



200 Selwood Bldg.
202 West Superior Street
Duluth, Minnesota 55802-1960
Website: www.lawduluth.com
Telephone: 218/727-8451
Fax: 218/727-6081

September 21, 2018

VIA E-MAIL ONLY

Mr. William Gronseth
Superintendent
Independent School District No. 709
215 North First Avenue East
Duluth, MN 55802

RE: Proposal of Volunteers/Homecroft School

Dear Mr. Gronseth:

I am writing to at the request of Mr. Spooner regarding a proposal that volunteers and a Non-Profit have made, to work on the fields at Homecroft School. There apparently has been some fund raising and some planning on what they could do there. Work of volunteers who do work and fund raise to benefit students is always greatly appreciated. Work done on the Homecroft fields may also benefit others who use the fields who are not students.

It is my understanding from Mr. Spooner that the volunteers propose to do work on the field using designs that they have developed. Mr. Spooner has indicated that those designs and the proposed manner of performing the work may not comply with the guidelines of the School District both as regards to contracting requirements and as regards to the work that would be done.

The School District of course owns the property at Homecroft School. The School District has the obligation to assure that the legal requirements are met regarding work done on the District's property. Even if volunteers or a Non-Profit are to contract for the work, so that the District itself did not have a contract with the Contractors, work must still be done in such a manner that the District is protected from liability. Therefore, if work is being done on the District's property, the District should be protected by the existence of sufficient insurance which names the District as an additional insured. The District is obligated by law to make sure that is done and that any other legal requirements on the District's property in regard to contracting, are followed.

Because the District is the owner of the property, the District is potentially liable if there are injuries or other claims relating to the property in the future. Therefore, while we all welcome volunteering, there could be potential difficulties for the District if construction is not up to the standards that would be required of the District, and any other additional standards which the District might need for its purposes. The issue is not just the District's liability for injuries which may occur. The issue also is how to design facilities to prevent injuries to students and others who may use the facilities. Work on the property also should be scheduled and coordinated by District staff so as to not interfere unnecessarily with schedules of students, staff and others.

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Appropriate warranties regarding the work that would protect the District also are necessary as with any other work for the District. With the construction being done, of course there is a possibility of injury to people or property during the construction. There must be proper insurance to protect the District from such claims and the work should be done in a manner approved by the District in order to minimize those risks to the District, and to minimize the risks to the people and property which could potentially be injured. There typically should be observation of the work during the construction in order to assure that the work is done pursuant to the plans and specifications.

The District of course has to look at the long term maintenance of improvements to its facilities including its fields, and if the work is not done to the District's standards, it may have to be re-done earlier than otherwise would be necessary, at additional expense and trouble for the District, students and possibly others. There could be additional maintenance expenses, even if the work does not have to be redone.

Because the District does have to maintain its property, and would have to maintain the field, work should be done in such a manner that it receives the District's approval regarding the design and construction that the District may need. I recognize that there have been some issues in the near past regarding playground surfaces and there certainly could be issues regarding any field that is used by students and/or others.

I therefore recommend that any work to be performed on the Homecroft fields, or other work there or at other places, follow the requirements which Mr. Spooner and other appropriate District personnel apply. While compliance of such requirements may change the cost of a project or its timing or its means of performance, it is important that if the District is asked to modify those requirements, or waive some of them, that should be within the judgment of Mr. Spooner and others at the District. They are obligated by law to have work performed that complies with the law and which is in the long term interest of the District, both with regards to potential liability and with regard to maintenance and use of the District property. Mr. Spooner and others at the District do not set such requirements because they want to be difficult, but because they are required to do so in order to protect the District and users.

It therefore is my opinion that with field work that might be done at Homecroft, and any other substantial work done on the District grounds or buildings, that standard procedures for construction work by the District be followed, including:

1. If there is a contract to be paid by the School District, then it must be subject to the procedural and substantive building requirements of the School District as they may apply. If the School District itself is not paying for the work, then it needs to be determined whether those requirements for District contracts nonetheless need to be met in whole or in part;
2. Using AIA Contracts or other standard approved contracts;

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3. Plans and specifications must be prepared by a licensed design professional who is accepted by the District, with the design professional signing off on the plans and specifications. The plans and specifications and overall design of course must meet the School District's goals and standards as they may apply, including but not limited to safety regarding persons and property and the long time maintenance and improvements of the schools of the District;
4. The plans and specifications of course must comply with the various other requirements of the District;
5. The construction must be observed pursuant to the standards of the design professional and the District;
6. There of course needs to be insurance for the contract and the work which protects the School District;
7. The design professionals of course have to review the work when it has been completed to assure compliance with the plans and specifications and any other requirements, along with certifying that the work has been completed pursuant to the plans and specifications; and
8. Other standard contractual procedural requirements for work on the District's buildings and grounds should be followed.

I hope that this general discussion is helpful. If you have other questions or if there are more specific issues you would like me to address, feel free to contact us. I hope that the Homecroft field project can go ahead in an appropriate manner.

Yours very truly,

DRYER STORAASLI KNUTSON
& POMMERVILLE, LTD.



Mark L. Knutson
mlknutson@lawduluth.com

MLK/mas

cc: Mr. Dave Spooner *(via email only)*