

AGREEMENT

THIS AGREEMENT, made and entered into this 21st day of May, 2015, by and between Independent School District #709, a public corporation, hereinafter called District, and Chuck Smith, an independent contractor, hereinafter called Contractor.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Contractor will provide programs or services for the District at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows: (insert as appropriate)

1. **Dates of Service.** This Agreement shall be deemed to be effective as of May 21st, 2015, and shall remain in effect until June 15, 2015, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Chuck Smith shall provide a speech at the Lowell Elementary "Grandparents Day" Memorial Day Recognition. Mr. Smith shall speak on the American Indian/Ojibwe contributions to the Armed Services of the United States.

3. **Background Check .** (Applies to contractors working independent with students)

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$250.00. Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. **Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any

item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

7. **Ownership of Materials.** The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, or any portion thereof, to its own use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, workers compensations, and any other taxes or business license fees as required.

9. **Indemnity and defense of the District.** Contractor hereby agrees to defend, indemnify and hold the District harmless from all claims relating to its work pursuant to this Agreement.

In the event that Contractor breaches its obligation to defend, indemnify and hold the District harmless, then in addition to its other damages the District shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail care of the Office of Education Equity, ISD 709, Duluth Public Schools, 215 North 1st Avenue East, Duluth, MN 55802. All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail Chuck Smith, 4503 Twin Lakes Drive, Brookston, MN 55711.

11. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of the District.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered

except by written agreement of the parties.

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

16. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to "data on individuals"; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

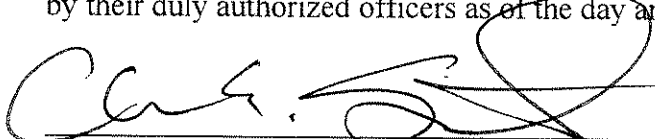

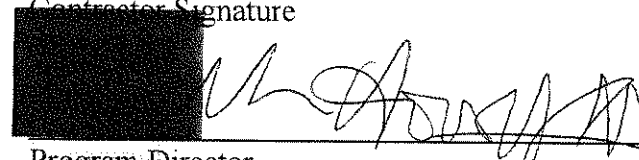
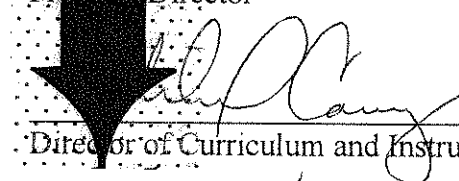

17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

Workers' Compensation Insurance: Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

Commercial General Liability: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

		5/21/15
Contractor Signature	SSN/ Tax Identification Number	Date
		5/24/15
Program Director		Date
		5/28/15
Director of Curriculum and Instruction		Date
		5/28/15
Director of Business Service / Superintendent of Schools		Date



UNIVERSITY OF MINNESOTA FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT ("Agreement") is entered into effective as of March 30, 2015, by and between the Regents of the University of Minnesota ("University"), a Minnesota constitutional corporation, and ISD 709 ("Licensee"), a independent school district of Minnesota. This Agreement is entered into by University through its Regents.

1. **Grant of License.** University grants to Licensee a license to use Weber Music Hall (the "Facility") solely for the following purpose(s):

East High School Choir Concert (the "Event").

The estimated number of people expected to attend the Event is three hundred twenty two (322). Licensee acknowledges and agrees that University, its agents, employees, invitees, licensees and students may use any portion of the Facility for any purpose whatsoever and at any time during the term of the Agreement, provided that such use shall not unreasonably disturb Licensee's use of the Facility as provided in this Agreement. Licensee shall use the Facility in accordance with the terms and conditions of this Agreement, all University policies and rules and all federal, state and local laws, ordinances, rules and regulations.

2. **Term.** Licensee is permitted to use the Facility only during the following dates and times:

May 28, 2015 from 4:00-10:00 pm

3. **Fee.** In addition to any other payment Licensee is required to make pursuant to this Agreement, Licensee shall pay University a fee as described on the attached Exhibit A (the "Fee"). The Fee is non-refundable, unless otherwise provided in this Agreement.

4. **Utilities and Services.** University shall provide maintenance and services to the Facility in accordance with its routine schedule and standards for the Facility. Licensee shall reimburse University for all additional maintenance and services provided at Licensee's request.

5. **Concessions/Novelties; Food; Beverage.**

5.1 Licensee shall not sell any concessions or novelties on or in the Facility or on any University property without an executed Sales Permit issued by University, which Permit University may grant or withhold in its sole discretion.

5.2 Food may be served on or in the Facility only with the permission of University, and, if required by University, a permit from University's Department of Environmental Health and Safety.

5.3 Licensee shall not sell, distribute, dispense, advertise or promote any non-alcoholic beverage (or permit any other to do the same) without University's written consent, which consent University may condition, grant or withhold in its sole discretion.

5.4 Licensee and/or its caterer may not serve or sell alcoholic beverages at the Facility, unless Licensee receives authorization from the University, containing such terms and conditions as University, in its sole discretion, deems advisable. Such authorization may be granted or withheld at University's sole discretion.

6. Alterations; Signs; Liens. Licensee shall not redecorate, change or alter the Facility, nor shall Licensee display any signs or advertising in or about the Facility, without the prior written consent of University, which consent University may grant or withhold in its sole discretion. Licensee shall not permit to accrue, and shall indemnify University against and hold University harmless from, any liens for labor or materials provided to Licensee, or claimed to have been so provided.

7. Personal Property. Licensee, not University, is responsible for loss of or damage to any personal property of Licensee, its guests, agents, employees or invitees, located within the Facility or on University property, before, during or after the term of the Agreement.

8. Indemnification. Licensee agrees to defend (with counsel reasonably acceptable to University), indemnify, and hold harmless University from and against all claims, actions, damages, judgments, fines, liabilities, and expenses (including attorney's and other professional fees) arising from or in connection with (i) Licensee's use of the Facility and other University property, except to the extent caused by the negligence or intentional misconduct of University; (ii) the negligent or wrongful acts of Licensee's employees, agents, vendors, contractors, or invitees; or (iii) Licensee's failure to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Agreement.

9. Insurance. At least thirty (30) days prior to the Event, Licensee shall provide University with a certificate of insurance or other acceptable evidence of insurance coverage as indicated below. If this Agreement is signed by Licensee fewer than thirty (30) days prior to the Event, Licensee shall submit such evidence of insurance upon the signing of this Agreement.

9.1. Check either (A) (B) or (C) below as applicable:

(A) Licensee's policy of Commercial General Liability Insurance with a minimum limit of \$1,000,000 per occurrence; or qualified self-insurance subject to approval by University.

(B) Proof that Licensee has purchased event liability insurance with a minimum limit of \$1,000,000 per occurrence. Licensee may purchase such insurance from the insurer of its choice, or at the following website address: <https://tulip.ajgrms.com> (a pass code will be provided if this option is selected).

- (C) State and other governmental agencies that are self-insured shall provide a letter stating that fact and the coverage limits for such insurance on departmental letterhead.

9.2 Workers' Compensation/Employers Liability, if applicable, to the extent required by law.

9.3 All insurance provided under paragraph 9.1(A) and 9.1(B) shall be written by insurance companies with an A.M. Best rating of A-VII or better and licensed and authorized to do business in the State of Minnesota and shall name the Regents of the University of Minnesota as an additional insured. The policies shall provide that the insurance coverage shall not be canceled, modified or non-renewed before the end of the term of this Agreement without written notice to University. Licensee shall maintain the insurance(s) described in this paragraph for the entire term of this Agreement.

10. Assignment. Licensee shall not assign its rights under this Agreement without University's prior written consent, which consent University may grant or withhold in its sole discretion.

11. Surrender. Licensee shall surrender possession of the Facility to University at the conclusion of the Event in the same good condition as on the date of possession by Licensee. Licensee shall reimburse University for any and all costs University incurs to repair any damage to the Facility or other University property or equipment arising out of or connected with Licensee's use of the Facility, unless such damage is caused solely by University, its officers, employees, agents or representatives.

12. Notices. 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 party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to University: University of Minnesota
c/o Real Estate Office
Attn.: Senior Real Estate Specialist
424 Donhowe Building
319-15th Avenue SE
Minneapolis, MN 55455-0199
Facsimile No.: (612) 624-6345
E-mail: reo@umn.edu

With a copy of
default notices to: University of Minnesota
Office of the General Counsel
Attn.: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006
Facsimile No.: (612) 626-9624
E-mail: contracts@mail.ogc.umn.edu

If to Licensee: Duluth East High School
Attn: Jerry Upton
301 N 40th Ave E.
Duluth, MN 55804
Facsimile No.:
E-mail:

13. License Only; Remedies. Licensee acknowledges that this Agreement represents a grant of a revocable license only, and not an easement or lease. Licensee shall pay to University all of University's damages, costs and fees, including attorneys' fees, caused by Licensee's failure to comply with the terms and conditions of this Agreement. In addition, if Licensee fails to comply with the terms and conditions of this Agreement, University shall be entitled to exercise all other legal and equitable remedies available to University.

14. Limitation of University Liability. IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. UNIVERSITY'S TOTAL LIABILITY FOR BREACH OF THIS AGREEMENT IS THE FEE PAYABLE BY LICENSEE AS SET FORTH IN PARAGRAPH 3 OR IN AN EXHIBIT TO THIS AGREEMENT.

15. Force Majeure. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, terrorist acts, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party.

16. Use of University Name or Logo. Licensee 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 University or the name of any representative of the University without the written permission of the University in each instance except for the limited purpose of identifying the location of the Event in advertising or other notices for the Event.

16.1 Licensee shall not use or alter University Marks in connection with the Event. Licensee agrees that the following disclaimer shall be prominently placed in all material related to promotion, publicity or advertising of the Event, whether print media, photo, video or web-based, in a font not smaller than the main text of the specific piece:

“The University of Minnesota is not endorsing or sponsoring the activities conducted by ISD 709 on the University of Minnesota campus. The relationship between the University of Minnesota and ISD 709 is solely that of licensor and licensee.”

16.2 Licensee’s failure to comply with this section shall give University the right to immediately terminate this Agreement and Licensee’s access to the Facilities.

17. Copyright Representation and Release. Licensee represents that copies of presentation materials Licensee provides to University, or directs University to copy and distribute to Attendees, and materials that Licensee will present by multimedia at the Event, will only be made from legal copies and that Licensee has the right to make this use of the presentation materials either because Licensee a) owns the copyright; b) has written permission of the copyright owner(s) for this use; c) reasonably believes each use to be fair use pursuant to 17 United State Code § 107, *Limitations on exclusive rights: Fair use*; or d) reasonably believes the material to be in the public domain. Licensee further represents that copyright notices have not been altered and that required attributions are shown. Licensee releases and will hold harmless University, its Regents, officers, employees and agents for copyright infringement arising from Licensee’s presentation materials.

18. Amendments. This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

19. Non-Waiver. No waiver by any party of a default or non-performance by the other party shall be deemed a waiver of any subsequent default or non-performance.

20. Governing Law; Forum. The laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be brought in the state courts of Minnesota.

21. Entire Agreement. This Agreement (including all exhibits, if any) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.

22. Exhibits. The terms and conditions of any and all exhibits attached to this Agreement are made a part of this Agreement as if fully set forth in this Agreement. To the extent that any of the terms and conditions of paragraphs 1 – 22 of this Agreement conflict with any of the terms and conditions of the attached Exhibit(s), the terms and conditions of the Exhibit(s) shall control. All capitalized terms in any Exhibit(s) that are not specifically defined in such Exhibit(s) shall have the meanings given them in this Agreement.

IN WITNESS WHEREOF, University and Licensee have executed this Agreement as of the date set forth above.

Regents of the University of Minnesota

Duluth East High School

By: William E. Payne
Name: William Payne
Title: Dean, UMD School of Fine Arts
Date: 4/7/15

By: Bill Hanson
Name: ~~Jerry Upton~~ Bill HANSON
Title: ~~Choir Director~~ CFO
Date: 5/15/15



**SAFETY OF MINORS ADDENDUM
TO
FACILITY USE AGREEMENT**

THIS SAFETY OF MINORS ADDENDUM is part of the Facility Use Agreement (the "**Agreement**") entered into between University and Licensee dated 03-25-2015. In the event of any conflict between the provisions of this Addendum and other provisions of the Agreement, the provisions of this Addendum shall control.

1. Supervision; Safety and Protection of Minors. Licensee shall be responsible for (i) supervising minor attendees while anywhere on University property; and (ii) providing qualified, properly trained and responsible adult supervisors in compliance with University's Safety of Minors policy and the rules, regulations and procedures for use of the Facility, throughout the entire term of this Agreement.

1.1 Licensee represents and certifies to University that:

- Licensee's employees, chaperones, counselors, volunteers, and any others interacting with minor attendees (and anyone who supervises such persons) (collectively "**Licensee Parties**") have passed a criminal background check;
- Licensee Parties have completed a training program on child safety and protection, which training program specifically incorporates the mandatory notice requirements for maltreatment of minors set forth in Minn. Stat. §626.556; and
- Licensee maintains a readily-accessible list of parent and/or emergency contacts for minor attendees.

1.2 University reserves the right to require Licensee to provide evidence of Licensee's compliance with the requirements of this Section 1.

2. Consent Forms. Licensee shall obtain a consent and waiver of liability form for each minor attending the Event, which authorizes Licensee's employees or staff to take ill or injured attendees for medical treatment. Forms shall be signed by the parent or legal guardian of any minor attending the Event. Completed forms shall be retained by Licensee and made available to University upon request.

3. Reporting of Incidents/Accidents. Licensee shall submit a University-approved injury report (Personal Injury Accident Report) to the Facility manager within twenty-four (24)-hours of an incident that could give rise to University liability. All incidents shall be reported regardless of the severity or type of injury. The filing of an injury report does not shift responsibility for claims from Licensee to University.

**EXHIBIT A to
STANDARD USE/LICENSE AGREEMENT
WEBER MUSIC HALL**

The University and the Licensee further agree as follows:

1. Licensee.

- | | |
|------------------------------|--|
| 1.1 Title of event: | East High School Choir Concert and Rehearsal |
| 1.2 Sponsoring organization: | East High School |
| 1.3 Contact person: | Jerry Upton |
| 1.4 Mailing address: | |
| 1.5 City/State: | Duluth, MN |
| 1.6 Telephone: | 218-310-4309 |
| 1.7 Email: | |

2. Term.

Date: 05-28-2015	Start Time: 4:00 pm	Stop Time: 10:00 pm	Purpose: CN	Event Time: 7:00 pm
Date:	Start Time:	Stop Time:	Purpose:	Event Time:
Date:	Start Time:	Stop Time:	Purpose:	Event Time:
Date:	Start Time:	Stop Time:	Purpose:	Event Time:
Date:	Start Time:	Stop Time:	Purpose:	Event Time:

3. Fee.

University agrees to provide to Licensee the Facility, equipment and/or services described below at the Licensee's sole cost and expense. Licensee shall use such equipment and/or services at its own risk and shall reimburse University for the cost of repairs necessitated by Licensee's misuse or abuse.

Facility charge.

	Quantity (in days)	Cost	Total
Main hall	1/3	175.00	175.00
Warmup room			
Green room			
Dressing room			

Technical charge.

	Quantity	Cost	Total
Sound system without operator	1mic		NC
Sound system with operator 0-6 inputs			
Sound system with operator 7-24 inputs			
Two track recording	X		25.00
24 track recording			
Performance lighting without operator	X		25.00
Performance lighting with operator			
Piano			
Staging			
Risers	As needed, set up by licensee		
Conductor's podium			
Speaker's podium			
Other: Classrooms			

**EXHIBIT A to
STANDARD USE/LICENSE AGREEMENT
WEBER MUSIC HALL**

Other cost.

	Quantity (in hours)	Cost	Total
Weber Hall staff	4	\$15.00/hr	\$60.00
Technical staff		\$15.00/hr	\$
Custodial fee			\$

FACILITY CHARGES	\$175.00
TECHNICAL CHARGES	\$50.00
OTHER COSTS	\$60.00
TOTAL CHARGES	\$285.00

The Licensee shall pay the University a total fee of \$285.00.

The fee is due as follows:

Proof of insurance due on or before 4-28-2015.

A balance of \$285.00 due on or before 5-28-2015.

4. User obligations.

4.1 The licensee shall, in addition to its other obligations described in this Agreement, provide the following:

Box office personnel	X	
House management	X	
Ushers	X	At least 4 ushers must be provided for each event.
Setup and strike	X	
Other	<input type="checkbox"/>	

5. Additional Provisions.

5.1 The University shall, in addition to its other obligations described in this Agreement provide the following: no others.

East High School
Initials _____

WCH

Weber Music Hall
Initials _____

DJS

AGREEMENT

THIS AGREEMENT, made and entered into this 18th day of May, 2015, by and between Independent School District #709, a public corporation, hereinafter called District, and Aliese Hoesel, an independent contractor, hereinafter called Contractor.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Contractor will provide programs or services for the District at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of June 8th, 2015, and shall remain in effect until June 30th 2015, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.
2. **Performance.** Produce the Summer Hillside Youth Theatre Program for Myers-Wilkins School.
3. **Background Check .**
Contractor must provide signed permission form for the Myers-Wilkins Community School Collaborative to conduct a background check. The background check will be completed prior to the beginning of the Summer session Theatre Program at Myers-Wilkins School.
4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$3,045. Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.
5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:
 - a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
 - b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.
6. **Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.
7. **Ownership of Materials.** The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, or any portion thereof, to its own use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.
8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this

Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, workers compensations, and any other taxes or business license fees as required.

9. **Indemnity and defense of the District.** Contractor hereby agrees to defend, indemnify and hold the District harmless from all claims relating to its work pursuant to this Agreement.

In the event that Contractor breaches its obligation to defend, indemnify and hold the District harmless, then in addition to its other damages the District shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail care of Bill Hanson, ISD 709, Duluth Public Schools, 215 North 1st Avenue East, Duluth, MN 55802. All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail:

11. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of the District.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

16. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to "data on individuals"; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

Workers' Compensation Insurance: Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide

Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

Commercial General Liability: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

Alize Hoef
Contractor

~~XXXXXXXXXXXX~~
SSN/ Tax Identification Number

5/18/15
Date

Amy
Myers-Wilkins Principal

5/20/15
Date

C.B. Leypel
Director of Special Education / Title 1 Supervisor

5/22/15
Date

W. Hanson
Director of Business Service / Superintendent of Schools

5/26/15
Date

nhufay

5/26/15

FACILITIES USE AGREEMENT

This Agreement is made by and between **DULUTH FRIENDS OF TENNIS, INC.**, (hereinafter called "**Grantor**") and the **INDEPENDENT SCHOOL DISTRICT NO. 709**, d/b/a **DULUTH EAST HIGH SCHOOL** (hereinafter called "**User**").

RECITALS

WHEREAS, Grantor manages and operates the Longview Tennis Club and tennis courts located at 326 N. 25th Avenue East, Duluth, Minnesota; and

WHEREAS, User desires to use the facilities of Longview Tennis Club for its girls' and boys' high school tennis team programs;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth herein, the parties hereto, intending to be legally bound, agree as follows:

1.0 GRANT OF RIGHT TO USE REAL PROPERTY; TERM; COMPENSATION

1.1 **Lease of Real Property.** Grantor hereby grants to User the right to use the Longview Tennis Clubhouse and tennis courts on the terms and conditions contained herein. Use shall include the clubhouse, changing rooms and rest rooms only when the city has turned on the water and the building is staffed by Duluth Friends of Tennis staff. Use of the facilities shall include nets, score cards and squeegees and the ball storage room, provided the use complies with all rules and regulations of Grantor. User agrees to notify its players and any visiting teams that locker room and rest room facilities are not available for any practices, scrimmages or meets held prior to the date on which the city turns on the water to the clubhouse and the building is staffed by Duluth Friends of Tennis staff.

1.2 **Term.** The initial term of this agreement shall be ~~March~~ ^{MAY} 18, 2015 through December 31, 1, 2015. Thereafter, the agreement shall automatically renew for additional calendar years unless sooner terminated in the manner provided for herein. This contract terminates and supersedes any prior agreements between the parties.

1.3 **User Fees.** To compensate Grantor for the use of the facilities and equipment and its expenses in scheduling User's time and performing other tasks required to carry out the terms of this agreement, User shall pay an annual fee of five hundred dollars (\$500) per boys' team and five hundred dollars (\$500) per girls' team. Each year Grantor shall review the fee and determine the Use Fees for the next year. The Use Fee set by Grantor shall be due and shall be paid not later than the first day of March in each year for boys' teams and no later than the first day of August in each year for girls' teams. In addition to the annual use fee, User shall at the commencement of the Initial Term, pay to Grantor a security deposit as provided in paragraph 1.7. In the event User fails to fully perform its obligations under this agreement, the security deposit shall be forfeited and Grantor

may apply the security deposit toward its actual costs in obtaining performance by its own employees, agents, representatives or third parties.

1.4 **Hours.** User shall have the right to use the facilities only on such dates and at such times as have been agreed to in writing by Grantor. Annually, prior to the beginning of the academic year, User shall notify Grantor of the dates and times during which User desires to use the facilities. Grantor shall promptly review the requested times and notify User in writing of the times granted. The parties understand that User's use of the facilities shall be subject to the programs of Grantor, including United States Tennis Association league and junior tennis. A written schedule shall be prepared and User shall not deviate from the written schedule without the prior written consent of Grantor's Board chair.

1.5 **Alterations and Improvements.** User shall not make any improvements, alterations, additions or installations on or to the premises.

1.6 **Condition of Premises: Surrender.** User agrees to accept the premises in an "as is" condition. The use of the premises by User shall conclusively establish that the premises meet with User's approval. Upon termination of this agreement, User shall have no rights whatsoever to use the premises and shall peaceably surrender possession of the premises which shall be in a condition as good as or better than the condition in which the premises were in upon commencement of this agreement, ordinary wear and tear excepted.

1.7 **Security and Cleaning Deposit.** To insure that User has not damaged Grantor's property and has thoroughly cleaned the premises after use, User shall pay to Grantor a security and cleaning deposit of \$500. This deposit shall be held by Grantor and shall be used to compensate Grantor for any costs incurred to repair damages, replace damaged property or clean the premises after the User's use of the premises. If the deposit is insufficient to fully compensate Grantor, User shall pay the balance due within thirty (30) days of a written demand. The security deposit shall be paid not later than ten days after this agreement is signed and held by Grantor to insure User's full performance of its obligations under this agreement. So long as the Agreement remains in effect, if any portion of the deposit is used by Grantor to repair damages or for cleaning, User shall replenish and restore the security fund to \$500 within ten days of receipt of notice from Grantor that an additional security deposit payment is due. Upon termination of the Agreement, provided User has fully performed its obligations under this agreement, the portion of the security deposit not used by Grantor to repair damages caused by User or to clean the premises after User's use shall be refunded to User.

2.0 **TERMS AND CONDITIONS OF USE.**

2.1 **Key Access.** User shall be provided a key to access only the clubhouse ball storage area and grounds. User shall not duplicate any keys provided to User. User shall be responsible for safe-keeping of the keys and shall return the keys to Grantor upon termination of the lease. Whenever User has completed a session, unless the clubhouse is

staffed by DFOT, before leaving the premises User shall ensure that all doors and gates for which User has keys (except the gate immediately north of the clubhouse) are locked.

2.2 **Nets and Windscreens.** User shall at all times take special care to avoid damage to nets, net posts, windscreens or any other property of Grantor.

2.3 **Use of Personal Property.** In the event User uses any personal property of Grantor, at the conclusion of each session of use, User shall return the personal property to its designated storage area.

2.4 **Respect and Care of Tennis Court, Grounds and Personal Property.** User shall ensure and be responsible for the conduct of all persons permitted by User to enter the premises during the times User has scheduled use of the premises. Accordingly, User shall be responsible for and shall ensure that all garbage, debris and refuse generated by User's invitees shall be picked up and placed in proper garbage receptacles; that all balls used by User's invitees shall be picked up and returned to their proper storage place and that the changing rooms and bathrooms are thoroughly cleaned after each use. User shall ensure that its invitees treat the Grantor's property with respect and shall not cause or permit to occur any vandalism or damage to the premises or any personal property of Grantor, including, but not limited to, tennis nets, net posts, fences, gates, windscreens, bleachers, walking paths, patios, picnic tables, benches, chairs, shrubs, flowers, clubhouse and sidewalks. In the event of any such damage, User shall promptly report in writing to Grantor the nature of the damage, the time when the damage occurred, the extent of the damage and the identity of the persons who caused the damage. User shall take prompt and reasonable steps to remove from the premises persons who caused such damage and prevent their re-entry to the premises unless and until permitted by Grantor. To prevent damage to courts, under no circumstances will User or any person acting for or on behalf of User shovel or use any mechanical device to remove snow from the courts.

2.5 **Personal Behavior.** User shall be responsible for and shall ensure that all of User's invitees conduct themselves in a decent, appropriate and respectful manner while they are on the Grantor's property. Behavior shall comply with the United States Tennis Association rules of court and the code of behavior for students participating in Minnesota high school varsity sports programs. User shall promptly remove from the premises and appropriately discipline invitees engaged in inappropriate behavior. By way of illustration and without intending to be a complete list, inappropriate behavior includes profanity, swearing, disrespect of others, insubordination, intentionally causing injury to another person, damage to property, intentionally hitting balls into the alley or street and use of alcohol, tobacco, illegal drugs or prescription drugs not prescribed for the user.

2.6 **Areas Excluded.** User and its invitees shall have no right to access and will not allow its invitees to enter the main floor or use the fireplace of the clubhouse unless the building is staffed by Duluth Friends of Tennis. User and its invitees shall not be

permitted to go behind the service desk on the main floor of the clubhouse at any time. User and its invitees shall not use bathrooms until the city has turned on the water.

3.0 **INSURANCE AND INDEMNIFICATION.**

3.1 **Grantor's Insurance.** Grantor agrees that it shall at all times during the term of this agreement have and keep in force, directly or through the City of Duluth, (i) comprehensive general liability insurance covering Grantor and each and every one of its employees, agents, or servants in an amount not less than \$1,000,000 per occurrence, and (ii) Workers' Compensation insurance coverage for all of its employees in the minimum amounts required by Minnesota law.

3.2 **User's Insurance.** User agrees that it shall at all times during the term of this agreement have and keep in force, at its sole expense (i) comprehensive general liability insurance covering User and each and every one of its employees, agents, or servants in an amount not less than \$1,000,000 per occurrence, and (ii) Workers' Compensation insurance coverage for all of its employees in the minimum amounts required by Minnesota law. User shall furnish evidence of all such insurance coverage to Grantor upon request.

3.3 **Waiver of Subrogation.** Neither Grantor nor User shall be liable to the other for loss arising out of damage to or destruction of the premises or the building or improvements of which the premises are a part or with which they are connected, or the contents of any thereof, when such loss is caused by any of the perils which are or to be included within or insured against by any insurance policies issued for the benefit of either party or required under this agreement. All such claims for any and all loss, however caused, hereby are waived. Such absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either User or Grantor or by any of their respective agents, servants or employees. It is the intention and agreement of User and Grantor that the payments made hereunder have been fixed in contemplation that each party shall fully provide its own insurance protection at its own expense, and that each party shall look to its respective insurance carriers for reimbursement of any such loss, and further, that the insurance carriers involved shall not be entitled to subrogation under any circumstances against any party to this lease.

3.4 **Indemnification.** User shall indemnify, defend, and hold Grantor harmless against any suit or claim for damage or injury sustained during the term of this agreement by any person as a consequence of any act, omission, or negligence of User or its students, employees or agents. Grantor shall indemnify, defend, and hold User harmless against any suit or claim for damage or injury sustained during the term of this agreement by any person as a consequence of any act, omission or negligence of Grantor or its volunteers, employees or agents. The parties agree that the terms of Sections 3.3 and 3.4 shall survive any termination of this agreement.

4.0 **RELATIONSHIP OF THE PARTIES.** The relationship of Grantor and its employees, agents and servants to User and its employees, agents and servants shall be that of landlord and tenant.

5.0 **TERM OF GRANT AND TERMINATION OF AGREEMENT.**

5.1 **Term.** This agreement shall have an initial term commencing on ~~March~~ ^{MAY} 18, 2015 and ending on December 31, 2015. Unless either party gives, no later than sixty (60) days before the end of the Initial Term, written notice of its intent to not renew this agreement, this agreement shall be automatically renewed and extended at the end of the Initial Term for successive additional terms of one calendar year, until terminated in the manner set forth herein.

5.2 **Termination by User.** User may, at its option, cancel and terminate this agreement upon written notice to Grantor as follows:

5.2.1 For cause, in the event Grantor fails to cure its breach of any material term or condition of this agreement; provided, that User shall first serve thirty (30) days prior written notice to Grantor of such breach which describes the breach in reasonable detail;

5.2.2 Without cause, after expiration of the Initial Term, by providing Grantor with sixty (60) days written notice of termination.

5.3 **Termination by Grantor.** Grantor may, at its option, cancel and terminate this agreement upon written notice to User as follows:

5.3.1 For cause, in the event User fails to cure its breach of any material term or condition of this agreement; provided, that Grantor shall first serve ten (10) days prior written notice to User of such breach which describes the breach in reasonable detail;

5.3.2 Without cause, after the expiration of the Initial Term, by providing User with sixty (60) days written notice of termination.

5.4 **Effect of Termination.** Upon termination of this agreement as herein provided, neither party shall have any further obligation hereunder except for obligations accruing prior to the date of termination of this agreement and any obligations, promises or covenants contained herein that are expressly, or by operation of law, made to extend beyond the term of this agreement.

6.0 **MISCELLANEOUS**

6.1 **Relationship of the Parties.** Nothing contained in this agreement shall be construed to create an employer/employee relationship, joint venture, partnership, or similar relationship between the parties.

6.2 **Entire Agreement; Amendment.** This agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements relating to the same subject matter. This agreement may be amended only in a writing signed by each of the parties.

6.3 **Governing Law.** This agreement shall be construed according to the laws of the State of Minnesota.

6.4 **Severability.** In the event any provision or provisions of this agreement are declared invalid, the remainder of this agreement shall remain in full force and effect as if the invalid provision or provisions had never been a part of this agreement.

6.5 **No Waiver.** The failure of either party to give notice of any default by the other party hereunder or to enforce any of such party's rights hereunder, no matter how long such failure may continue, shall never constitute a waiver of such party's rights hereunder, including the right to seek monetary damages for a default. The remedies provided hereunder are not exclusive and the exercise of one remedy shall not be deemed a waiver of any other available remedy, either legal or equitable. No waiver of any provision hereof shall constitute a waiver of any other provision hereof, nor a waiver of the same provision at any subsequent time.

6.6 **Reimbursement of Expenses for Enforcement.** In the event legal action is required to seek specific performance of this agreement or to recover damages for breach of this agreement, the prevailing party shall be entitled to recover its costs and attorneys' fees.

6.7 **Authority.** The Parties represent and warrant that the agreement has been signed by a representative of the party with full authority and authorization to bind the party.

6.8 **No Third Party Beneficiaries.** Nothing in this agreement, express or implied, is intended to confer any rights or remedies under, or by reason of, this agreement on any person or entities other than the signatories hereto.

6.9 **Notices.** Any notices required to be given hereunder shall be in writing and may be either delivered personally or sent by first class mail, postage prepaid, return receipt requested, and properly addressed to the address of the other Party stated below. Notices shall be deemed received on the date of receipt verification provided by the U.S. Postal Service. Notices shall be addressed as follows:

Addresses for notice:

If to User, to:

Shawn Roed
Duluth East High School
301 North 40th Avenue East
Duluth, MN 55812


If to Grantor, to:

Duluth Friends of Tennis
P.O. Box 3426
Duluth, MN 55803

6.10 **Non-Assignment.** No party may assign any of its rights or responsibilities under this agreement without the prior written consent of the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

DULUTH FRIENDS OF TENNIS, INC. INDEPENDENT SCHOOL DISTRICT, #709

By: 

Its: President

By: 

Its: CFO

**UDAC
AND
Duluth Public Schools**

AGREEMENT FOR PURCHASE OF TRANSITION SERVICES

The following is an Agreement between *UDAC* and Duluth Public Schools. This Agreement shall be effective *May 1, 2015 – June 30th 2015*.

I. UDAC Agrees:

- A. To provide transition services for two students up to 2 hours for each student.
- B. Not to exceed 5 hours of Transition Services

II. Duluth Public Schools Agrees:

- A. To pay for the Transitions Services at a Rate of \$10.00 per hour
- B. To remit to UDAC, upon receipt yearly invoice, the amount due and owing for the services provided.
- C. The Director of Special Education at Duluth Public Schools shall supervise the contracted services to ensure that services are provided in accordance with students IEPs.

ADDITIONAL CONDITIONS

1. The Duluth Public Schools and UDAC Schools will comply with all state and federal reporting requirements. The Duluth Public Schools and UDAC will comply with MN Government Data Practices Act, Minnesota Statutes Chapter 13, as applied to all data.
2. UDAC will consent to disclosure of its social security number, federal employer tax ID number and/or Minnesota Tax ID number already provided to the district.
3. The numbers may be used in the enforcement of federal and state laws resulting in action requiring the contractor to file tax returns, pay delinquent taxes or other state liabilities.
4. Services must be provided to the satisfaction of Duluth Public Schools and not in violation of any federal, state or local laws, ordinances, rules and regulations. UDAC will not be paid for work considered in violation of any of those laws or if work is found unsatisfactory.

CANCELLATION

This agreement may be cancelled by Duluth Public Schools or UDAC at any time, without cause, upon 30 days written notice. In the event of such a cancellation, the contractor shall be entitled to payment, determined on a pro rata basis, for work performed to D Schools.

AMENDMENTS

Amendments must be in writing and indicate approval by both parties to the amendex

STATE AUDIT

The books, records, documents and accounting procedures of the contractor and its employees relevant to this agreement must be made available by the STATE for a minimum of 6 months from the end of the agreement.

LIABILITY

The contractor agrees to indemnify, save and hold the district/agency, its employees and agents from any and all claims or causes of action, including attorney's fees incurred arising from the performance of this agreement by the contractor and its agents or employees.

Agreed to by:

UDAC

ISD 709

By Ann Dahl

By WCHanson

Title Director of Vocational Services

Title CFD

Date 5/26/15

Date 5/28/15

Memorandum

To: Bill Hanson

From: Kerry M. Leider



Date: May 5, 2015

Re: Quote #4210– Furnish and Install Play Field Fence at Myers-Wilkins Elementary School – Keller Fence Company North, Inc.

Attached are two (2) copies of the Agreement between Independent School District #709 and Keller Fence Company North, Inc. to provide all labor, material, equipment and services to furnish and install the play field fence at Myers-Wilkins Elementary School per Quote #4210. The total estimated cost of this service is \$4,780.00.

I am recommending approval of the agreement with Keller Fence Company North, Inc. After review and if you concur, please sign both copies of the Agreement and return them to the Facilities Management office for processing.

Attachments

AGREEMENT

Revised 6/24/14

THIS AGREEMENT, made and entered into this 5th day of May 2015, by and between Independent School District No. 709, a public corporation, hereinafter called ISD 709, and Keller Fence Company North Inc., an independent contractor, hereinafter called Contractor.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Contractor will provide programs or services for ISD 709 at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of May 5, 2015 and shall remain in effect until project is complete unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.
2. **Performance.** *Provide all labor, material, equipment and services necessary to furnish and install the fence at Myers-Wilkins Elementary School per Quote #4210*
3. **Contract Documents.** It is understood that this Contract consists of the following:
 1. Printed Memoranda of Agreement and Title Sheet;
 2. Advertisement for Quotes, Contractor's response, and Tabulation;
 3. Contractors Insurance Policy;
 4. Supplementary Conditions and Insurance Requirements; and
 5. Any other documents identified by ISD 709.
4. **Background Check .** *(N/A)*
5. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, ISD 709 hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$4,780.00. Contractors are required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless the TIN is provided.
6. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:
 - a. Payment shall be made by ISD 709 within 30 days of submission of a proper invoice by the Contractor;
 - b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.
7. **Propriety of Expenses.** The fact that ISD 709 has reimbursed Contractor for any expense claimed by Contractor shall not preclude ISD 709 from questioning the propriety of any such item. ISD 709 reserves the right to offset any overpayment or disallowance of any

item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies ISD 709 may have to recover funds expended by Contractor for disallowed costs, or to seek other damages.

8. **Ownership of Materials.** ISD 709 reserves the rights to reproduce the documents that are the subject of the Contract, in any form, in any fashion, or appropriate the contents of the documents, or any portion thereof, to its own use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.

9. **Independent Contractor.** Both ISD 709 and Contractor agree that the Contractor will act as an independent contractor in the performance of its duties under this Agreement and is not an employee of ISD 709. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, workers compensations, and any other taxes or business license fees as required.

10. **Indemnity and defense of ISD 709.** Contractor shall indemnify, hold harmless and defend ISD709, its employees, agents, successors and assigns, and their respective shareholders, directors, officers, employees and agents against and in respect to any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities, general losses, costs and reasonable attorneys' fees, court costs and litigation expenses (collectively "Liabilities") which may arise out of, relate to or result from any act or omission of the Contractor.

In the event that Contractor breaches its obligation to defend, indemnify and hold ISD 709 harmless, then in addition to its other damages ISD 709 shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

11. **Notices.** All notices to be given by Contractor to ISD 709 shall be deemed to have been given by depositing the same in writing in the United States Mail care of Kerry M. Leider, ISD 709, Duluth Public Schools, 215 North 1st Avenue East, Duluth, MN 55802. All notices to be given by ISD 709 to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to: Keller Fence Company North, Inc., P.O. Box 781, Grand Rapids, MN 55744

12. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of ISD 709.

13. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

14. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in

accordance with the laws of the State of Minnesota without regard to conflict of laws considerations.

15. **Compliance with Laws.** The Contractor shall comply with all governing laws, rules and regulations, whether federal, state, local or those of ISD 709. Those governing laws include but are not limited to Minnesota Statute 16C.05 (5) (formerly 1998 Minnesota Laws Ch. 386, Art. 1 Section 6) which Statute presently provides that the books, records, documents and accounting procedures and practices of the vendor or other party, that are relevant to the Contractor transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. The other provisions of the Statute also apply.

The Contractor recognizes that, to the extent that competitive bidding requirements apply to this Contract that those requirements apply to the award and performance of this Contract.

The Regulations of ISD 709 are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

16. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.

17. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon 30 days written notice to the other party as provided for in this Agreement.

18. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to "data on individuals"; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

19. **Insurance.** Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

20. **Workers' Compensation Insurance:** Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

21. **Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

ISD 709 shall be named an additional insured under said policy and proof of this insurance shall be provided to ISD 709. This insurance shall be in at least the amount of \$1,500,000.

22. **Bonding.** Contractor shall provide such Payment and Performance Bonds as may be required, if any.

23. **Representatives of ISD 709.** The Contractor shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

<u>ISD 709 Employee</u>	<u>Position</u>
William Hanson	Director of Business Services

The Consultant shall report to the following persons regarding its work pursuant to this Agreement, or the designees:

<u>ISD 709 Employee</u>	<u>Position</u>
David Spooner	Supervisor of Maintenance and Construction

24. **Protection of ISD 709.** To the extent that work by the Contractor or others on behalf of ISD 709 is to be planned, conducted, supervised or reviewed by the Contractor, the Contractor shall advise ISD 709 if such work:

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;
- c. should be performed in a different manner and whether other work should be performed;
- d. requires ISD 709 to be advised of any other facts or opinions regarding that work.

In all respects, the Contractor shall represent the interests of ISD 709 and act to protect those interests and endeavor to guard ISD 709 against defects, deficiencies and omissions in the performance of the work.

25. **Negotiation, Mediation and Arbitration.** Any disputes between the parties shall first be negotiated. If the parties are not successful in negotiation, they then shall subject the dispute to mediation. If mediation is not successful, then any disputes between ISD 709 and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of ISD 709, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Contractor and any architects, contractors, subcontractors, material men and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedures for ISD 709 courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

INDEPENDENT SCHOOL DISTRICT NO. 709

KELLER FENCE COMPANY
NORTH, INC.

Program Director

W. C. Hanson

CFO/Executive Director of Business Services

[Signature]

By

PRESIDENT

Title

41-1799840

Taxpayer Identification Number

Memorandum

To: Bill Hanson

From: Kerry M. Leider



Date: May 14, 2015

Re: Furnish and Install 128 Lineal Feet of Chainlink Fence at Lester Park Elementary School – Keller Fence Company North, Inc.

Attached are two (2) copies of the Proposal between Independent School District #709 and Keller Fence Company North, Inc. to furnish and install 128 Lineal Feet of Chainlink Fencing at Lester Park Elementary School to keep children out of the parking lot area. The total estimated low cost of this service is \$3,425.00 and is being paid by the ECFE program.

I am recommending approval of the agreement with Keller Fence Company North, Inc. After review and if you concur, please sign both copies of the Agreement and return them to the Facilities Management office for processing.

Attachments



PO Box 781 * Grand Rapids, MN 55744-0781
(218) 328-5504 * 1-800-241-2309 * Fax: (218) 328-5509

PROPOSAL

To: David Spooner
Supervisor of Maint & Const
Duluth Schools

Date: April 15, 2015
PROPOSAL# 0415064
F.O.B. Job Site
Terms: Due Upon Completion

Regarding: Lester Park Elementary

Keller Fence Company-North proposes to furnish and install the following:

128 LF of 4' high 9 gauge aluminized chainlink fence, including 1 each 3' wide walk gate.
Materials are as follows: 2 1/2" X 8' Schedule 40 full weight terminal posts, 2" X 8' Schedule 40 full weight line posts, 1 5/8" Schedule 40 full weight top and bottom rails. All posts driven. Gate posts shall have anti-spin plates below grade. Includes Industrial Gate hardware.
\$ 2,825.00

Add 1 5/8" Full Weight bottom rail \$ 600.00

DUE TO THE UNPREDICTABLE WEATHER THIS LATE IN THE YEAR, KELLER FENCE COMPANY CANNOT GUARANTEE THAT THIS PROJECT, IF AWARDED COULD BE COMPLETED THIS YEAR.

The above quotation is good for a period of ten (10) days from the date of this proposal. Keller Fence Company -North appreciates the opportunity to quote on this project and hope it merits your favorable review. If you have any questions or need additional information do not hesitate to call us at the above number.

PROPOSAL ACCEPTED BY
W. C. Harrison
Date: 5/15/15
PURCHASE ORDER #

Sincerely,
Scott Windorski
Scott Windorski
Keller Fence Company - North, Inc.

Memorandum

To: Bill Hanson

From: Kerry M. Leider



Date: May 19, 2015

Re: Install Additional Hardware and Program the Locks for the Access Control System at Historic Old Central High School – Johnson Controls

Attached are two (2) copies of the Agreement between Independent School District #709 and Johnson Controls to install additional hardware and program the locks for the access control system at HOCHS. The total estimated cost of this service is \$8,853.48.

I am recommending approval of the agreement with Johnson Controls. After review and if you concur, please sign both copies of the Agreement and return them to the Facilities Management office for processing.

Attachments





Duluth MN Common Branch - 0N51
 4627 AIRPARK BLVD
 DULUTH MN 55811-5750
 PH: (866) 211 3536
 FAX: (218) 727 7945

Proposal

TO: INDEPENDENT SCHOOL DISTRICT
 709
 215 N 1ST AVE E
 DULUTH, MN 55802

Date: 1/26/2015

Quote Ref: 1-86UABV8
 Project Name: Duluth Historic Old Central Security Upgrade
 Site: DULUTH INDEPENDENT SCHOOL
 DISTRICT 709
 730 E CENTRAL ENTRANCE
 DULUTH, MN 55811-15578

ATTN: David Spooner

We propose to furnish the materials and/or perform the work below for the net price of: \$8,853.48

For the above price this proposal includes:

1. 1 PIM 400
2. 1 Mercury Board
3. 2 Power Supplies
4. 2 Antennas
5. Programming & Project supervision

This proposal DOES NOT include:

1. Labor or material not specifically described above is excluded from this proposal.
2. Unless otherwise stated, any and all overtime labor is excluded from this proposal.
3. Applicable taxes or special freight charges are excluded from this proposal.
4. High or low voltage electrical installation, network cabling or installation
5. Additional product licensing beyond P2000 integration.
6. Additional antennas w/ power packs will be billed out at state contract price of \$1,501.55

Additional Notes:

1. Estimate built on state contract number S-813(5)
2. Rates are guaranteed to April 5th 2015, any rate increases after that occur after April 5th 2015 are subject to State contract pricing.

Important: This proposal incorporates by reference the Terms and Conditions attached

This proposal is hereby accepted and Johnson Controls is authorized to proceed with the work, subject to credit approval by Johnson Controls, Inc. Milwaukee, WI.

This proposal is valid through: 4/05/2015

DULUTH INDEPENDENT SCHOOL DISTRICT 709

Signature: *Bill Hanson*
 Name: Bill Hanson
 Title: CFO
 Date: _____
 PO: _____

Johnson Controls

Signature: *Nathaniel Oppen*
 Name: Nathaniel Oppen
 Title: SMA
 Date: 4/05/15



(IMPORTANT): This proposal incorporates by reference the terms and conditions which are attached to this document. All work is to be performed Monday through Friday during normal JCI business hours unless otherwise noted. This proposal, or any accepted alternates, are hereby accepted and Johnson Controls is authorized to proceed with the work; subject, however, to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin

TERMS AND CONDITIONS

By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

1. SCOPE OF WORK. This proposal is based upon the use of straight time labor only. Plastering, patching, and painting are excluded. In-line duct and piping devices, including, but not limited to valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson, shall be distributed and installed by others under Johnson's supervision but at no additional cost to Johnson. Purchaser agrees to provide Johnson with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. Johnson agrees to keep the job site clean of debris arising out of its own operations. Purchaser shall not back charge Johnson for any costs or expenses without Johnson's written consent. Unless specifically noted in the statement of the scope of work or services undertaken by JCI under this agreement, JCI's obligations under this agreement expressly exclude any language or provision of the agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by JCI shall not operate to compel JCI to perform any work relating to Hazards without JCI's express written consent.

2. INVOICE AND PAYMENTS. Johnson may invoice Purchaser monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Purchaser shall pay Johnson at the time purchaser signs this agreement an advance payment equal to 10% of the contract price, which advance payment shall be credited against the final payment (but not any progress payment) due here in under and purchaser Johnson additional amounts invoiced upon receipt of the invoice. Waivers of lien will agree to pay be furnished upon request, as the work progresses, to the extent payments are received. If Johnson's invoice is not paid within 30 days of its issuance, it is delinquent.

3. MATERIALS. If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of Johnson, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, Johnson shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.

4. EQUIPMENT WARRANTY. Johnson Controls, Inc (JCI) warrants that equipment manufactured or labeled by Johnson Controls, Inc. shall be free from defects in material and workmanship arising from normal usage for a period of one year. Only if JCI installs or furnishes a piece of equipment under this Agreement, and that equipment is covered by a warranty from a manufacturer other than JCI, JCI will transfer the benefits of that manufacturer's warranty to Customer. All transportation charges incurred in connection with the warranty for equipment and/or materials not installed by JCI shall be borne by Customer. These warranties shall not extend to any equipment that has been abused, altered, misused or repaired by Customer or third parties without the supervision of and prior written approval of JCI, or if JCI serial numbers or warranty date decals have been removed or altered. Customer must promptly report any failure of the equipment to JCI in writing.

5. LABOR WARRANTY. Johnson Controls, Inc. (JCI) warrants its workmanship or that of its agents (Technicians) in relation to installation of equipment for a period of ninety (90) days from date of installation. Customer shall bear all labor costs associated with replacement of failed equipment still under JCI's equipment warranty or the original manufacturer's warranty, but outside the terms of this express labor warranty. All warranty labor shall be executed on normal business days during JCI normal business hours. These warranties do not extend to any equipment which has been repaired by others, abused, altered, or misused in any way, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. UNDER NO CIRCUMSTANCES SHALL JCI BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO ANY DEFECT IN MATERIAL OR WORKMANSHIP OF EQUIPMENT OR THE PERFORMANCE OF SERVICES.

6. LIABILITY. Johnson shall not be liable for any special, indirect, or consequential damages arising in any manner from the equipment or material furnished or the work performed pursuant to this agreement.

7. TAXES. The price of this proposal does not include duties, sales, use, excise, or other taxes, unless required by federal, state, or local law. Purchaser shall pay, in addition to the stated price, all taxes not legally required to be paid by Johnson or, alternatively, shall provide Johnson with acceptable tax exemption certificates. Johnson shall provide purchaser with any tax payment certificate upon request and after completion and acceptance of the work.

8. DELAYS. Johnson shall not be liable for any delay in the performance of the work resulting from or attributed to acts of circumstance beyond Johnson's control, including but not limited to; acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner, or other Contractors or delays caused by suppliers or subcontractors of Johnson, etc.

9. **COMPLIANCE WITH LAWS.** Johnson shall comply with all applicable federal, state, and local laws and regulations, and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits a permanent nature shall be procured and paid for by the Purchaser.
10. **DISPUTES.** All disputes involving more than \$15,000.00 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall recover all legal costs and attorneys fees incurred as a result. Nothing here shall limit any rights under construction lien laws.
11. **INSURANCE.** Insurance coverage in excess of Johnson's standard limits will be furnished when requested and required. No credit will be given or premium paid by Johnson for insurance afforded by others.
12. **INDEMNITY.** The Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorney's fees which may arise in connection with the execution of the work herein specified and which are caused, by the negligent act or omission of the indemnifying Party.
13. **OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of the, Occupational Safety and Health Act relating in any way to the project or project site.
14. **ENTIRE AGREEMENT.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
15. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon JCI unless accepted by JCI in writing.