
 - vi. contract fees;
 - vii. actual gross pension;
 - viii. the value and nature of employer-paid fringe benefits;
 - ix. the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
 - x. job title;
 - xi. bargaining unit;
 - xii. job description;
 - xiii. education and training background;
 - xiv. previous work experience;
 - xv. date of first and last employment;
 - xvi. the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

- xvii. the final disposition of any disciplinary action, as defined in Minnesota Statutes section 13.43, subdivision 2(b), together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the school district;
 - xviii. the complete terms of any agreement settling any dispute arising out of the employment relationship, including superintendent buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money, and such agreement may not have the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data;
 - xix. work location;
 - xx. work telephone number;
 - xxi. badge number;
 - xxii. work-related continuing education;
 - xxiii. honors and awards received; and
 - xxiv. payroll time sheets or other comparable data that are used only to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.
- b. The following information on current and former applicants for employment by the school district is public:
- i. veteran status;
 - ii. relevant test scores;
 - iii. rank on eligible list;
 - iv. job history;
 - v. education and training; and
 - vi. work availability.
- c. Names of applicants are private data except when certified as eligible for appointment to a vacancy or when applicants are considered by the school board to be finalists for public employment position.
- d. Applicants for appointment to a public body.
- i. Data about applicants for appointment to a public body collected by the school district as a result of the applicant's application for employment are private data on individuals except that the following are public:
 - (1) name;
 - (2) city of residence, except when the appointment has a residency requirement that requires the entire address to be public;
 - (3) education and training;
 - (4) employment history;
 - (5) volunteer work;

- (6) awards and honors;
- (7) prior government service;
- (8) any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to Minnesota Statutes section 15.0597; and
- (9) veteran status.
- ii. Once an individual is appointed to a public body, the following additional items of data are public:
 - (1) residential address;
 - (2) either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
 - (3) first and last dates of service on the public body;
 - (4) the existence and status of any complaints or charges against an appointee; and
 - (5) upon completion of an investigation of a complaint or charge against an appointee, the final investigative report is public, unless access to the data would jeopardize an active investigation.
- iii. Notwithstanding paragraph 2., any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached.
- e. Regardless of whether there has been a final disposition as defined in Minnesota Statutes section 13.43, subdivision 2(b), upon completion of an investigation of a complaint or charge against a public official, as defined in Minnesota Statutes section 13.43, subdivision 2(e), or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.
Data relating to a complaint or charge against a public official is public only if: the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement. Data that is classified as private under another law is not made public by this provision.

5. PRIVATE PERSONNEL DATA

- a. All other personnel data not listed in Section 4 are private data will not be otherwise released unless authorized by law.
- b. Data pertaining to an employee's dependents are private data on individuals.
- c. Data created, collected or maintained by the school district to administer

- employee assistance programs are private.
- d. Parking space leasing data with regard to data on individuals are private.
 - e. An individual's checking account number is private when submitted to a government entity.
 - f. Personnel data ~~may~~must be disseminated to labor organizations to the extent ~~the responsible authority determines the dissemination is~~ necessary for the labor organization to conduct elections, ~~notify employees of fair share fee assessments~~investigate and process grievances, and implement the provisions of Minnesota Statutes chapters 179 and 179A. Employee Social Security numbers are not necessary to implement the provisions of chapters 179 and 179A. The personnel data described in section 179A.07, subdivision 8, must be disseminated to labor organizations in the timing and manner described in that subdivision. Personnel data shall be disseminated to labor organizations, the Public Employment Relations Board ("PERB"), and the Bureau of Mediation Services ("BMS") to the extent the dissemination is ordered or authorized by the Commissioner of the BMS or the PERB or its employees or agents.
 - g. The school district may display a photograph of a current or former employee to prospective witnesses as part of the school district's investigation of any complaint or charge against the employee.
 - h. The school district may, if its responsible authority or designee reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, release data that are relevant to the concerns for safety to:
 - i. the person who may be harmed and to the attorney representing the person when the data are relevant to obtaining a restraining order;
 - ii. a prepetition screening team conducting an investigation of the employee under Minnesota Statutes section 253B.07, subdivision 1;
 - or
 - iii. a court, law enforcement agency, or prosecuting authority.
 - i. Private personnel data or confidential investigative data on employees may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of a crime or alleged crime committed by an employee.
 - j. A complainant has access to a statement provided by the complainant to the school district in connection with a complaint or charge against an employee.
 - k. When allegations of sexual or other types of harassment are made against an employee, the employee does not have access to data that would identify the complainant or other witnesses if the responsible authority determines that the employee's access to that data would:
 - i. threaten the personal safety of the complainant or a witness; or
 - ii. subject the complainant or witness to harassment.

If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.

- l. The school district must report to the Minnesota Professional Educator Licensing and Standards Board ("PELSB") or the Board of School Administrators ("BOSA"), whichever has jurisdiction over the teacher's or administrator's license as required by Minnesota Statutes section 122A.20, subdivision 2, and shall, upon written request from the licensing board having jurisdiction over license, provide the licensing board with information about the teacher or administrator from the school district's files, any termination or disciplinary proceeding, and settlement or compromise, or any investigative file in accordance with Minnesota Statutes section 122A.20, subdivision 2.
- m. Private personnel data shall be disclosed to the Department of Employment and Economic Development for the purpose of administration of the unemployment insurance program under Minnesota Statutes Chapter. 268.
- n. When a report of alleged maltreatment of a student in an elementary, middle, or high school is made to the Commissioner of the Minnesota Department of Education ("MDE") under Minnesota Statutes Chapter 260E, data that are relevant and collected by the school facility about the person alleged to have committed maltreatment must be provided to the Commissioner on request for purposes of an assessment or investigation of the maltreatment report. Additionally, personnel data may be released for purposes of providing information to a parent, legal guardian, or custodian of a child in accordance with MDE Screening Guidelines.
- o. The school district shall release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if
 - i. an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data; or
 - ii. the employee resigned while a complaint or charge involving the allegations was pending, the allegations involved acts of sexual contact with a student, and the employer informed the employee in writing, before the employee resigned, that if the employee resigns while the complaint or charge is still pending, the employer must release private personnel data about the employee's alleged sexual contact with a student to a school district or charter school requesting the data after the employee applies for employment with that school district or charter school and the data remain classified as provided in Minnesota Statutes Chapter 13.

Data that are released under this paragraph must not include data on the student.

- p. Data submitted by an employee to the school district as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or improve the school district operations is private data. An employee who is identified in a suggestion, however, shall have access to all data in the suggestion except the identity of the employee making the suggestion.
- q. Protected health information, as defined in 45 C.F.R. Parts 160 and 164, on employees is private and will not be disclosed except as permitted or required by law.
- r. Personal home contact information for employees may be used by the school district to ensure that an employee can be reached in the event of an emergency or other disruption affecting continuity of school district operations and may be shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation for the school district or government entity.
- s. The personal telephone number, home address, and electronic mail address of a current or former employee of a contractor or subcontractor maintained as a result of a contractual relationship between the school district and a contractor or subcontractor entered on or after August 1, 2012, are private data. These data must be shared with another government entity to perform a function authorized by law. The data also must be disclosed to a government entity or any person for prevailing wage purposes.
- t. When a continuing contract teacher is discharged immediately because the teacher's license has been revoked due to a conviction for child abuse or sexual offenses involving a child as set forth in Minnesota Statutes, section 122A.40, subdivision 13(b), or when the Commissioner of the MDE makes a final determination of child maltreatment involving a teacher under Minnesota Statutes section 260E.21, subdivision 4 or 260E.35, the school principal or other person having administrative control of the school must include in the teacher's employment record the information contained in the record of the disciplinary action or the final maltreatment determination, consistent with the definition of public data under Minnesota Statutes section 13.41, subdivision 5, and must provide PELSB and the licensing division at MDE with the necessary and relevant information to enable PELSB and MDE's licensing division to fulfill their statutory and administrative duties related to issuing, renewing, suspending, or revoking a teacher's license. In addition to the background check required under Minnesota Statutes section 123B.03, a school board or other school hiring authority must contact PELSB and MDE to determine whether the teacher's license has been suspended or revoked, consistent with the discharge and final maltreatment determinations. Unless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a school district must disseminate to another school district private personnel data on a current or former teacher (employee or contractor) of the district, including the results of

background investigations, if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.

6. MULTIPLE CLASSIFICATIONS

If data on individuals are classified as both private and confidential by Minnesota Statutes Chapter 13, or any other state or federal law, the data are private.

7. CHANGE IN CLASSIFICATIONS

The school district shall change the classification of data in its possession if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

8. RESPONSIBLE AUTHORITY

The responsible authority, or a school district employee if so designated, shall serve as the school district's data practices compliance official and, as such, shall be the employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems.

Contact for the responsible authority for personnel data can be found at:
<https://board.mpls.k12.mn.us/publicdatarequests>.

Original Adoption:

8/10/2021

Revision Dates:

10/12/2021

Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)

Minn. Stat. § 13.03 (Access to Government Data)

Minn. Stat. § 13.05 (Duties of Responsible Authority)

Minn. Stat. § 13.37 (General Nonpublic Data)

Minn. Stat. § 13.39 (Civil Investigation Data)

Minn. Stat. § 13.41 (Licensing Data – Public Data)

Minn. Stat. § 13.43 (Personnel Data)

Minn. Stat. § 15.0597 (Appointment to Multimember Agencies)

Minn. Stat. § 122A.20, subd. 2 (Mandatory Reporting)

Minn. Stat. § 122A.40, subds. 13 and 16 (Employment; Contracts; Termination)

Minn. Stat. § 123B.03 (Background Check)

Minn. Stat. § 123B.143, subd. 2 (Disclose Past Buyouts)

Minn. Stat. Ch. 179 (Minnesota Labor Relations Act)

Minn. Stat. Ch. 179A (Minnesota Public Labor Relations Act)

Minn. Stat. § 253B.07 (Judicial Commitment: Preliminary Procedures)

Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

Minn. Stat. Ch. 268 (Unemployment Insurance)

Minn. R. Pt. 1205 (Data Practices)

P.L. 104-191 (HIPAA)

45 C.F.R. Parts 160, 162 and 164 (HIPAA Regulations)

Minn. Stat. § 13.601, subd. 3 (Applicants for Employment)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

	AYE	NAY	ABSENT	ABSTAIN
Abdi	_____	_____	_____	_____
Beachy	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Emerick	_____	_____	_____	_____
Feerayarre	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Norvell	_____	_____	_____	_____

Presiding Officer

Attest

Sharon El-Amin, Chair, Minneapolis
Public Schools

Lori Norvell, Clerk, Minneapolis
Public Schools

**MINNEAPOLIS PUBLIC SCHOOLS
RESOLUTION 2023-0051**

RESOLUTION ADOPTING POLICY 5610

WHEREAS, The proposed adoption of this policy is required to align to a recent change in state or federal law.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

SECTION 1: **ADOPTION** “Policy 5610: Corporal Punishment And Prone Restraint” of the Minneapolis Public Schools Policies & Regulations is hereby *added* as follows:

ADOPTION

Policy 5610: Corporal Punishment And Prone Restraint(*Added*)

1. PURPOSE

The purpose of this policy is to prohibit the use of corporal punishment and prone restraint upon a student.

2. GENERAL STATEMENT OF POLICY

No employee or agent of the school district shall inflict corporal punishment or use prone restraint upon a student.

3. DEFINITIONS

a. “Corporal punishment” means conduct involving:

- i. hitting or spanking a pupil with or without an object; or
- ii. unreasonable physical force that causes bodily harm or substantial emotional harm.

b. “Prone restraint” means placing a pupil in a face-down position.

4. PROHIBITIONS

- a. An employee or agent of Minneapolis Public Schools shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a pupil to reform unacceptable conduct or as a penalty for unacceptable conduct.
- b. An employee or agent of Minneapolis Public Schools shall not use prone restraint.
- c. An employee or agent of Minneapolis Public Schools shall not inflict any form of physical holding that restricts or impairs a pupil's ability to breathe; restricts or impairs a pupil's ability to communicate distress; places pressure or weight on a pupil's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen; or results in straddling a pupil's torso.

5. EXCEPTIONS

A teacher or school principal, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student to prevent imminent bodily harm or death to the student or to another. A school employee, school bus driver, or other agent of Minneapolis Public Schools, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to restrain a student to prevent bodily harm or death to the student or to another.

6. VIOLATION

Employees who violate the provisions of this policy shall be subject to disciplinary action as appropriate. Any such disciplinary action shall be made pursuant to and in accordance with applicable statutory authority, collective bargaining agreements, and school district policies. Violation of this policy may also result in civil or criminal liability for the employee.

Original Adoption:

8/8/2023

Legal References:

Minn. Stat. § 121A.58 (Corporal Punishment; Prone Restraint and Certain Physical Holds)

Minn. Stat. § 121A.582 (Student Discipline; Reasonable Force)

Minn. Stat. § 123B.25 (Legal Actions Against Districts and Teachers)

Minn. Stat. § 609.06 Subd. 1 (6)(7) (Authorized Use of Force)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

	AYE	NAY	ABSENT	ABSTAIN
Abdi	_____	_____	_____	_____
Beachy	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Emerick	_____	_____	_____	_____
Feerayarre	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Norvell	_____	_____	_____	_____

Presiding Officer

Attest

Sharon El-Amin, Chair, Minneapolis
Public Schools

Lori Norvell, Clerk, Minneapolis
Public Schools

**MINNEAPOLIS PUBLIC SCHOOLS
RESOLUTION 2023-0045**

RESOLUTION AMENDING POLICY 5690

WHEREAS, The proposed revisions are required to align to a recent change in state or federal law.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

SECTION 1: **AMENDMENT** “Policy 5690: Student Data” of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

A M E N D M E N T

Policy 5690: Student Data

1. PURPOSE

The school district recognizes its responsibility in regard to the collection, maintenance, and dissemination of pupil records and the protection of the privacy rights of students as provided in federal law and state statutes.

2. GENERAL STATEMENT OF POLICY

The following procedures and policies regarding the protection and privacy of parents and students are adopted by the school district, pursuant to the requirements of 20 U.S.C. § 1232g, et seq., (Family Educational Rights and Privacy Act (FERPA)) 34 C.F.R. Part 99 and consistent with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, and Minnesota Rules Parts 1205.0100-1205.2000.

3. DEFINITIONS

- a. “*Authorized representative*” means any entity or individual designated by the school district, state, or an agency headed by an official of the Comptroller of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or state and local educational authorities to conduct, with respect to federal or state supported education programs, any audit or evaluation or any compliance or enforcement activity in connection with federal legal requirements that relate to these programs.
- b. “*Biometric record*,” as referred to in “*Personally Identifiable*,” means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual (e.g., fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting).
- c. “*Dates of attendance*,” as referred to in “*Directory Information*,” means the

period of time during which a student attends or attended a school or schools in the school district, including attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not in the classroom, and including the period during which a student is working under a work-study program. The term does not include specific daily records of a student's attendance at a school or schools in the school district.

d. “*Directory information*” means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

i. *General Public Access*. The following information is designated as directory information to any member of the public not identified in section 3.d.ii:

- (1) Name, height and weight of individual members of athletic teams;
- (2) Name of recipient and name of award or scholarship received, and
- (3) Names of participants in officially recognized school activities.

ii. *Government Agency Access*. In addition to the information available to the general public, the following information is designated as directory information regarding any student or the student's identified parent or person acting as the parent to the student to any properly identified member of a governmental agency:

- (1) Name
- ~~(2) Home Address(es)~~
- ~~(3) Telephone Number(s)~~
- (4) School of enrollment
- (5) Photograph, audio or video image
- ~~(6) Electronic mail address~~
- (7) Date of Birth
- (8) Dates of attendance
- (9) Grade level

iii. Directory information does not include:

- (1) a student's social security number;
- (2) a student's home address, telephone number, email address, or other personal contact information;
- (3) a student's identification number (ID), user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems if the identifier may be used to access education records without use of one or more factors that authenticate the student's identity such as a personal identification number (PIN), password, or other factors known or possessed only by the authorized user;

- (4) a student ID or other unique personal identifier that is displayed on a student ID badge if the identifier can be used to gain access to educational records when used in conjunction with one or more factors that authenticate the student's identity, such as a PIN, password, or other factor known or possessed only by the student;
- (5) personally identifiable data which references religion, race, color, social position, or nationality; or
- (6) data collected from nonpublic school students, other than those who receive shared time educational services, unless written consent is given by the student's parent or guardian.

e. *"Education Records"*

- i. What constitutes "education records." Education records means those records that are: (1) directly related to a student; and (2) maintained by the school district or by a party acting for the school district.
- ii. What does not constitute education records. The term, "education records," does not include:
 - (1) Records of instructional personnel that are:
 - (A) kept in the sole possession of the maker of the record;
 - (B) used only as a personal memory aid;
 - (C) not accessible or revealed to any other individual except a temporary substitute teacher; and
 - (D) destroyed at the end of the school year.
 - (2) Records relating to an individual, including a student, who is employed by the school district which:
 - (A) are made and maintained in the normal course of business;
 - (B) relate exclusively to the individual in that individual's capacity as an employee; and
 - (C) are not available for use for any other purpose.

However, records relating to an individual in attendance at the school district who is employed as a result of his or her status as a student are education records.

- (3) Records relating to an eligible student, or a student attending an institution of post-secondary education, that are:
 - (A) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity or assisting in that capacity;
 - (B) made, maintained, or used only in connection with the provision of treatment to the student; and
 - (C) disclosed only to individuals providing the treatment; provided that the records can be personally reviewed

by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are a part of the program of instruction within the school district.

(4) Records created or received by the school district after an individual is no longer a student at the school district and that are not directly related to the individual's attendance as a student.

(5) Grades on peer-related papers before the papers are collected and recorded by the teacher.

- f. "*Eligible student*" means a student who has attained eighteen (18) years of age or is attending an institution of post-secondary education.
- g. "*Juvenile justice system*" includes criminal justice agencies and the judiciary when involved in juvenile justice activities.
- h. "*Legitimate educational interest*" includes an interest directly related to classroom instruction, teaching, student achievement and progress, discipline of a student, student health and welfare, and the ability to respond to a request for education data. It includes a person's need to know in order to:
 - i. Perform an administrative task required in the school or employee's contract or position description approved by the school board;
 - ii. Perform a supervisory or instructional task directly related to the student's education;
 - iii. Perform a service or benefit for the student or the student's family such as health care, counseling, student job placement, or student financial aid; or
 - iv. Perform a task directly related to responding to a request for data.
- i. "*Parent*" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent of the student in the absence of a parent or guardian. The school district may presume the parent has the authority to exercise the rights provided herein, unless it has been provided with evidence that there is a state law or court order governing such matters as marriage dissolution, separation or child custody, or a legally binding instrument which provides to the contrary.
- j. "*Personally identifiable*" means that the data or information includes, but is not limited to: (a) a student's name; (b) the name of the student's parent or other family member; (c) the address of the student or student's family; (d) a personal identifier such as the student's social security number or student number or biometric record; (e) other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) information requested by a person who the school district reasonably believes knows the identity of the student to whom the

education record relates.

- k. “*Record*” means any information or data recorded in any way including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
- l. “*Responsible authority*” means the individual designated by the School Board.
- m. “*Student*” includes any individual who is or has been in attendance, enrolled, or registered at the school district and regarding whom the school district maintains education records. Student also includes applicants for enrollment or registration at the school district and individuals who receive shared time educational services from the school district.
- n. “*School official*” includes: (a) a person duly elected to the school board; (b) a person employed by the school board in an administrative, supervisory, instructional, or other professional position; (c) a person employed by the school board as a temporary substitute in a professional position for the period of his or her performance as a substitute; and (d) a person employed by, or under contract to, the school board to perform a special task such as a secretary, a clerk, a public information officer or data practices compliance official, an attorney, or an auditor for the period of his or her performance as an employee or contractor.
- o. “*Summary data*” means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify the individual is ascertainable.
- p. All other terms and phrases shall be defined in accordance with applicable state and federal law or ordinary customary usage.

4. GENERAL CLASSIFICATION

- a. State law provides that all data collected, created, received, or maintained by a school district are public unless classified by state or federal law as not public or private or confidential. State law classifies all data on individuals maintained by a school district which relates to a student as private data on individuals. This data may not be disclosed to parties other than the parent or eligible student without consent, except pursuant to a valid court order, certain state statutes authorizing access, and the provisions of FERPA and the regulations promulgated thereunder.

5. STATEMENT OF RIGHTS

- a. *Rights of Parents and Eligible Students*

Parents and eligible students have the following rights under this policy:

- i. The right to inspect and review the student’s education records;
- ii. The right to request the amendment of the student’s education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student’s privacy or other rights;
- iii. The right to consent to disclosures of personally identifiable information contained in the student’s education records, except to the extent that such consent is not required for disclosure pursuant to this

- policy, state or federal law, or the regulations promulgated thereunder;
- iv. The right to refuse release of names, addresses, and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions;
 - v. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the school district to comply with the federal law and the regulations promulgated thereunder;
 - vi. The right to be informed about rights under the federal law; and
 - vii. The right to obtain a copy of this policy at the location set forth in Section 21 of this policy.

b. *Eligible Students*

All rights and protections given to parents under this policy transfer to the student when he or she reaches eighteen (18) years of age or enrolls in an institution of post-secondary education. The student then becomes an “eligible student.” However, the parents of an eligible student who is also a “dependent student” are entitled to gain access to the education records of such student without first obtaining the consent of the student. In addition, parents of an eligible student may be given access to education records in connection with a health or safety emergency if the disclosure meets the conditions of any provision set forth in 34 C.F.R. § 99.31(a).

c. *Students with a Disability*

The school district shall also follow 34 C.F.R. §§ 300.610-300.617 with regard to the privacy, notice, access, record keeping and accuracy of information related to students with a disability.

6. DISCLOSURE OF EDUCATION RECORDS

a. *Consent Required for Disclosure*

- i. The school district shall obtain a signed and dated written informed consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of the student, except as provided herein.
- ii. The written consent required by this subdivision must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:
 - (1) a specification of the records to be disclosed;
 - (2) the purpose or purposes of the disclosure;
 - (3) the party or class of parties to whom the disclosure may be made;
 - (4) the consequences of giving informed consent; and
 - (5) if appropriate, a termination date for the consent.
- iii. When a disclosure is made under this subdivision:
 - (1) if the parent or eligible student so requests, the school district shall provide him or her with a copy of the records disclosed; and
 - (2) if the parent of a student who is not an eligible student so requests, the school district shall provide the student with a

copy of the records disclosed.

iv. A signed and dated written consent may include a record and signature in electronic form that:

(1) identifies and authenticates a particular person as the source of the electronic consent; and

(2) indicates such person's approval of the information contained in the electronic consent.

v. If the responsible authority seeks an individual's informed consent to the release of private data to an insurer or the authorized representative of an insurer, informed consent shall not be deemed to have been given unless the statement is:

(1) in plain language;

(2) dated;

(3) specific in designating the particular persons or agencies the data subject is authorizing to disclose information about the data subject;

(4) specific as to the nature of the information the subject is authorizing to be disclosed;

(5) specific as to the persons or agencies to whom the subject is authorizing information to be disclosed;

(6) specific as to the purpose or purposes for which the information may be used by any of the parties named in Clause e. above, both at the time of the disclosure and at any time in the future; and

(7) specific as to its expiration date which should be within a reasonable time, not to exceed one year except in the case of authorizations given in connection with applications for: (i) life insurance or noncancellable or guaranteed renewable health insurance and identified as such, two years after the date of the policy, or (ii) medical assistance under Minnesota Statutes Chapter 256B or Minnesota Care under Minnesota Statute Chapter 256L, which shall be ongoing during all terms of eligibility, for individualized education program health-related services provided by a school district that are subject to third party reimbursement.

vi. *Eligible Student Consent*

Whenever a student has attained eighteen (18) years of age or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except as provided in section 5 of this policy.

b. *Prior Consent for Disclosure Not Required*

The school district may disclose personally identifiable information from the education records of a student without the written consent of the parent of the

student or the eligible student unless otherwise provided herein, if the disclosure is:

- i. To other school officials, including teachers, within the school district whom the school district determines have a legitimate educational interest in such records;
- ii. To a contractor, consultant, volunteer, or other party to whom the school district has outsourced institutional services or functions provided that the outside party:
 - (1) performs an institutional service or function for which the school district would otherwise use employees;
 - (2) is under the direct control of the school district with respect to the use and maintenance of education records; and
 - (3) will not disclose the information to any other party without the prior consent of the parent or eligible student and uses the information only for the purposes for which the disclosure was made.
- iii. To officials of other schools, school districts, or post-secondary educational institutions in which the student seeks or intends to enroll, or is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer. The records shall include information about disciplinary action taken as a result of any incident in which the student possessed or used a dangerous weapon, and with proper annual notice (see Section 19), suspension and expulsion information pursuant to section 7917 of the federal Every Student Succeeds Act, 20 U.S.C. § 7917, and, if applicable, data regarding a student's history of violent behavior. The records also shall include a copy of any probable cause notice or any disposition or court order under Minnesota Statutes 260B.171, unless the data are required to be destroyed under Minnesota Statutes 120A.22, Subdivision 7(c) or section 121A.75. On request, the school district will provide the parent or eligible student with a copy of the education records that have been transferred and provide an opportunity for a hearing to challenge the content of those records in accordance with Section 15 of this policy;
- iv. To authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or the Commissioner of the State Department of Education or his or her representative, subject to the conditions relative to such disclosure provided under federal law;
- v. In connection with financial aid for which a student has applied or has received, if the information is necessary for such purposes as to:
 - (1) To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed

pursuant to state statute adopted:

- (A) determine eligibility for the aid;
- (B) determine the amount of the aid;
- (C) determine conditions for the aid; or
- (D) enforce the terms and conditions of the aid.

“Financial aid” for purposes of this provision means a payment of funds provided to an individual or a payment in kind of tangible or intangible property to the individual that is conditioned on the individual’s attendance at an educational agency or institution;

vi. To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to state statute adopted:

- (1) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system’s ability to effectively serve the student whose records are released; or
- (2) after November 19, 1974, if the reporting or disclosure allowed by state statute concerns the juvenile justice system and the system’s ability to effectively serve, prior to adjudication, the student whose records are released, provided the officials and authorities to whom the records are disclosed certify in writing to the school district that the data will not be disclosed to any other party, except as provided by state law, without the prior written consent of the parent of the student. At a minimum, the school district shall disclose the following information to the juvenile justice system under this paragraph: a student’s full name, home address, telephone number, and date of birth; a student’s school schedule, attendance record, and photographs, if any; and parents’ names, home addresses, and telephone numbers;

vii. To organizations conducting studies for or on behalf of educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction; provided that the studies are conducted in a manner which does not permit the personal identification of parents or students by individuals other than representatives of the organization who have a legitimate interest in the information, the information is destroyed when no longer needed for the purposes for which the study was conducted, and the school district enters into a written agreement with the organization that: (a) specifies the purpose, scope, and duration of the study or studies and the information to be disclosed; (b) requires the organization to use personally identifiable

information from education records only to meet the purpose or purposes of the study as stated in the written agreement; (c) requires the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests; and (d) requires the organization to destroy all personally identifiable information when information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed. For purposes of this provision, the term, “organizations,” includes, but is not limited to, federal, state, and local agencies and independent organizations. In the event the Department of Education determines that a third party outside of the school district to whom information is disclosed violates this provision, the school district may not allow that third party access to personally identifiable information from education records for at least five (5) years;

- viii. To accrediting organizations in order to carry out their accrediting functions;
- ix. To parents of a student eighteen (18) years of age or older if the student is a dependent of the parents for income tax purposes;
- x. To comply with a judicial order or lawfully issued subpoena, provided, however, that the school district makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance therewith so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with a federal grand jury subpoena, or any other subpoena issued for law enforcement purposes, and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, or the disclosure is in compliance with an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. § 2332b(g)(5)(B), an act of domestic or international terrorism as defined in 18 U.S.C. § 2331, or a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of the proceeding. If the school district initiates legal action against a parent or student, it may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the school district to proceed with the legal action as a plaintiff. Also, if a parent or eligible student initiates a legal action against the school district, the school district may disclose to the court, without a court order or subpoena, the student’s education records that are relevant for the school district to defend itself;
- xi. To appropriate parties, including parents of an eligible student, in

connection with an emergency if knowledge of the information is necessary to protect the health, including the mental health, or safety of the student or other individuals. The decision is to be based upon information available at the time the threat occurs that indicates that there is an articulable and significant threat to the health or safety of a student or other individuals. In making a determination whether to disclose information under this section, the school district may take into account the totality of the circumstances pertaining to a threat and may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other students. A record of this disclosure must be maintained pursuant to Section 13.E. of this policy. In addition, an educational agency or institution may include in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. This information may be disclosed to teachers and school officials within the school district and/or teachers and school officials in other schools who have legitimate educational interests in the behavior of the student;

- xii. To the juvenile justice system if information about the behavior of a student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals;
- xiii. Information the school district has designated as “directory information” pursuant to Section 7 of this policy;
- xiv. To military recruiting officers and post-secondary educational institutions pursuant to Section 11 of this policy;
- xv. To the parent of a student who is not an eligible student or to the student himself or herself;
- xvi. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiologic investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted;
- xvii. To volunteers who are determined to have a legitimate educational interest in the data and who are conducting activities and events sponsored by or endorsed by the educational agency or institution for students or former students;
- xviii. To the juvenile justice system, on written request that certifies that the information will not be disclosed to any other person except as authorized by law without the written consent of the parent of the student:
 - (1) the following information about a student must be disclosed: a student’s full name, home address, telephone number, date of

birth; a student's school schedule, daily attendance record, and photographs, if any; and any parents' names, home addresses, and telephone numbers;

- (2) the existence of the following information about a student, not the actual data or other information contained in the student's education record, may be disclosed provided that a request for access must be submitted on the statutory form and it must contain an explanation of why access to the information is necessary to serve the student: (1) use of a controlled substance, alcohol, or tobacco; (2) assaultive or threatening conduct that could result in dismissal from school under the Pupil Fair Dismissal Act; (3) possession or use of weapons or look-alike weapons; (4) theft; or (5) vandalism or other damage to property. Prior to releasing this information, the principal or chief administrative officer of a school who receives such a request must, to the extent permitted by federal law, notify the student's parent or guardian by certified mail of the request to disclose information. If the student's parent or guardian notifies the school official of an objection to the disclosure within ten (10) days of receiving certified notice, the school official must not disclose the information and instead must inform the requesting member of the juvenile justice system of the objection. If no objection from the parent or guardian is received within fourteen (14) days, the school official must respond to the request for information.

The written requests of the juvenile justice system member(s), as well as a record of any release, must be maintained in the student's file.

- xix. To the principal where the student attends and to any counselor directly supervising or reporting on the behavior or progress of the student if it is information from a disposition order received by a superintendent under Minnesota Statutes section 260B.171, Subdivision 3. The principal must notify the counselor immediately and must place the disposition order in the student's permanent education record. The principal also must notify immediately any teacher or administrator who directly supervises or reports on the behavior or progress of the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other school district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individual need the information to work with the student in an

appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student, outline the offense, and describe any conditions of probation about which the school must provide information if this information is provided in the disposition order. Disposition order information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information may not be further disseminated by the counselor, teacher, administrator, staff member, substitute, or volunteer except as necessary to serve the student, to protect students and staff, or as otherwise required by law, and only to the student or the student's parent or guardian;

- xx. To the principal where the student attends if it is information from a peace officer's record of children received by a superintendent under Minnesota Statutes section 260B.171, Subdivision 5. The principal must place the information in the student's education record. The principal also must notify immediately any teacher, counselor, or administrator directly supervising the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individuals need the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student and describe the alleged offense if this information is provided in the peace officer's notice. Peace officer's record information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information must not be further disseminated by the counselor, teacher administrator, staff member, substitute, or volunteer except to communicate with the student or the student's parent or guardian as necessary to serve the student, to protect students and staff, or as otherwise required by law.

The principal must delete the peace officer's record from the student's education record, destroy the data, and make reasonable efforts to notify any teacher, counselor, staff member, administrator, substitute, or volunteer who received information from the peace officer's record if the county attorney determines not to proceed with a petition or directs the student into a diversion or mediation program or if a juvenile court makes a decision on a petition and the county attorney or juvenile court notifies the superintendent of such action;

- xxi. To the Secretary of Agriculture, or authorized representative from the

Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of state and local educational and other agencies and institutions receiving funding or providing benefits of one or more programs authorized under the National School Lunch Act or the Child Nutrition Act of 1966 for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that: (a) any data collected shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and (b) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements; or

- xxii. To an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in 25 U.S.C. § 5304), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

xxiii. To a public library of a student's name, home address, telephone number, email address, or other personal contact information for the purpose of issuing a library card to the student; or

xxiv. To a federally recognized tribal nation about a tribally enrolled or descendant student to the extent necessary to support the educational attainment of the student.

c. Nonpublic School Students

The school district may disclose personally identifiable information from the education records of a nonpublic school student, other than a student who receives shared time educational services, without the written consent of the parent of the student or the eligible student unless otherwise provided herein, if the disclosure is:

- i. Pursuant to a valid court order;
- ii. Pursuant to a statute specifically authorizing access to the private data; or
- iii. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiological investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public

educational agency or institution in which the investigation is being conducted.

7. RELEASE OF DIRECTORY INFORMATION

a. ~~Classification~~ Educational Data

i. Educational data designated as directory information is public data on individuals to the extent required under federal law. Directory information must be designated pursuant to the provisions of:

- (1) Minnesota Statutes, section 13.32, subdivision 5; and
- (2) United States Code, title 20, section 1232g, and Code of Federal Regulations, title 34, section 99.37, which were in effect on January 3, 2012.

ii. The school district may not designate a student's home address, telephone number, email address, or other personal contact information as directory information under this section.

iii. When requested, the school district must share personal contact information and directory information, whether public or private, with the Minnesota Department of Education, as required for federal reporting purposes.

~~Directory information is public except as provided herein.~~

b. *Former Students*

Unless a former student validly opted out of the release of directory information while the student was in attendance and has not rescinded the opt out request at any time, the school district may disclose directory information from the education records generated by it regarding the former student without meeting the requirements of Paragraph C. of this section. In addition, under an explicit exclusion from the definition of an "education record," the school district may release records that only contain information about an individual obtained after he or she is no longer a student at the school district and that are not directly related to the individual's attendance as a student (e.g., a student's activities as an alumnus of the school district).

c. *Present Students and Parents*

The school district may disclose directory information from the education records of a student and information regarding parents without prior written consent of the parent of the student or eligible student, except as provided herein. ~~Prior to such disclosure the school district shall:~~

i. When conducting the directory information designation and notice process required by federal law, the school district shall give parents and students notice of the right to refuse to let the district designate specified data about the student as directory information.

ii. ~~Annually give public~~ The school district shall give annual notice by any means that are reasonably likely to inform the parents and eligible students of:

- (1) the types of personally identifiable information regarding students and/or parents that the school district has designated

- as directory information;
 - (2) the parent's or eligible student's right to refuse to let the school district designate any or all of those types of information about the student and/or the parent as directory information; and
 - (3) the period of time in which a parent or eligible student has to notify the school district in writing that he or she does not want any or all of those types of information about the student and/or the parent designated as directory information.
- iii. Allow a reasonable period of time after such notice has been given for a parent or eligible student to inform the school district in writing that any or all of the information so designated should not be disclosed without the parent's or eligible student's prior written consent, except as provided in Section 6 of this policy.
 - iv. A parent or eligible student may not opt out of the directory information disclosures to:
 - (1) prevent the school district from disclosing or requiring the student to disclose the student's name, ID, or school district e-mail address in a class in which the student is enrolled; or
 - (2) prevent the school district from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information and that has been properly designated by the school district as directory information.
 - v. The school district shall not disclose or confirm directory information without meeting the written consent requirements contained in Section 6.A. of this policy if a student's social security number or other non-directory information is used alone or in combination with other data elements to identify or help identify the student or the student's records.
- d. *Procedure for Obtaining Nondisclosure of Directory Information*
- The parent's or eligible student's written notice shall be directed to the responsible authority and shall include the following:
- i. Name of the student and/or parent, as appropriate;
 - ii. Home address;
 - iii. School presently attended by student;
 - iv. Parent's legal relationship to student, if applicable; and
 - v. Specific categories of directory information to be made not public without the parent's or eligible student's prior written consent, which shall only be applicable for that school year.

e. *Duration*

The designation of any information as directory information about a student or parents will remain in effect for the remainder of the school year unless the parent or eligible student provides the written notifications provided herein.

8. **DISCLOSURE OF PRIVATE RECORDS**

a. *Private Records*

For the purposes herein, education records are records which are classified as private data on individuals by state law and which are accessible only to the student who is the subject of the data and the student's parent if the student is not an eligible student. The school district may not disclose private records or their contents except as summary data, or except as provided in Section 6 of this policy, without the prior written consent of the parent or the eligible student. The school district will use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other party to whom personally identifiable information from education records is disclosed.

b. *Private Records Not Accessible to Parent*

In certain cases, state law intends, and clearly provides, that certain information contained in the education records of the school district pertaining to a student be accessible to the student alone, and to the parent only under special circumstances, if at all.

- i. The responsible authority may deny access to private data by a parent when a minor student who is the subject of that data requests that the responsible authority deny such access. The minor student's request must be submitted in writing setting forth the reasons for denying access to the parent and must be signed by the minor. Upon receipt of such request the responsible authority shall determine if honoring the request to deny the parent access would be in the best interest of the minor data subject. In making this determination the responsible authority shall consider the following factors:

- (1) whether the minor is of sufficient age and maturity to be able to explain the reasons for and understand the consequences of the request to deny access;
- (2) whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm;
- (3) whether there are grounds for believing that the minor data subject's reasons for precluding parental access are reasonably accurate;
- (4) whether the data in question is of such a nature that disclosure of it to the parent may lead to physical or emotional harm to the minor data subject; and
- (5) whether the data concerns medical, dental or other health services provided pursuant to Minnesota Statutes sections 144.341-144.347, in which case the data may be released only if the failure to inform the parent would seriously jeopardize the health of the minor.

c. *Private Records Not Accessible to Student*

Students shall not be entitled to access to private data concerning financial

records and statements of the student's parent or any information contained therein.

d. *Military-Connected Youth Identifier*

When a school district updates its enrollment forms in the ordinary course of business, the school district must include a box on the enrollment form to allow students to self-identify as a military-connected youth. For purposes of this section, a "military-connected youth" means having an immediate family member, including a parent or sibling, who is currently in the armed forces either as a reservist or on active duty or has recently retired from the armed forces. Data collected under this provision is private data on individuals, but summary data may be published by the Department of Education.

9. DISCLOSURE OF CONFIDENTIAL RECORDS

a. *Confidential Records*

Confidential records are those records and data contained therein which are made not public by state or federal law, and which are inaccessible to the student and the student's parents or to an eligible student.

b. *Reports Under the Maltreatment of Minors Reporting Act*

Pursuant to Minnesota Statutes Chapter 260E, written copies of reports pertaining to a neglected and/or physically and/or sexually abused child shall be accessible only to the appropriate welfare and law enforcement agencies. In respect to other parties, such data shall be confidential and will not be made available to the parent or the subject individual by the school district. The subject individual, however, may obtain a copy of the report from either the local welfare agency, county sheriff, or the local police department subject to the provisions of Minnesota Statutes Chapter 260E.

Regardless of whether a written report is made under Minnesota Statutes Chapter 260E, as soon as practicable after a school receives information regarding an incident that may constitute maltreatment of a child in a school facility, the school shall inform the parent, legal guardian, or custodian of the child that an incident occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.

c. *Investigative Data*

Data collected by the school district as part of an active investigation undertaken for the purpose of the commencement or defense of pending civil legal action, or that are retained in anticipation of a pending civil legal action are classified as protected nonpublic data in the case of data not on individuals, and confidential data in the case of data on individuals.

- i. The school district may make any data classified as protected non-public or confidential pursuant to this subdivision accessible to any person, agency, or the public if the school district determines that such access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest.
- ii. A complainant has access to a statement he or she provided to the school district.

- iii. Parents or eligible students may have access to investigative data of which the student is the subject, but only to the extent the data is not inextricably intertwined with data about other school district students, school district employees, and/or attorney data as defined in Minnesota Statutes section 13.393.
- iv. Once a civil investigation becomes inactive, civil investigative data becomes public unless the release of the data would jeopardize another pending civil legal action, except for those portions of such data that are classified as not public data under state or federal law. Any civil investigative data presented as evidence in court or made part of a court record shall be public. For purposes of this provision, a civil investigation becomes inactive upon the occurrence of any of the following events:
 - (1) a decision by the school district, or by the chief attorney for the school district, not to pursue the civil legal action. However, such investigation may subsequently become active if the school district or its attorney decides to renew the civil legal action;
 - (2) the expiration of the time to file a complaint under the statute of limitations or agreement applicable to the civil legal action; or
 - (3) the exhaustion or expiration of rights of appeal by either party to the civil legal action.
- v. A “pending civil legal action” for purposes of this subdivision is defined as including, but not limited to, judicial, administrative, or arbitration proceedings.
- d. *Chemical Abuse Records*
 To the extent the school district maintains records of the identity, diagnosis, prognosis, or treatment of any student which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, such records are classified as confidential and shall be disclosed only for the purposes and under the circumstances expressly authorized by law.

10. DISCLOSURE OF SCHOOL RECORDS PRIOR TO EXCLUSION OR EXPULSION HEARING

At a reasonable time prior to any exclusion or expulsion hearing, the student and the student’s parent or guardian or representative shall be given access to all school district records pertaining to the student, including any tests or reports upon which the action proposed by the school district may be based, pursuant to the Minnesota Pupil Fair Dismissal Act, Minnesota Statutes section 121A.40, et seq.

11. DISCLOSURE OF DATA TO MILITARY RECRUITING OFFICERS AND POST-SECONDARY EDUCATIONAL INSTITUTIONS

- a. The school district will release the names, addresses, electronic mail address

(which shall be the electronic mail address provided by the school district if available, that may be released to military recruiting officers only), and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions within sixty (60) days after the date of the request unless a parent or eligible student has refused in writing to release this data pursuant to Paragraph C. below.

- b. Data released to military recruiting officers under this provision:
 - i. may be used only for the purpose of providing information to students about military service, state and federal veterans' education benefits, and other career and educational opportunities provided by the military;
 - ii. cannot be further disseminated to any other person except personnel of the recruiting services of the armed forces; and
 - iii. copying fees shall not be imposed.
- c. A parent or eligible student has the right to refuse the release of the name, address, electronic mail address (which shall be the electronic mail address provided by the school district, if available, that may be released to military recruiting officers only), or home telephone number to military recruiting officers and post-secondary educational institutions. To refuse the release of the above information to military recruiting officers and post-secondary educational institutions, a parent or eligible student must notify the responsible authority in writing by October 1 each year. The written request must include the following information:
 - i. Name of student and parent, as appropriate;
 - ii. Home address;
 - iii. Student's grade level;
 - iv. School presently attended by student;
 - v. Parent's legal relationship to student, if applicable;
 - vi. Specific category or categories of information which are not to be released to military recruiting officers and post-secondary educational institutions; and
 - vii. Specific category or categories of information which are not to be released to the public, including military recruiting officers and post-secondary educational institutions.
- d. Annually, the school district will provide public notice by any means that are reasonably likely to inform the parents and eligible students of their rights to refuse to release the names, addresses, and home phone numbers of students in grades 11 and 12 without prior consent.
- e. A parent or eligible student's refusal to release the above information to military recruiting officers and post-secondary educational institutions does not affect the school district's release of directory information to the rest of the public, which includes military recruiting officers and post-secondary educational institutions. In order to make any directory information about a student private, the procedures contained in Section 7 of this policy also must be followed. Accordingly, to the extent the school district has designated the

name, address, home phone number, and grade level of students as directory information, absent a request from a parent or eligible student not to release such data, this information will be public data and accessible to members of the public, including military recruiting officers and post-secondary educational institutions.

12. LIMITS ON REDISCLOSURE

a. Redisclosure

Consistent with the requirements herein, the school district may only disclose personally identifiable information from the education records of a student on the condition that the party to whom the information is to be disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the officers, employees, and agents of any party receiving personally identifiable information under this section may use the information, but only for the purposes for which the disclosure was made.

b. Redisclosure Not Prohibited

i. Subdivision A. of this section does not prevent the school district from disclosing personally identifiable information under Section 6 of this policy with the understanding that the party receiving the information may make further disclosures of the information on behalf of the school district provided:

(1) The disclosures meet the requirements of Section 6 of this policy; and

(2) The school district has complied with the record-keeping requirements of Section 13 of this policy.

ii. Subdivision A. of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas or litigation, to disclosures of directory information, to disclosures to a parent or student or to parents of dependent students, or to disclosures concerning sex offenders and other individuals required to register under 42 U.S.C. § 14071. However, the school district must provide the notification required in Section 12.D. of this policy if a redisclosure is made based upon a court order or lawfully issued subpoena.

c. Classification of Disclosed Data

The information disclosed shall retain the same classification in the hands of the party receiving it as it had in the hands of the school district.

d. Notification

The school district shall inform the party to whom a disclosure is made of the requirements set forth in this section, except for disclosures made pursuant to court orders or lawfully issued subpoenas, disclosure of directory information under Section 7 of this policy, disclosures to a parent or student, or disclosures to parents of a dependent student. In the event that the Family Policy Compliance Office determines that a state or local educational authority, a federal agency headed by an official listed in 34 C.F.R. § 99.31(a)(3), or an

authorized representative of a state or local educational authority or a federal agency headed by an official listed in § 99.31(a)(3), or a third party outside of the school district improperly rediscloses personally identifiable information from education records or fails to provide notification required under this section of this policy, the school district may not allow that third party access to personally identifiable information from education records for at least five (5) years.

13. RESPONSIBLE AUTHORITY; RECORD SECURITY; AND RECORD KEEPING

a. Responsible Authority

The responsible authority shall be responsible for the maintenance and security of student records.

b. Record Security

The principal of each school subject to the supervision and control of the responsible authority shall be the records manager of the school, and shall have the duty of maintaining and securing the privacy and/or confidentiality of student records.

c. Plan for Securing Student Records

The building principal shall submit to the responsible authority a written plan for securing students records by September 1 of each school year. The written plan shall contain the following information:

- i. A description of records maintained;
- ii. Titles and addresses of person(s) responsible for the security of student records;
- iii. Location of student records, by category, in the buildings;
- iv. Means of securing student records; and
- v. Procedures for access and disclosure.

d. Review of Written Plan for Securing Student Records

The responsible authority shall review the plans submitted pursuant to Paragraph C. of this section for compliance with the law, this policy and the various administrative policies of the school district. The responsible authority shall then promulgate a chart incorporating the provisions of Paragraph C. which shall be attached to and become a part of this policy.

e. Record Keeping

- i. The principal shall, for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record, with the education records of the student, that indicates:
 - (1) the parties who have requested or received personally identifiable information from the education records of the student;
 - (2) the legitimate interests these parties had in requesting or obtaining the information; and
 - (3) the names of the state and local educational authorities and

federal officials and agencies listed in Section 6.B.iv. of this policy that may make further disclosures of personally identifiable information from the student's education records without consent.

- ii. In the event the school district discloses personally identifiable information from an education record of a student pursuant to Section 12.B. of this policy, the record of disclosure required under this section shall also include:
 - (1) the names of the additional parties to which the receiving party may disclose the information on behalf of the school district;
 - (2) the legitimate interests under Section 6 of this policy which each of the additional parties has in requesting or obtaining the information; and
 - (3) a copy of the record of further disclosures maintained by a state or local educational authority or federal official or agency listed in Section 6.B.iv. of this policy in accordance with 34 C.F.R. § 99.32 and to whom the school district disclosed information from an education record. The school district shall request a copy of the record of further disclosures from a state or local educational authority or federal official or agency to whom education records were disclosed upon a request from a parent or eligible student to review the record of requests for disclosure.
- iii. Section 13.E.i. does not apply to requests by or disclosure to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student, requests by or disclosures to other school officials under Section 6.B.i. of this policy, to requests for disclosures of directory information under Section 7 of this policy, or to a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or agency has ordered that the existence or the contents of the subpoena or the information provided in response to the subpoena not be disclosed or as directed by an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18. U.S.C. § 2332b(g)(5)(B) or an act of domestic or international terrorism.
- iv. The record of requests of disclosures may be inspected by:
 - (1) the parent of the student or the eligible student;
 - (2) the school official or his or her assistants who are responsible for the custody of the records; and
 - (3) the parties authorized by law to audit the record-keeping procedures of the school district.
- v. The school district shall record the following information when it

discloses personally identifiable information from education records under the health or safety emergency exception:

- (1) the articulable and significant threat to the health or safety of a student or other individual that formed the basis for the disclosure; and
- (2) the parties to whom the school district disclosed the information.

vi. The record of requests and disclosures shall be maintained with the education records of the student as long as the school district maintains the student's education records.

14. RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

a. *Parent of a Student, an Eligible Student or the Parent of an Eligible Student Who is Also a Dependent Student*

The school district shall permit the parent of a student, an eligible student, or the parent of an eligible student who is also a dependent student who is or has been in attendance in the school district to inspect or review the education records of the student, except those records which are made confidential by state or federal law or as otherwise provided in Section 8 of this policy.

b. *Response to Request for Access*

The school district shall respond to any request pursuant to Subdivision A. of this section immediately, if possible, or within ten (10) days of the date of the request, excluding Saturdays, Sundays, and legal holidays.

c. *Right to Inspect and Review*

The right to inspect and review education records under Subdivision A. of this section includes:

- i. The right to a response from the school district to reasonable requests for explanations and interpretations of records; and
- ii. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the education records, the school district shall provide the parent or eligible student with a copy of the records requested or make other arrangements for the parent or eligible student to inspect and review the requested records.
- iii. Nothing in this policy shall be construed as limiting the frequency of inspection of the education records of a student with a disability by the student's parent or guardian or by the student upon the student reaching the age of majority.

d. *Form of Request*

Parents or eligible students shall submit to the school district a written request to inspect education records which identify as precisely as possible the record or records he or she wishes to inspect.

e. *Collection of Student Records*

If a student's education records are maintained in more than one location, the responsible authority may collect copies of the records or the records themselves from the various locations so they may be inspected at one site.

However, if the parent or eligible student wishes to inspect these records where they are maintained, the school district shall attempt to accommodate those wishes. The parent or eligible student shall be notified of the time and place where the records may be inspected.

f. *Records Containing Information on More Than One Student*

If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information which pertains to that student.

g. *Authority to Inspect or Review*

The school district may presume that either parent of the student has authority to inspect or review the education records of a student unless the school district has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as marriage dissolution, separation, or custody which provides to the contrary.

h. *Fees for Copies of Records*

i. The school district shall charge a reasonable fee for providing photocopies or printed copies of records unless printing a copy is the only method to provide for the inspection of data. In determining the amount of the reasonable fee, the school district shall consider the following:

- (1) the cost of materials, including paper, used to provide the copies;
- (2) the cost of the labor required to prepare the copies;
- (3) any schedule of standard copying charges established by the school district in its normal course of operations;
- (4) any special costs necessary to produce such copies from machine based record-keeping systems, including but not limited to computers and microfilm systems; and
- (5) mailing costs.

ii. If 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and, instead, the charge shall be no more than 25 cents for each page copied.

iii. The cost of providing copies shall be borne by the parent or eligible student.

iv. The responsible authority, however, may not impose a fee for a copy of an education record made for a parent or eligible student if doing so would effectively prevent or, in the case of a student with a disability, impair the parent or eligible student from exercising their right to inspect or review the student's education records.

15. REQUEST TO AMEND RECORDS; PROCEDURES TO CHALLENGE DATA

a. *Request to Amend Education Records*

The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading, or

violates the privacy rights of the student may request that the school district amend those records.

- i. The request shall be in writing, shall identify the item the requestor believes to be inaccurate, misleading, or in violation of the privacy or other rights of the student, shall state the reason for this belief, and shall specify the correction the requestor wishes the school district to make. The request shall be signed and dated by the requestor.
- ii. The school district shall decide whether to amend the education records of the student in accordance with the request within thirty (30) days after receiving the request.
- iii. If the school district decides to refuse to amend the education records of the student in accordance with the request, it shall inform the parent of the student or the eligible student of the refusal and advise the parent or eligible student of the right to a hearing under Subdivision B. of this section.

b. *Right to a Hearing*

If the school district refuses to amend the education records of a student, the school district, on request, shall provide an opportunity for a hearing in order to challenge the content of the student's education records to ensure that information in the education records of the student is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. A hearing shall be conducted in accordance with Subdivision C. of this section.

- i. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.
- ii. If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the school district, or both.
- iii. Any statement placed in the education records of the student under Subdivision B. of this section shall:
 - (1) be maintained by the school district as part of the education records of the student so long as the record or contested portion thereof is maintained by the school district; and
 - (2) if the education records of the student or the contested portion thereof is disclosed by the school district to any party, the explanation shall also be disclosed to that party.

c. *Conduct of Hearing*

- i. The hearing shall be held within a reasonable period of time after the

school district has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing.

- ii. The hearing may be conducted by any individual, including an official of the school district who does not have a direct interest in the outcome of the hearing. The school board attorney shall be in attendance to present the school board's position and advise the designated hearing officer on legal and evidentiary matters.
- iii. The parent of the student or eligible student shall be afforded a full and fair opportunity for hearing to present evidence relative to the issues raised under Subdivisions A. and B. of this section and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.
- iv. The school district shall make a decision in writing within a reasonable period of time after the conclusion of the hearing. The decision shall be based solely on evidence presented at the hearing and shall include a summary of evidence and reasons for the decision.

d. *Appeal*

The final decision of the designated hearing officer may be appealed in accordance with the applicable provisions of Minnesota Statutes Chapter 14 relating to contested cases.

16. PROBLEMS ACCESSING DATA

- a. The data practices compliance official is the designated employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems.
- b. Data practices compliance official means the individual designated by the responsible authority.
- c. Any request by an individual with a disability for reasonable modifications of the school district's policies or procedures for purposes of accessing records shall be made to the data practices compliance official.

17. COMPLAINTS FOR NONCOMPLIANCE WITH FERPA

a. *Where to File Complaints*

Complaints regarding alleged violations of rights accorded parents and eligible students by FERPA, and the rules promulgated thereunder, shall be submitted in writing to the, U.S. Department of Education, Student Privacy Office, 400 Maryland Avenue S.W., Washington, D.C. 20202.

b. *Content of Complaint*

A complaint filed pursuant to this section must contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA and the rules promulgated thereunder has occurred.

18. WAIVER

A parent or eligible student may waive any of his or her rights provided herein pursuant to FERPA. A waiver shall not be valid unless in writing and signed by the parent or eligible student. The school district may not require such a waiver.

19. ANNUAL NOTIFICATION OF RIGHTS

a. *Contents of Notice*

The school district shall give parents of students currently in attendance and eligible students currently in attendance annual notice by such means as are reasonably likely to inform the parents and eligible students of the following:

- i. That the parent or eligible student has a right to inspect and review the student's education records and the procedure for inspecting and reviewing education records;
- ii. That the parent or eligible student has a right to seek amendment of the student's education records to ensure that those records are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights and the procedure for requesting amendment of records;
- iii. That the parent or eligible student has a right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that federal and state law and the regulations promulgated thereunder authorize disclosure without consent;
- iv. That the parent or eligible student has a right to file a complaint with the U.S. Department of Education regarding an alleged failure by the school district to comply with the requirements of FERPA and the rules promulgated thereunder;
- v. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest for purposes of disclosing education records to other school officials whom the school district has determined to have legitimate educational interests; and
- vi. That the school district forwards education records on request to a school in which a student seeks or intends to enroll or is already enrolled as long as the disclosure is for purposes related to the student's enrollment or transfer and that such records may include suspension and expulsion records pursuant to the federal Every Student Succeeds Act and, if applicable, a student's history of violent behavior.

b. *Notification to Parents of Students Having a Primary Home Language Other Than English*

The school district shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

c. *Notification to Parents or Eligible Students Who are Disabled*

The school district shall provide for the need to effectively notify parents or eligible students identified as disabled.

20. DESTRUCTION AND RETENTION OF RECORDS

Destruction and retention of records by the school district shall be controlled by state and federal law.

21. COPIES OF POLICY

Copies of this policy may be obtained by parents and eligible students at the superintendent's office.

Adoption Date:

8/10/2021

Revision Dates:

10/12/2021

Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act) [Minn. Stat. § 13.32, Subd. 5 \(Directory Information\)](#)

Minn. Stat. § 13.393 (Attorneys) Minn. Stat. Ch. 14 (Administrative Procedures Act) Minn. Stat. § 120A.22 (Compulsory Instruction) Minn. Stat. § 121A.40-121A.56 (The Pupil Fair Dismissal Act) Minn. Stat. § 121A.75 (Receipt of Records; Sharing) Minn. Stat. § 127A.852 (Military-Connected Youth Identifier) Minn. Stat. § 144.341-144.347 (Consent of Minors for Health Services) Minn. Stat. Ch. 256B (Medical Assistance for Needy Persons) Minn. Stat. Ch. 256L (MinnesotaCare) Minn. Stat. § 260B.171, subds. 3 and 5 (Disposition Order and Peace Officer Records of Children) Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors) Minn. Stat. § 363A.42 (Public Records; Accessibility) Minn. Rules Parts 1205.0100-1205.2000 (Data Practices) 10 U.S.C. § 503(b) and (c) (Enlistments; Recruiting Campaigns; Compilation of Directory Information) 18 U.S.C. § 2331 (Definitions) 18 U.S.C. § 2332b (Acts of Terrorism Transcending National Boundaries) 20 U.S.C. § 1232g et seq. (Family Educational Rights and Privacy Act) 20 U.S.C. § 6301 et seq. (Every Student Succeeds Act) 20 U.S.C. § 7908 (Armed Forces Recruiting Information) 20 U.S.C. § 7917 (Transfer of School Disciplinary Records) 25 U.S.C. § 5304 (Definitions – Tribal Organization) 26 U.S.C. §§ 151 and 152 (Internal Revenue Code) 42 U.S.C. § 1711 et seq. (Child Nutrition Act) 42 U.S.C. § 1751 et seq. (Richard B. Russell National School Lunch Act) 34 C.F.R. §§ 99.1-99.67 (Family Educational Rights and Privacy) 34 C.F.R. § 300.610-300.627 (Confidentiality of Information) 42 C.F.R. § 2.1 et seq. (Confidentiality of Drug Abuse Patient Records) *Gonzaga University v. Doe*, 536 U.S. 273 309 (2002)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

	AYE	NAY	ABSENT	ABSTAIN
Abdi	_____	_____	_____	_____
Beachy	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Emerick	_____	_____	_____	_____
Feerayarre	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Norvell	_____	_____	_____	_____

Presiding Officer

Attest

Sharon El-Amin, Chair, Minneapolis
Public Schools

Lori Norvell, Clerk, Minneapolis
Public Schools

**MINNEAPOLIS PUBLIC SCHOOLS
RESOLUTION 2023-0027**

RESOLUTION AMENDING POLICY 5210

WHEREAS, The Board’s Policy Committee has recommended the proposed changes.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

SECTION 1: AMENDMENT “Policy 5210: Student Personal Electronic Devices” of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

A M E N D M E N T

Policy 5210: Student Personal Electronic Devices

1. PURPOSE

The primary purpose of the district is to educate students. Education is to prepare them for post-secondary pursuits such as college or careers, and life as an adult. ~~Increasingly~~ Success both in college and in careers ~~depends on~~ requires appropriate use of ~~available~~ technology. ~~Increasingly students have access to existing and emerging technologies through personal electronic devices.~~ Appropriate guided use of these devices may enhance the educational experience and should be aligned with the academic goals of the classroom, social and emotional skills schools integrate into their climates and cultures. Age-appropriate private use of these devices that does not interfere with the educational process should be permissible. The purpose of this policy is to establish the parameters for the possession and use of personal electronic devices that are capable of ~~transmitting~~ sharing or receiving data or images. The District continues to have high expectations for student behavior in the use of such devices permitted under this policy. ~~Personal electronic devices can be a powerful educational tool, but possession and use of personally owned devices at school is a privilege, not a right.~~

2. GENERAL STATEMENT OF POLICY

- a. High ~~S~~school students may ~~have~~ possess personal electronic devices with them at school, or at non-public school events off campus. ~~Unless the device is being appropriately used under 2.B below, the student shall secure the personal electronic device either out of sight or holstered and turned off.~~
- b. High School student use of personal electronic devices is limited to:
 - i. Before and after the regularly scheduled school day;
 - ii. During the student’s scheduled lunch period;
 - iii. During passing time between classes;

- iv. During class as established by classroom norms set forth by the students and the teacher ~~time when the classroom teacher permits the use for educational purposes only~~; and
- v. During the school day by permission from the school principal or principal's designee for personal purposes.
- c. Students in grades 6-8 may ~~posses~~have personal electronic devices with them at school or at non-public school events off campus. ~~Unless the device is being appropriately used under 2.D. below, the student shall secure the personal electronic device out of sight, or holstered and turned off.~~
- d. Students in grades 6 - 8 may use personal electronic devices under the following conditions:
 - i. Before and after the regularly scheduled school day;
 - ii. During class time when the classroom teacher specifically permits the use for educational purposes only; and
 - iii. During the school day by permission from the school principal or principal's designee for personal purposes.
- e. Students in grades K- 5 may ~~possess a~~have personal electronic devices with them only upon request of the student's parent or guardian and with the permission of the principal. The device must be kept out of sight and turned off except when being used appropriately under 2.F. below.
- f. Students in grades K-5 who have obtained permission to ~~possess~~have a personal electronic device at school or at non-public school events may use it under the following conditions:
 - i. Before and after the regularly scheduled school day;
 - ii. During the school day with the express permission of a classroom teacher for educational purposes only; or
 - iii. During the school day with the permission of the principal or principal's designee for personal purposes.
- g. Students bring personal electronic devices to school at their own risk. The District assumes no liability for loss, theft, damage, nor liability for any unauthorized use of an electronic device. If a device is confiscated ~~under this policy~~, no responsibility for the safety or security of the device is guaranteed.
- h. Students may not during school or at non-public school sponsored events employ the photographic, videographic, audio recording or reproduction capacity of any electronic device for the purposes of photographing, video capture, recording or reproduction of the same of any student or staff person without the express consent of the staff person, or under the supervision of a teacher or administrator. This section applies at all times while on school premises including school buses or at non-public school sponsored events, regardless of the location.
- i. Under no circumstances may personal electronic devices be used in locker rooms, restrooms or rooms designated for changing clothing.

3. STANDARDS FOR RESPONSIBLE USE

- a. Students who ~~are permitted to~~ use personal electronic devices during instructional time shall exhibit respect for the educational environment by:

- i. Following established classroom norms set forth by the students and the teacher for ~~classroom teacher instructions for classroom~~ use;
 - ii. Using devices only as they do not distract from the educational process or disturb other students;
 - iii. Respecting copyright rights of others;
 - iv. ~~Refraining from~~Not using devices to cheat or ~~assisting~~help others to cheat.
- b. Use of personal electronic devices on school buses shall not interfere with the safe operation of the bus, or the safety of students or driver.
 - c. At public events, students may use personal electronic devices to photograph, videograph, or record the audience. Events that do not involve copyrighted materials may be recorded.
 - d. Students will respect the privacy of others and will not post or upload pictures or recordings taken during school or at non-public school events of others to the internet nor e-mail pictures or recordings to others without the express advance permission of the persons in the photograph or recording.
 - e. Use of personal electronic devices is also subject to other District policies regarding copyright, bullying, cheating, harassment, plagiarism, acceptable use of the internet and District e-mail. If a violation occurs which involves more than one District policy, consequences for each policy may apply.

4. CONSEQUENCES FOR VIOLATIONS

- a. ~~Failure to keep a device off or appropriately secured~~Inappropriate student use of a personal electronic device.
 - i. Student use of the devices in classrooms or during instructional time should be guided by the use of classroom norms set forth by the students and teacher. The teacher is responsible for outlining that protocol at the onset of the class during that school year or period.
 - ii. Consequences for student violation of outlined norms will follow student behavior guidelines as outlined in Regulation 5200A: Classification of Behavior and Responses and other applicable regulations.
 - iii. ~~At the first infraction, the staff person shall require the student to secure the device and turn it off. The staff member may require the student not to respond to a call. The student will be reminded as to the consequences for failure to keep the device off and appropriately secured.~~
 - iv. ~~At a second infraction, the staff person shall confiscate the device and turn it in to the school office, where the student may retrieve it after the close of classes for the day.~~
 - v. ~~At a third infraction, the staff person shall confiscate the device, notify the parent or guardian, and turn it into the school office where the parent or guardian may retrieve the device. The principal or principal's designee may elect to return a device to a student. The parent will be notified of the consequence of an additional infraction.~~

- ~~vi. At a fourth infraction, the student will forfeit the privilege to possess or use a personal electronic device at school.~~
- b. Inappropriate use of a device
 - ~~i. At the first infraction, the staff person shall confiscate the device, turn it into the office, inform the parent or guardian of the infraction, and reeducate the student on appropriate use. The student may be subject to other disciplinary actions based on the circumstances of the infraction.~~
 - ~~ii. At the second infraction, the student will forfeit the right to possess or use a personal educational device at school without the express permission of the principal or site administrator. The student may be subject to other disciplinary actions based on the circumstances of the infraction.~~
 - ~~iii. If any infraction is a violation of law, school authorities will notify the appropriate law enforcement agency.~~

5. RESPONSIBILITY

- a. The Superintendent is authorized to promulgate regulations to implement this policy.
- b. This policy shall be reviewed on an annual basis ~~on an annual basis~~ to assure that use of personal electronic devices remains consistent with providing an appropriate educational environment for all students.
- c. Classroom teachers are responsible for guiding appropriate use of student personal electronic devices in their classrooms and while students are under their supervision. Teachers shall not require the use of personal electronic devices for purposes of learning or completion of class requirements. Teachers are responsible for reporting inappropriate use.
- d. Students are responsible for the safety and security of any personal electronic device brought to school. Students are responsible for the appropriate use of any device brought to school. Students are responsible for reporting inappropriate use to their teachers, administrators or other school staff.
- e. Parents are responsible to work with school principals to identify those situations where exceptions to use or possession policy is necessary to secure the health or safety of their children, and to participate in creating a plan for appropriate use under their family circumstances within the educational environment. Parents are responsible to reinforce the appropriate use of personal electronic devices by their children.
- f. The Principal, supported by the District's Communications Department, is responsible for communicating this policy to all community stakeholders including students, staff, families, and partners ~~school staff, and to all students.~~

Original Adoption:

08/23/2011

Revision Dates:

8/17/2015

MPS Policy Cross References:

- Policy 5200 (Behavior Standards and Code of Conduct)
- Policy 5201 (Bullying and Hazing Prohibition)
- Policy 4002 (Harassment and Violence Prohibition)
- Policy 5635 (Reporting Maltreatment of Minors and Vulnerable Adults)
- Policy 5680 (Search of Students/ Lockers/ Desks/ Motor Vehicles)
- Policy 6680 (Safety, Security and Emergency Preparedness)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

	AYE	NAY	ABSENT	ABSTAIN
Abdi	_____	_____	_____	_____
Beachy	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Emerick	_____	_____	_____	_____
Feerayarre	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Norvell	_____	_____	_____	_____

Presiding Officer

Attest

Sharon El-Amin, Chair, Minneapolis
Public Schools

Lori Norvell, Clerk, Minneapolis
Public Schools

Equity Considerations for Policies

Student Personal Electronic Devices Policy 5210

April 2023

Policy Sponsor: Shawn Harris-Berry

MPS Equity and Diversity Policy 1304

"The Board of Directors, Superintendent and staff commit to conducting an Equity and Diversity Impact Assessment on *all future policies that have a significant impact on student learning and resource allocation*. This commitment also includes conducting assessments on *policies that are periodically reviewed and updated* through the policy development process that have a significant impact on student learning and resources allocation."

Identify Your Policy Recommendation

Use the space below to identify your policy recommendation as either **1) an existing policy requiring no changes, 2) current policy with needed revisions, 3) current policy needing a repeal; policy no longer needed, 4) current policy needing a repeal; subsume some parts into other policies, or 5) a new policy.**

Current policy with needed revisions

Recommended Policy Change

Provide a brief description below of the policy recommendation. If you have supporting documents, you may provide the URL for the EDIA Team to access your recommendation or attach the supporting documents in an email when you submit this document to the EDIA team.

Current Policy

If applicable, use the space below to summarize what the current policy states. Provide the URL for audiences to read the full board policy. If this is an existing policy with no changes needed, state that below.

<https://mps.municipalcodeonline.com/book?type=policies#name=Policy 5210: Student Personal Electronic Devices>

Recommended Policy Change

If applicable, use the space below to summarize the recommended changes to the existing policy. If this is an existing policy with no changes needed, skip this question.

- In general, update language to reflect current practices.
- Removed language around disciplinary action.

- Added in language to ensure student-teacher collaboration in developing personal electronic usage in the classroom.

Additional Information

Use the space below to share additional information or context about the policy recommendation.

N/A

Meaningful Inclusion of Diverse Perspectives on the Policy Recommendation

Describe the ways in which you've worked to ensure that you have meaningfully included diverse perspectives from internal and external stakeholder groups in the policy recommendation process.

Explain who you engaged with, how they were engaged, and when these engagements took place. When explaining how you engaged with stakeholders, specify whether you informed (shared information with stakeholders), consulted (shared information with and gathered feedback from stakeholders), or collaborated (partnered with to inform, gather feedback, and co-constructed the policy recommendation).

If you had trouble with engagement, you could also use the space to identify ways you tried to engage stakeholders. You can also describe how you used information gathered in the past to inform your policy recommendation process.

Internal Engagement including staff	External Engagement including students, families, and community members
• Principal Forum reviewed and discussed with the Forum Executive Board, April 10, 2023. The president will share with their Forum constituents. • ED of Climate and Equity Dec 2022, March 23 • ED of Communications Dec 2022, March 23 • ED of Engagement Dec 2022, March 23 • Associate Superintendents Dec 2022, March 23	• DPAC April Meeting (Canceled) • Student Council Citywide April 17, 2023 • MFT—received a copy of the policy revisions via email from Senior Leader Candra Bennett for feedback.

Identify the Current Problem

Describe what data (including conversations with stakeholders) tells you about possible existing student inequities. Include the evidence in this section or you may send the EDIA team the data that supports why there is a need to recommend the policy change.

Student personal electronic use in the classroom, based on the existing policy, is determined solely by the teacher. Potentially negatively impacting students academic performance as well as classrooms and buildings culture and climate.

Describe what the potential root causes or factors are that contributed to the inequity - including factors that are within MPS' locus of control as well as factors that are outside of MPS' locus of control.

Naming what is within or outside of your locus of control informs decision makers about what possible measures may need to be taken, including legislative efforts and partnerships to be built to tackle the root causes.

Root Causes or Factors (within MPS' locus of control)	Root Causes or Factors (outside of MPS' locus of control)
The policy needs to be updated to reflect current practices	N/A

Equity Consideration if the Policy Recommendation is Approved/Implemented

Identify what practices and/or core functions may be impacted by the recommendation. This could include internal (division and/or department) team structures, staffing, roles, and responsibilities as well as any state or federal level mandates.

N/A

Specify which student groups you anticipate will be positively impacted by the recommended policy change, and how.

Group(s) Positively Impacted	How the Approved Recommended Policy will Positively Impact the Group(s)
All students	Allows student-teacher collaboration in developing personal electronic usage in the classroom.

Furthermore, identify which specific student groups may be negatively impacted by the policy recommendation and describe how you plan to mitigate the negative impact and/or harm.

Group(s) Negatively Impacted	Mitigation Plan
None	N/A

Additional Information and Considerations

Use the space below to share any additional information that would be helpful to know.

--



Superintendent Leadership Profile

Visionary Instructional Leader

- Possesses a strong instructional background, with documented success in improving student achievement and reducing or eliminating achievement gaps.
- Is a student-centered leader who ensures schools are safe places for learning, with clear plans to provide equitable access to mental health resources and services.
- Commits to addressing individual student needs and maintaining high-performance expectations.
- Has a firm grasp of how students learn, ensuring that every school in the MPS system offers programs that students can access to meet their diverse needs.

Effective Communicator

- Ensures people feel valued, heard, and respected through strong communication and listening skills.
- Collaborates with stakeholders to identify and address barriers and inequities that impact students' opportunities.
- Builds authentic relationships with students, parents, teachers, administrators, union representatives, and community members through thoughtful communication, engagement, and actions.
- Serves as MPS leading advocate for education at the district, city, and state levels.

Collaborative Manager

- Analyzes and then addresses demographic and attendance changes impacting the MPS schools and works with the community to develop plans to address student enrollment, facilities, and financial issues.



Superintendent Leadership Profile

- Is politically savvy with the experience and skills to navigate the political landscape and build strong partnerships with government officials, school employees, and community organizations to create renewed trust.
- Has fiscal and operational expertise to lead a system that efficiently and effectively assigns fiscal and human resources to priority initiatives, such as implementing the strategic plan and enrollment challenges.
- Implements programs to retain talented staff and attract others who reflect the students served and embrace the MPS' values and beliefs.
- Is a decisive leader who uses a participatory process with integrity to solve complex issues and, when needed, make difficult decisions that are in the best interests of students.

Leadership Attributes and Personal Qualities

- Fosters unity within the MPS community and serves as a healing presence.
- Maintains a visible and active presence in the community, engaging with stakeholders and seeking their input.
- Values the community's role in decision-making and respects their perspectives, always remembering MPS are the community's schools.
- Remains connected and engaged with staff to understand the administrative and teaching challenges affecting student learning.
- Champions diversity, equity, and inclusion, addressing inequities and racism in policies programs, services, facilities, and curriculum.
- Builds strong teams, acts with integrity, and relentlessly advocates for diversity, inclusion, and equity throughout the MPS organization.

Draft Superintendent Leadership Profile Survey Feedback

(Summer 2023)

1. What would you add to the draft superintendent leadership profile?

(Personally identifiable information was not included)

- The truth. The new person is going to manage a massive restructuring.
- The communication section needs to be strengthened. We can't have ONLY listening and collaborating. We need proactive work to give the community insight into district-level needs, challenges, and direction. We need a leader willing to LEAD in this way, not just wait or hide from hard conversations and/or truths.
- What experience the candidate has with magnet school programs; e.g., design, implementation, funding, marketing, community engagement, growth, progress monitoring; overall building magnet capacity.
- If possible, strongly encourage that the superintendent live within the Minneapolis city limits, with any school-age children attending Minneapolis Public Schools. Perhaps there are other similar ways in which a superintendent could put their money where their mouth is and show support for our city and the school district they are leading?
- MPS needs a leader that is familiar with MPS and its needs. I am very happy and supportive of the current interim superintendent and as possible would like to recommend her as next superintendent. The new superintendent should have the skill and priority to listen and work with the MPS community of families and teachers and students. I do not want another disruption of actions of previous administration including the CDD. Thank you for your consideration.
- The qualities of empathy and approachability- this would likely fall into the communications category or as key components to relationship building
- Overall looks good. Lot of changes coming for MPS. We have two young students in the system and we expect overhauls coming down the pipeline. MPS needs to get lean. Students are the key factor. And while MPS is not a "business" per se, now more than ever is the time to hire a leader that approaches this like a corporate restructuring. We need to get the forecasting and finances tight in order to insure a viable long term future.
- I would like to see firm commitment to rigor, quality, and excellence. A superintendent should set high standards for all students--those who wish to go on to university or college, those who wish to pursue vocational training, and those who seek to enter professions. A superintendent should be articulate, even eloquent; should understand the place of ethics and integrity in the schools and in broader society; and should understand that schools help lay the foundations for our democratic society. A

Draft Superintendent Leadership Profile Survey Feedback

(Summer 2023)

superintendent should avoid the empty slogans and meaningless jargon that pervades so much of institutionalized thinking (and so many of the "leadership qualities" listed below)-- and a superintendent should understand that students--no matter what their career or life goals--must learn to be able to tell the difference between evidence and nonsense.

- The superintendent should live in the city of Minneapolis. As the figurehead of MPS, it is essential that the role is filled by a person who experiences and believes in the city as much as the people that they end up leading.
- The role should be filled by a person who represents the changes we have sought in Minneapolis with respect to race. At this fragile time, another white male would be an awful choice no matter who they are.
- Candidate's has real personal ties to MPS by sending their own children to MPS schools.
- Connects with union leadership to build relationships and lead respectful and productive contract negotiations to get best outcomes for staff and students. [Away from battling & back to collaborative, interest-based negotiations]
- We want someone who reflects our student population--a person of color, someone who has been marginalized (e.g. grew up in poverty, an immigrant, LGBTQ, etc), perhaps someone who is bilingual. If we end up with another white man, that's going to be a problem.
- More about having a track record of working in partnership with teachers.
- Supe needs to quickly address three issues, MPS financial straits, academic challenges and school climate.
- Fiscally responsible willing to close schools to match the student enrollment MPS currently has. Forward thinking - willing to advocate for capital planning that is expansive and goes above and beyond the ADA bare minimum. No additional changes to buildings unless innovation and UDL design is included in the planning process. Willing to hold leaders feet to the fire when building welcoming school communities and acknowledging principals and Associate supts. who push the mission and vision to the point where we can see it and don't need to state it verbally. Willing to use metrics that show the real story - not just the story that makes any one person look good. Hires a cabinet that is inclusive of people who are willing to ask the hard questions w/o the threat of losing their job or being written up for "insubordination". If we hire people who look like us and sound like us we are probably not really doing the work that matters.

Draft Superintendent Leadership Profile Survey Feedback (Summer 2023)

- Understands the impact of taking care of teaching staff and how it relates to better achievement with students.
- Listens to staff the is directly working with students.
- Support for teachers.
- This leader needs to implement child-centered decision making. MPS currently bases too many decisions on adult preferences or ease of logistics. The guiding principal for decision-making should ALWAYS be "does this serve children best".

This leader should approach this job like the executive director of a social justice agency. She/he should be advocating at the legislature, testifying in committee, challenging errant comments and beliefs, writing op-eds, meeting with editorial boards, demanding actions from the Mayor and city council members. We don't need a simple Administrator---that doesn't move us forward. It's small. We need an Advocate. Someone big and fearless. Charismatic. Smart. Willing to get in the game and be an actual leader.

This leader should be fiercely pro-public education. They should not cede one inch to charter-schools and should actively work to undo the damage they have done to the system and funding model of traditional and real public schools.

This leader should immediately close schools that are significantly and historically under-enrolled. We can't afford them.

- Innovative thinking. Experience designing and implementing new educational models that prepare students for future workforce needs (innovation, problem solving, creativity), using individualized instruction and other flexible approaches (e.g. multi-age groupings, vocational and college tracking). Ability to move instruction away from rote learning, skills drills and memorization.

Connection. Connection to a community of educational innovators, with demonstrated success recruiting top thinkers.

Mediation. Experience mediating the vast and sometimes conflicting needs of families from different racial and socioeconomic backgrounds, without elevating one group over the other. Ability to inspire a shared vision, of shared interests that will improve MPS for all students and excite support from all sides.

Systems thinking. Ability to consider entrenched problems from a systems perspective, with experience advocating at the legislature or other forums for needed changes.

- Ensures ELL students, families feel valued, heard, and respected through strong community engagements.

Draft Superintendent Leadership Profile Survey Feedback (Summer 2023)

- A leader who supports teachers needs and wants. A leader who is empathetic. A leader who cares about equality and equity.
- Understands the difference between nonprofits funded by corporate philanthropies that pretend to represent the community and the actual Minneapolis Public Schools community.
- Values all students and voices, not just the loudest or wealthiest.
- Improving student academic success.
- Make sure schools hire on real work experience. Drop so many qualifications for the different positions. Look at the whole person.

2. What are the 3 most important leadership qualities in the draft superintendent leadership profile you believe the Board of Directors should prioritize in its search for a new superintendent?

(Results rank-ordered by count)

Quality	Count	Percentage
Builds authentic relationships with students, parents, teachers, administrators, union representatives, and community members through thoughtful communication, engagement, and actions.	13	37.1%
Builds strong teams, acts with integrity, and relentlessly advocates for diversity, inclusion, and equity throughout the MPS organization.	9	25.7%
Ensures people feel valued, heard, and respected through strong communication and listening skills.	9	25.7%
Commits to addressing individual student needs and maintaining high-performance expectations.	7	20%
Has a firm grasp of how students learn, ensuring that every school in the MPS system offers programs that students can access to meet their diverse needs.	7	20%
Is politically savvy with the experience and skills to navigate the political landscape and build strong partnerships with government officials, school employees, and community organizations to create renewed trust.	7	20%

Draft Superintendent Leadership Profile Survey Feedback (Summer 2023)

Fosters unity within the MPS community and serves as a healing presence.	6	17.1%
Has fiscal and operational expertise to lead a system that efficiently and effectively assigns fiscal and human resources to priority initiatives, such as implementing the strategic plan and enrollment challenges.	6	17.1%
Is a student-centered leader who ensures schools are safe places for learning, with clear plans to provide equitable access to mental health resources and services.	6	17.1%
Analyzes and then addresses demographic and attendance changes impacting the MPS schools and works with the community to develop plans to address student enrollment, facilities, and financial issues.	4	14.3%
Champions diversity, equity, and inclusion, addressing inequities and racism in policies programs, services, facilities, and curriculum.	5	14.3%
Remains connected and engaged with staff to understand the administrative and teaching challenges affecting student learning.	5	14.3%
Possesses a strong instructional background, with documented success in improving student achievement and reducing or eliminating achievement gaps.	4	14.3%
Implements programs to retain talented staff and attract others who reflect the students served and embrace the MPS' values and beliefs.	4	11.4%
Is a decisive leader who uses a participatory process with integrity to solve complex issues and, when needed, make difficult decisions that are in the best interests of students.	3	8.6%
Maintains a visible and active presence in the community, engaging with stakeholders and seeking their input.	2	5.7%
Serves as MPS leading advocate for education at the district, city, and state levels.	2	5.7%
Values the community's role in decision-making and respects	2	5.7%

Draft Superintendent Leadership Profile Survey Feedback (Summer 2023)

their perspectives, always remembering MPS are the community's schools.		
Collaborates with stakeholders to identify and address barriers and inequities that impact students' opportunities.	1	2.9%