

## **Special Business Meeting (Contract Approvals)**

Tuesday, April 23, 2024 6:00 PM

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

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

2) **Approval of Playground Contracts**

2)a. Contract with Flagship Recreation (2024-4400002161)

2)b. Contract with Flagship Recreation (2024-4400002162)

2)c. Contract with Kompan (2024-1000235339)

3) **Adjournment**



**To:** Minneapolis Board of Education  
**From:** Ibrahima Diop, Senior Finance & Operations Officer  
**Subject:** New Playgrounds at Bryn Mawr, Pratt, and Kenwood Schools  
**Date:** April 19, 2024

### **Cover Memo**

#### **Recommendation**

The Minneapolis Board of Education authorize the Senior Officer of Finance & Operations to sign contracts for:

- Flagship Recreation (2024-4400002161) for the playground at Bryn Mawr
- Flagship Recreation (2024-4400002162) for the playground at Pratt
- Kompan (2024-1000235339) for the playground at Kenwood

All three playgrounds are ADA accessible and provide inclusive play options for ages and mobilities at the schools. Details of each playground and the process used to gather input during the design is detailed below.

#### **Background**

[MPS Regulation 3517D \(Recommendations Regarding Playground Equipment\)](#) was established to provide a process for engagement for playground replacements at Minneapolis Public Schools (MPS). The regulation requires cooperative planning with Facilities and teachers, building leadership and parents. We rely on school leadership to assemble the playground planning and review committee to provide broad voices in the conversation on the playground renewal. We also engage with physical and occupational therapists to provide input on designs and play features for playgrounds. While no one group gets everything they would want, we require inclusive play features at all playgrounds and accessible play equipment. The play surfaces at playgrounds are engineered wood fiber that is an ADA approved surface.

MPS issued a request for proposal (RFP) to playground equipment manufacturers/installers to design, build and install playground equipment for the Summer 2024 playground renewals. The RFP requires the selected vendor to provide a minimum of three options for each school that meets the budget requirements and provides age-appropriate play equipment. The play equipment must include:

- Active play and learning areas.
- Accessible features.
- Fall protection mitigation.
- Durability. The equipment should be usable during all seasons.

The three playgrounds detailed in this memo include for Bryn Mawr, Pratt, and Kenwood. Details for each playground are provided below.

### **Bryn Mawr**

Environmental Health & Safety recommended the replacement of the playground at Bryn Mawr due to the age of the equipment and some safety concerns that can be mitigated by newer playground equipment. Through the RFP process, Flagship Recreation was selected to provide the design, equipment, and installation for the Bryn Mawr playground. Capital Construction staff engaged with school leadership to establish the playground committee to review the designs for the new playground. Per the RFP, Flagship was required to provide potential designs for consideration. After obtaining input from parents, staff, and school leadership a final design was developed. Input was provided from Occupational & Physical Therapy, Teachers, Students, Parents, School leadership, and the Bryn Mawr Site Council.

A survey was developed to gather input on the potential designs for Bryn Mawr. Input was received from staff, students and parents on suggested changes and improvements. The final design considered the input along with budget limits, inclusive play, space constraints and safety (proper fall zones). The final design provided the best option to address some of the inputs received. The final design included several inclusive play features including swings, twister and a rev-i-wheel spinner that is inclusive for all age groups and mobilities. The surface of the playground is ADA compliant. A layout for the proposed playground is attached.

### **Pratt**

Environmental Health & Safety recommended the replacement of the playground at Pratt due to the age of the equipment and some safety concerns that can be mitigated by newer playground equipment. Through the RFP process, Flagship

Recreation was selected to provide the design, equipment, and installation for the Pratt playground. Capital Construction staff engaged with school leadership to establish the playground committee to review the designs for the new playground. Per the RFP, Flagship was required to provide potential designs for consideration. After obtaining input from the parents, staff, and school leadership a final design was developed. In addition to public input on the designs, specific consultations occurred with staff from Occupational & Physical Therapy, Teachers (including special education), Students, Parents, Pratt leadership and the Pratt Site Council.


A survey was developed to gather input on the potential designs for Pratt. Input was received from staff, students and parents on suggested changes and improvements. The final design considered the input along with budget limits, inclusive play, space constraints and safety (proper fall zones). The final design provided the best option to address some of the inputs received. The final design included several inclusive play features including a xylophone, clubhouse, a small spinner and a chimes station. The surface of the playground is ADA compliant. A layout for the proposed playground is attached.

### **Kenwood**

Environmental Health & Safety recommended the replacement of the playground at Kenwood due to the age of the equipment and some safety concerns that can be mitigated by newer playground equipment. Through the RFP process, Kompan was selected to provide the design, equipment and installation for the Kenwood playground. Capital Construction staff engaged with school leadership to establish the playground committee to review the designs for the new playground. Per the RFP, Kompan was required to provide potential designs for consideration after obtaining input from the parents, staff and school leadership. From the input received a final design was developed. The planning group at Kenwood included the Principal, a Teacher, a PTA representative, and a Physical Therapist.

Kompan provided designs and collected input from staff, students and parents on the options. The final selected option includes inclusive play items including a passthrough kitchen, xylophone, steering wheels on columns at ADA height, sensory boards, a stand-alone "Inclusive twister" a universal play area for all children, across age groups and mobility. A design for the final selection is attached.

# Bryn Mawr Proposed Playground



**CONTAINER DETAILS**


TOTAL CONTAINER AREA	8830 SF
ASTM SAFETY SURFACING TYPE	ENGINEERED WOOD FIBER
TOTAL EWF AREA	8830 SF
TOTAL PERIMETER	497 LF
EDGING TYPE	EXISTING WOOD BORDER
FINISH GRADE	TOP OF WOOD BORDER

**\*\*SITE PREPARATION REQUIREMENTS:**


- MAXIMUM OF 1% GRADE CHANGE ACROSS CONTAINER
- NO PRE-INSTALLED DRAIN TILE OUTSIDE OF 4 FEET OF PERIMETER
- DRAIN TILE STUB TO BE PROVIDED IF DRAIN TILE IS REQUIRED
- NO DRAINAGE AGGREGATE PRE-INSTALLED
- NO FABRIC PRE-INSTALLED
- MINIMUM CONTAINER SIZE NEEDED DENOTES THE INSIDE OF CURB DIMENSION

**5-12 AREA**

TOTAL ELEVATED PLAY COMPONENTS	9	REQUIRED 0
TOTAL ELEVATED COMPONENTS ACCESSIBLE BY GRAB	0	REQUIRED 0
TOTAL ELEVATED COMPONENTS ACCESSIBLE BY TRANSFER	6	REQUIRED 0
TOTAL ACCESSIBLE GROUND LEVEL COMPONENTS SHOWN	14	REQUIRED 3
TOTAL DIFFERENT TYPES OF GROUND LEVEL COMPONENTS	7	REQUIRED 2



FLAGSHIP RECREATION  
1123 UPPER 33RD ST N  
LAKE ELMO, MN 55082  
763-550-7860  
FLAGSHIPPLAY.COM  
@FLAGSHIPPLAY



THIS PLAY AREA & PLAY EQUIPMENT IS DESIGNED FOR AGE RANGES AS NOTED ON PLAN.

**Bryn Mawr Elementary School Revised Design**  
252 Upton Ave S  
Minneapolis, MN 55405

SALES REPRESENTATIVE:  
Bailey Wolf

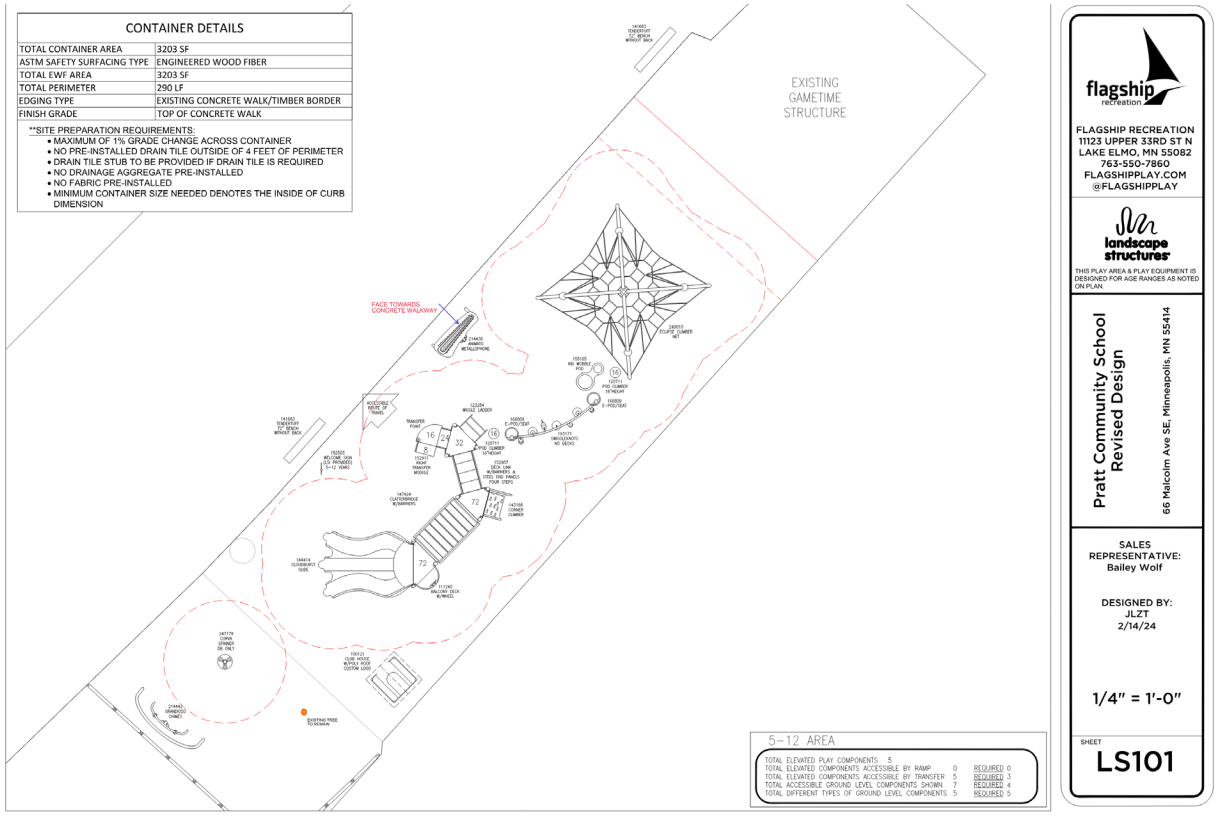
DESIGNED BY:  
JLZT  
2/27/24

1/8" = 1'-0"

SHEET  
**LS101**



# Pratt Proposed Playground



FLAGSHIP RECREATION  
1123 UPPER 33RD ST N  
LAKE ELMO, MN 55082  
763-550-7860  
FLAGSHIPPLAY.COM  
@FLAGSHIPPLAY



THIS PLAY AREA & PLAY EQUIPMENT IS DESIGNED FOR AGE RANGES AS NOTED ON PLAN.

**Pratt Community School  
Revised Design**  
66 Malcolm Ave SE, Minneapolis, MN 55414

SALES REPRESENTATIVE:  
Bailey Wolf

DESIGNED BY:  
JLZT  
2/14/24

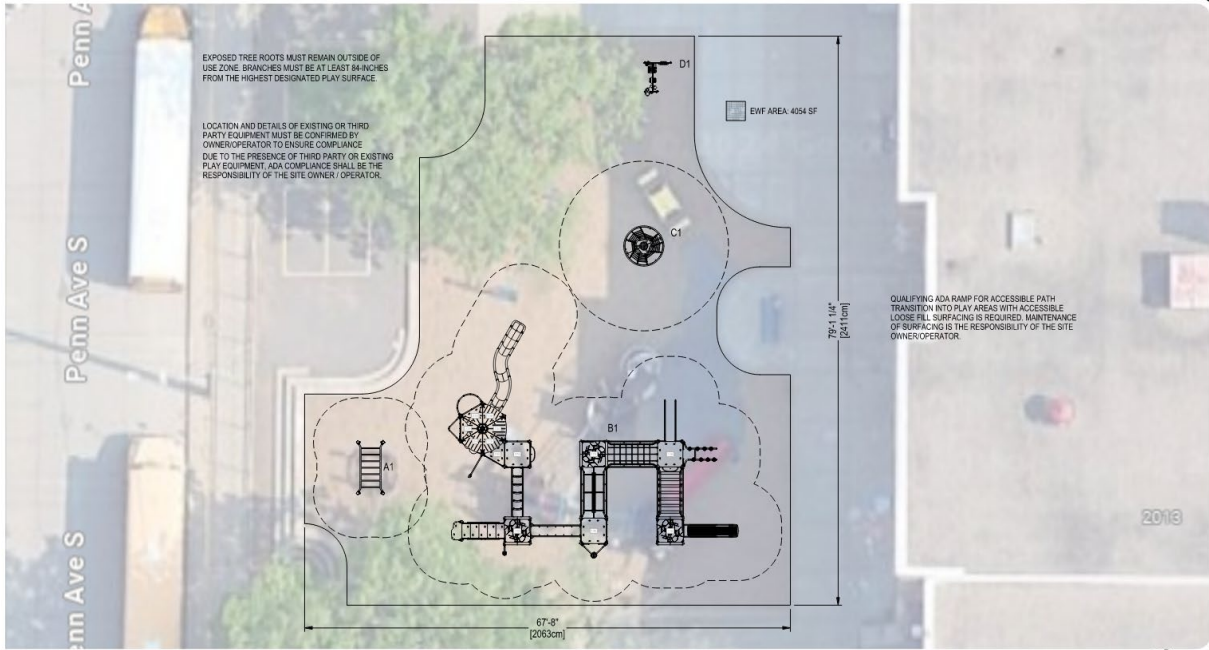
1/4" = 1'-0"

SHEET  
**LS101**



Pratt Elementary  
MPS\_Pratt 020824 • 2.14.2024  
Slr landscape structures logo  
flagship recreation logo

# Kenwood Proposed Playground



#	Product Number	Product Name	MFPA	Count
1	POWERSLOTT	Children's Chained Ladder	10'	1
2	POWERTWIST-CUSTOM	Mega Deck	9'10"	1
3	POWERSLOTT-10'	Children's Chained Ladder	10'	1

**Kenwood Elementary**  
Minneapolis Public Schools





MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR GOODS – above \$50,000**

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 **Flagship Recreation** “Contractor” (collectively “parties”) to provide **demolition, hauling, and installation of playground equipment at Bryn Mawr Elementary School.**

### **1 TERM OF CONTRACT**

1.1 This Contract is effective on **February 28, 2024** or the date of the last signature of the parties, whichever is later, and shall remain in effect until **February 28, 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.



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)

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### 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 **\$252,162.10**. 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 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

Division: Capital Planning, Construction, & Maintenance

Attn: Curt Hartog – Executive Director

1250 W Broadway

Minneapolis, MN 55411



1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)

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Email: [Curtis.hartog@mpls.k12.mn.us](mailto:Curtis.hartog@mpls.k12.mn.us)

## CONTRACTOR

NAME: **Flagship Recreation**

Address: **11123 Upper 33rd St. N, Lake Elmo, MN 55042**

Phone: **763.439.3528**

Email: [bailey@flagshipplay.com](mailto:bailey@flagshipplay.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 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: **Curtis Hartog**  
(Printed)

Title: **Executive Director**

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

**CONTRACTOR NAME**

Signature:  \_\_\_\_\_

Name: **Bailey Wolf**  
(Printed)

Title: **Project Consultant**

Date: 2/29/2024 \_\_\_\_\_



## EXHIBIT A: SCOPE OF WORK

### *Deliverables:*

See Exhibit A

### *Service Outcome:*

See Exhibit A

### *Method of Evaluation*

Adherence to drawings dated 02/28/2024.

[The remainder of this page intentionally left blank.]

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

See Exhibit A



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR GOODS – above \$50,000**

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 **Flagship Recreation** “Contractor” (collectively “parties”) to provide **demolition, hauling, and installation of playground equipment at Pratt Elementary School.**

### **1 TERM OF CONTRACT**

1.1 This Contract is effective on **February 28, 2024** or the date of the last signature of the parties, whichever is later, and shall remain in effect until **February 28, 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 **\$152,508.76**. 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 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

Division: Capital Planning, Construction, & Maintenance

Attn: Curt Hartog – Executive Director

1250 W Broadway

Minneapolis, MN 55411



1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)

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Email: [Curtis.hartog@mpls.k12.mn.us](mailto:Curtis.hartog@mpls.k12.mn.us)

## CONTRACTOR

NAME: [Flagship Recreation](#)

Address: [11123 Upper 33rd St. N, Lake Elmo, MN 55042](#)

Phone: [763.439.3528](tel:763.439.3528)

Email: [bailey@flagshipplay.com](mailto:bailey@flagshipplay.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 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.

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**SPECIAL SCHOOL DISTRICT NO. 1**

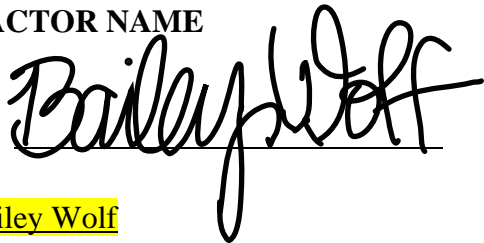
Signature: \_\_\_\_\_

Name: **Curtis Hartog**  
(Printed)

Title: **Executive Director**

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

**CONTRACTOR NAME**

Signature:  \_\_\_\_\_

Name: **Bailey Wolf**  
(Printed)

Title: **Project Consultant**

Date: 2/29/2024

## EXHIBIT A: SCOPE OF WORK

### *Deliverables:*

See Exhibit A

### *Service Outcome:*

See Exhibit A

### *Method of Evaluation*

Adherence to drawings dated 02/28/2024.

[The remainder of this page intentionally left blank.]

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

See Exhibit A



## **Contract for Goods/Supplies/Materials and/or Labor/Installation**

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 Kompan, Inc. “Contractor” (collectively “parties”) to provide removal of existing playground and installation of new playground equipment (material & labor) per Kompan Quote#SP133924-1 dated 3/11/2024 for Kenwood Elementary School, Minneapolis, MN.

### **1 TERM OF CONTRACT**

- 1.1 This Contract is effective on March 11, 2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until March 11, 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 related to Labor and Installation 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/Vendor under this Contract, including compensation for goods and/or services, including reimbursable expenses (if applicable), shall not exceed \$252,000.00. Contractor/Vendor 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.

#### 4. INSPECTION OF GOODS & REJECTION

- 4.1 Buyer is entitled to inspect the Goods upon delivery. If the Goods are unacceptable for any reason, Buyer must reject them at the time of delivery up to ten (10) business days from the date of delivery. If Buyer has not rejected the Goods within ten (10) business days from the date of delivery, Buyer shall have waived any right to reject that specific delivery of Goods.
- 4.2 In the event Buyer rejects the Goods, Buyer shall allow Seller a reasonable time to cure the deficiency. A reasonable time period shall be determined by industry standards for the Goods, as well as the Seller and Buyer.

#### 5 RISK OF LOSS

- 5.1 Risk of loss will be on the Seller until the time when the Buyer accepts delivery. Seller shall maintain any and all necessary insurance in order to insure the Goods against loss at Seller's own expense.

#### 6 TITLE

- 6.1 Title to the Goods will remain with the Seller until Buyer accepts delivery.

#### 7 FORCE MAJEURE

- 7.1 Non-delivery or default of this Agreement due to labor disputes, transportation shortage, delay or shortage of materials to produce the Goods, fires, accidents, Acts of God, or any other causes outside of Seller's control shall be notified to Buyer immediately upon realization that it will not be able to deliver the Goods as promised. Either Party may terminate this Agreement upon such notice.

#### 8 MATERIALS AND LABOR

Contractor shall provide and pay for all labor and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services, and all materials necessary for the completion of the Work. All materials shall be good quality and new, unless the Contract Documents require or permit otherwise. Contractor may substitute materials only with the prior written approval of the District. (Check all that apply)

The following materials will not be included in the Contract Price and are the sole responsibility of the District and will not be covered under warranty by Contractor:

\_\_\_\_ NA \_\_\_\_\_ or attach annexure.

In addition, the Contract Price shall include the following fixtures:

\_\_\_\_ NA \_\_\_\_\_ or attach annexure.

#### 9 LICENSES AND PERMITS

(Check one)  Contractor  District shall obtain all licenses and permits necessary for proper completion of the Work. (Check one)  Contractor  District is responsible for the cost of any necessary permits or licenses.



## 10 LAWS AND REGULATIONS

Contractor shall perform the Work in a workmanlike manner and in compliance with all applicable federal, state, and local laws, regulations and ordinances, trade standards, ethical guidelines and any safety requirements of District (the “Applicable Laws”). Contractor shall promptly notify District upon discovery of any variance between the Applicable Laws and the Construction Documents.

## 11 SUPERVISION OF CONSTRUCTION

Contractor shall be solely responsible for and shall supervise and direct all construction under this Agreement. Contractor shall provide competent and suitable personnel to perform the Work and shall at all times maintain good discipline and order at the Property. Contractor will at all times take all reasonable precautions for the safety of its employees and the public at the Property. Contractor agrees to assume full responsibility for the acts, negligence, and/or omissions of its employees and any subcontractors and their employees.

## 12 RECORD DOCUMENTS

Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, and the like in good order and annotated to show all changes made during construction, which will be delivered to District upon completion of the Work. District shall have the right to inspect and review such documents upon notice to Contractor.

## 13 UTILITIES

(Check one)  Contractor  District shall pay for all permanent electric, water, phone, cable, sewer and gas service as needed to perform the Work. (Check one)  Contractor  District shall pay for the installation, connection and removal of all temporary utilities on the Property during the performance of the Work. All temporary utilities shall conform and adhere to the Applicable Laws.

## 14 HAZARDOUS MATERIALS

Except as otherwise provided in the Contract Documents, Contractor shall be responsible for all Hazardous Materials brought to the Property by Contractor. Hazardous Materials shall include radioactive materials, asbestos, polychlorinated biphenyls, petroleum products, crude oil, flammable materials, chemicals or solvents known to cause cancer or reproductive toxicity, pollutants, contaminants and toxic substances which are restricted, prohibited or regulated by any agency of government in its manufacture, use, maintenance, storage, Ownership or handling. If Contractor discovers any Hazardous Materials on the Property, Contractor shall immediately notify District and may cease working until the material or substance has been rendered harmless. District shall defend, indemnify and hold harmless Contractor, any subcontractors, and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney’s fees, arising out of or resulting from contact with the Hazardous Substance in performance of the Work resulting in bodily injury, illness or death, or injury or property damage, provided such claim, damage, loss or expense is not the result of any negligent act or omission by the party seeking such indemnity.



## **15 CONDITION OF THE PROPERTY**

Contractor agrees to keep the Property and adjoining driveways free and clear of waste material and rubbish. Contractor shall confine the storage of materials and equipment and the operations of employees to the Property, and shall not unreasonably encumber the Property with materials or equipment. Contractor shall be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by District.

## **16 INSPECTION**

District shall have a right to inspect the Work at any time and request that Contractor promptly correct any Work that is defective or does not conform to the Contract Documents. If required, the Work shall be inspected and certified by the appropriate state or local agency or health officer at each necessary stage.

## **17 SUBCONTRACTS**

Contractor shall furnish to District a list of names of subcontractors proposed to perform principal portions of the Work. Contractor shall not employ any subcontractor to whom District reasonably objects. A subcontractor, for the purposes of this Agreement, shall be a person with whom Contractor has a direct contract for work at the Property. All contracts between Contractor and subcontractor shall be in accordance with the terms of this Agreement and the Contract Documents.

## **18 WORK CHANGES**

District reserves the right to order changes to the Work in the nature of additions, deletions or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Price and time of termination if applicable. All changes will be authorized in a written "Change Order" signed by District and Contractor, which shall be incorporated by reference herein.

## **19 OTHER CONTRACTORS**

District reserves the right to enter into other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work shall not be impeded and shall give them access to the Property as necessary to perform their contracts.

## **20 EXTENSIONS OF TIME**

The times stated in this Agreement may be extended for such reasonable time as Contractor may determine when performance of the Work by Contractor is delayed by a Change Order, labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, or other causes beyond Contractor's control or which justify the delay.



## 21 INDUSTRY LANGUAGE

The language used for terms of this Agreement, unless otherwise defined, shall be construed according to the customary meaning within the construction industry in the area where the Project is located and for the type of Work being performed.

## 22 CONFIDENTIALITY (Check one)

As a result of Contractor's participation in the Work, Contractor will have access and contribute to information and materials of a highly sensitive nature, including Confidential Information. Contractor hereby warrants that Contractor and its employees and agents shall not (without in each instance obtaining the District's prior written consent) disclose, make commercial or other use of, or give or sell to any person, firm, or corporation, any Confidential Information received directly or indirectly from District or acquired or developed in the course of the performance of this Agreement unless: (1) required to do so pursuant to Applicable Laws (and then only after Contractor has given District prompt written notice of the legal compulsion and, at District's expense, provided by District with cooperation in any attempt District may make to gain a protective order acceptable to District); or (2) it is rightfully in the possession of Contractor from a source other than District prior to the time of disclosure of the information to Contractor under this Contract; or (3) it was in the public domain prior to the time of Contractor's receipt; or (4) it became part of the public domain prior to the time of Contractor's receipt by any means other than an authorized act or omission on the part of Contractor; or (5) it is supplied to Contractor after the time of Contractor's receipt by a third party who was not under any obligation to District to maintain such information in confidence; or (6) it was independently developed by Contractor prior to the time of its receipt from District. All Confidential Information, regardless of form, shall be the property of District and shall be returned to District upon its request, or in any event, at the completion or earlier termination of this Agreement.

Contractor will NOT have access and contribute to Confidential Information.

## 23 GENERAL TERMS AND CONDITIONS

- a. 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.

## 24 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

- a. 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.

## 25 BACKGROUND CHECKS

- a. 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.
- b. 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.

## 26 DATA PRIVACY

- a. 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.

## 27 USE OF DISTRICT NAME OR LOGO

- a. 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.



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## 28 INDEPENDENT CONTRACTOR

- a. 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.
- b. 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.

## 29 WORKER HEALTH, SAFETY AND TRAINING

- a. 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.

## 30 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

- a. 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.

## 31 INSURANCE

- a. 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. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards.

- b. 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.
- c. 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.
- d. 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.
- e. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION (\$1,000,000) for any one occurrence, with respect to each of Contractor's owned, hired or non-owned vehicles assigned to or used in performance of the services or work under this Contract.
- f. Contractor shall procure and maintain and shall cause any Subcontractor of the Contractor to procure and maintain, the minimum insurance coverage listed herein. Such coverage shall be procured and maintained with forms and insurers acceptable to the Company/Client. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- g. A Certificate of Insurance shall be completed by the Contractor's Insurance Agent(s) as evidence that policies providing the required coverage, condition, and minimum limits are in full force and effect and shall be subject to review and approval by the Company/Client prior to commencement of any services under this Contract. The Certificate shall identify this Contract and shall provide that the coverage afforded under the policies shall not be cancelled, terminated, or materially changed until at least thirty (30) days prior written notice has been given to the Company/Client. The Certificate shall name Company/Client, its officers, and its employees as additional insured with respect to the General Liability Insurance.



- h. Failure on the part of the Contractor or Subcontractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material Breach of Contract upon which the Company/Client may immediately terminate this Contract, or at its discretion, the Company/Client may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Company/Client shall be repaid by Contractor to the Company/Client upon demand, or Company/Client may offset the cost of the premium against any monies due to Contractor from the Company/Client.
- i. Company/Client reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Contractor agrees to execute any and all documents necessary to allow the Company/Client access to any and all insurance and endorsements pertaining to this particular job.
- j. Every policy required above shall be primary insurance, and any insurance carried by the Company/Client, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall be solely responsible for any deductible losses under the policies required above.
- k. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Contract by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration or types.
- l. As an independent contractor the Contractor is not entitled to Worker's Compensation benefits under the Company/Client plan. Furthermore, the Contractor is obligated to pay federal and state income tax on any monies' earned pursuant to this contractual relationship.
- m. The parties hereto understand and agree that the Company/Client, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitation or any other rights, immunities, and protections provided by state and federal laws.

## 32 INDEMNIFICATION

- a. 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.

**33            LIMITATION ON LIABILITY**

- a. 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.

**34            CONFLICT OF INTEREST/CODE OF ETHICS**

- a. 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.

**35            COMPLIANCE WITH LAWS AND DEBARMENT**

- a. 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.

**36            TERMINATION**

- a. 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.
- b. 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.

- c. 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.

### **37 RETURN OF DATA**

- a. 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.
- b. 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.

### **38 RECORDS MANAGEMENT AND MAINTENANCE**

- a. 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.

## 39 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

Attn: Capital Planning, Construction & Maintenance

Name: Ann Cerney

Title: Project Manager

Email: [ann.cerney@mpls/k12.mn.us](mailto:ann.cerney@mpls/k12.mn.us)

1250 W Broadway  
Minneapolis, MN 55411

### Vendor:

Name: Kompan, Inc.

Attn: John Engfer

Address: 605 W. Howard Lane, Suite 101, Austin, TX 78753

Email: [JohEng@Kompan.com](mailto:JohEng@Kompan.com) 612-940-1138

## 40 ACKNOWLEDGMENT

- a. 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.
- b. 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.



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#### **41 NON-WAIVER**

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

#### **42 ASSIGNMENT**

- a. 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.

#### **43 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT**

- a. 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.

#### **44 WARRANTY**

- a. 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.

- b. Contractor warrants that the Work shall be in accordance with the Contract Documents, applicable law and trade standards and free from material structural defects, improper workmanship or defective materials. Contractor shall replace, correct, or repair any Work not in accordance with the Contract Documents, applicable law and trade standards or any defects caused by faulty materials, equipment or workmanship for a period of **One (1)** year(s) from the date of completion of the Work. Nothing in this Section 15 shall be construed to place a time limit with respect to any other obligation Contractor may have under this Agreement.

**45 SEVERABILITY**

- a. 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.

**46 SURVIVABILITY**

- a. 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.

**SPECIAL SCHOOL DISTRICT NO. 1**

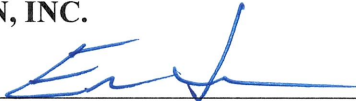
By: \_\_\_\_\_

Name: Ibrahima Diop

Title: Senor Finance & Operations Officer

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

**KOMPAN, INC.**

By:  \_\_\_\_\_

Name: Eric Lewis

Title: Treasurer

Date: 04/01/2024



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## EXHIBIT A: SCOPE OF WORK

### Description of Services:

Removal of existing playground and installation of new playground equipment (material & labor) per Kompan Quote#SP133924-1 dated 3/11/2024 for Kenwood Elementary School, Minneapolis, MN.

Demolition: Includes removal and disposal of existing playground equipment; Includes layout and digging for footings; Includes concrete for footings as needed; Includes disposal of packing material; Includes push/pull of EWF to access sub-base; Includes spreading of additional EWF;

- All spoils generated during the excavation of footings shall be disposed of on site at no cost to KOMPAN.
- MPS to provide 120 V (15 amp) power source and standard hose bib connection for water supply within one hundred (100') feet from work site.
- MPS shall have removed all existing equipment or obstacles from playground area prior to the arrival of the installation crews.

### Service Outcome:

New playground will be safe and fully compliant for student play. Wood fiber will be placed.

### Method of Evaluation:

Site meeting to confirm quality of installation and zero punchlist items.

## **EXHIBIT B: PAYMENT TERMS**

If there are exhibits to describe the payment terms:

The payment terms are as follows:

Payment terms shall be per MPS provisions for payment



1250, West Broadway Ave. Minneapolis, MN  
55411-2533 | Phone: 612.668.0000  
[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)





## Sales Proposal

Minneapolis Public Schools  
 Ann Cerney  
 1250 W Broadway Ave  
 Minneapolis, MN 55419

Quote No. SP133924-1  
 Customer No. 350181  
 Document Date 03/11/2024  
 Expiration Date 05/10/2024

Sales Representative John Engfer  
 Email JohEng@Kompan.com

Project Name US300932 MPS- Kenwood Elementary

No.	Description	Qty Unit	Unit Price	Discount %	Net Price
<a href="#">COR203301-1112</a>	CONE TWISTER INCLUSIVE LIGHT BLUE - IN-GROUND 	1 Pieces	21,360.00	15.00	18,156.00
<a href="#">MSV60300-0201</a>	Shop & Kitchen Surface (expansion bolts) 	1 Pieces	6,320.00	15.00	5,372.00
<a href="#">FSW21300-CUSTOM</a>	FSW21300 CUSTOM VARIANT 20273668 	1 Pieces	5,280.00	15.00	4,488.00
<a href="#">PCMS726651</a>	SIX TOWER MEGA DECK CUSTOM, PE SLIDE, IN-GROUND- BLUE AND YELLOW 	1 Pieces	140,000.00	15.00	119,000.00
Engineered Stamped Drawing	Engineered Stamped Drawings	1 Piece	2,000.00		2,000.00
INSTALLATION SERV	REMOVAL OF EQUIPMENT AND OLD EWF, INSTALLATION OF NEW EQUIPMENT, AND	1 Pieces	89,313.00		89,313.00
FREIGHT	APPOX. 4600 Sqf OF EWF Freight	1 Pieces	13,671.00		13,671.00

Description	Qty	Retail Price	Discount	Net Price
No. of Products	4			
Subtotal - Products		172,960.00	25,944.00	147,016.00
Subtotal - Installation		89,313.00		89,313.00
Subtotal - Freight		13,671.00		13,671.00
<b>Total USD</b>				<b>252,000.00</b>



Minneapolis Public Schools  
Ann Cerney  
1250 W Broadway Ave  
Minneapolis, MN 55419

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Expiration Date 05/10/2024

Sales Representative John Engfer  
Email JohEng@Kompan.com

Project Name US300932 MPS- Kenwood Elementary

**Payment Terms** Net 30 days



Note that the color and texture of products and surfacing made with recycled content are subjected by the differences from the used recycled raw materials. Therefore, minor differences in the appearance and texture can occur.

Applicable sales tax will be added unless a valid tax exemption certificate is provided. This amount is only an estimate of your tax liability.

Your acceptance of this proposal constitutes a valid order request and includes acceptance of terms and conditions contained within this Master Agreement, which is hereby acknowledged.

Acceptance of this proposal from KOMPAN is acknowledged by issuance of an order confirmation by an authorized KOMPAN representative.

Prices in this quotation are good until expiration date, shown in the top of this document. After that date, this proposal may be withdrawn.

KOMPAN Products are "Buy American" qualified, and compliant with the Buy American Act of 1933 and the "Buy American" provision of ARRA of 2009.

Prevailing Wage and Payment & Performance Bonds are not included unless stated in body of Sales Proposal. If Payment & Performance Bonds are needed, add 2.2% of the entire sales proposal.

This information required for order placement

Accepted By (Please Print): \_\_\_\_\_

Accepted By (Title): \_\_\_\_\_

Accepted By (signature): \_\_\_\_\_

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

\_\_\_\_\_

Date Equipment needed on site: \_\_\_\_\_

Bill To: \_\_\_\_\_

Ship To: \_\_\_\_\_

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

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

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

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

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

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

Contact Email: \_\_\_\_\_

Contact Email: \_\_\_\_\_

Contact Phone (Office): \_\_\_\_\_

Contact Phone (Office): \_\_\_\_\_

Contact Phone (Cell): \_\_\_\_\_

SALES TAX EXEMPTION CERTIFICATE #: \_\_\_\_\_  
(PLEASE PROVIDE A COPY OF CERTIFICATE)