

Consent Agenda - Regular School Board Meeting

Duluth Public Schools, ISD 709

Agenda

Tuesday, March 18, 2025

District Services Center

709 Portia Johnson Dr.

Duluth, MN 55811

6:30 PM

1. Consent Agenda

A. Approval of Minutes from Past School Board Meetings

- 1) Regular School Board Meeting - February 25, 2025 3

B. Approval of Action Items

1) Human Resources

- a. HR Staffing Report 6

2) Finance

- a. Financial Report 8

- b. Fundraisers 9

c. Bids, RFPs and Quotes

- (1) BID #1337 - General Construction Lowell ES 10

- (2) BID #1338 - Glazing Work Lowell ES 12

d. Contracts, Change Orders, Leases

- (1) LEASE - Arvig Building 05.01.25 - 04.31.26 14

- (2) CONTRACT - DSC Transportation Building Addition (BID 25

#1333 Transportation Building Addition approved 12.17.24)

3) Items Brought Forward From the Monthly Committee of the Whole Meeting

4) Other

- a. Diploma Requests 134

b. Field Trip Requests

- (1) Duluth East Band Jazz Festival 148

- (2) Laura MacArthur Wolfe Ridge 5th Grade 154

c. Data Sharing Agreements

- (1) The College of St Scholastica, Upward Bound 176

- (2) The Regents of the University of Minnesota Through Its 180

Duluth Campus Upward Bound

C. Approval of Policy Readings

1) First Readings - None

2) Second Readings

- a. 519 Interviews of Students by Outside Agencies 184

3) Annual Review

- a. 722 Public Data Requests 190

D. Approval of Committee Reports

By approving Committee Reports, the board acknowledges and approves all

informational and action items represented in the Regular School Board Meeting Report of each committee.

- 1) Monthly Committee of the Whole - *March 4, 2025*
- 2) Policy Committee - *March, 13, 2025*
- 3) Human Resources/Business Services Committee - *March 10, 2025*

Regular School Board Meeting
Tuesday, February 25, 2025 6:30 PM Central

District Services Center
709 Portia Johnson Dr.
Duluth, MN 55811

Henry Banks: Present
Kelly Durick Eder: Present
Rosie Loeffler-Kemp: Present
Jill Lofald: Present
Sarah Mikesell: Present
Amber Sadowski: Present
Stephanie Williams: Present
Present: 7.

1. Call to Order
at 6:37 p.m.

2. Roll Call

3. Pledge of Allegiance

4. Approval of the Agenda

Move to Approve the Agenda. This motion, made by Jill Lofald and seconded by Amber Sadowski, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea
Yea: 7, Nay: 0

5. School and Community Recognition

6. Resolution of Concurrence and Non-Concurrence Presentation

Members of the American Indian Parent Advisory Committee presented a vote of Non-Concurrence along with recommendations.

7. Career and Technical Education Presentation

Principal on Special Assignment Danette Seboe shared the Career and Technical Education Presentation.

8. Report of the Superintendent

8.A. Reports from Student School Board Representatives

Vice Chair Lofald presented Student Representative Garner's Denfeld Report.

Student Representative Dean presented the East Report.

Student Representative Taylor presented the ALC Report.

8.B. Superintendent's Report

Superintendent Magas presented the Superintendent's Report. Topics included:

Student Representative Reports

Budget Reduction & Realignment Update
Spanish Immersion Expansion Update
Legislative Update
Other

8.C. Schedule of Meetings and Events

9. Report of Standing Committees

9.A. Committee of the Whole

9.A.1) Monthly Committee of the Whole (*February 4, 2025*)

Assistant Superintendent Bonds presented the Monthly Committee of the Whole Report.

9.B. Human Resources/Business Services Committee (*Tuesday, February 11, 2025*)

Member Sadowski presented the HR/Business Services Committee Report.

9.C. Policy Committee (*Tuesday, February 11, 2025*)

Member Loeffler-Kemp presented the Policy Committee Report.

10. General Board Committee Updates

Member Williams gave a report about attending the Education Equity Advisory Committee.

Member Loeffler-Kemp shared information from the Duluth Public Schools Foundation.

Member Lofald shared information about participating in the Board of School Administrators.

Member Sadowski gave a report about attending the Inter-Governmental meeting.

Member Sadowski gave a report about attending the Head Start Parent Policy Council.

Member Loeffler-Kemp shared information about participating in an Art Grant Committee.

11. Consent Agenda

Move to Approve the Consent Agenda. This motion, made by Stephanie Williams and seconded by Henry Banks, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah

Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea

Yea: 7, Nay: 0

12. Resolutions from Committee Reports

12.A. B-2-25-4089 - Acceptance of Donations to Duluth Public Schools

Move to Approve Resolution B-2-25-4089 Acceptance of Donations to Duluth Public Schools.

This motion, made by Amber Sadowski and seconded by Jill Lofald, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah

Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea

Yea: 7, Nay: 0

13. Special Resolutions and Action Items

13.A. SP-2-25-4090 School Board Members Attendance at MSBA/MASA and AMSD Days at the Capitol

Move to Approve Resolution SP-2-25-4090 School Board Members Attendance at MSBA/MASA and AMSD Days at the Capitol. This motion, made by Rosie Loeffler-Kemp and seconded by Stephanie Williams, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah

Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea
Yea: 7, Nay: 0

14. Questions / Other

15. Adjournment

Move to Adjourn at 9:51 p.m. This motion, made by Henry Banks and seconded by Stephanie Williams, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah

Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea

Yea: 7, Nay: 0

HUMAN RESOURCES ACTION ITEMS FOR: March 10, 2025

<u>CERTIFIED APPOINTMENT</u>	<u>POSITION</u>	<u>EFFECTIVE DATES</u>	
BROMAN, NANCY E	MATH INTERVENTIONIST TOSA/MYERS WILKINS, (MA+45) IV 9, 0.6, GALLINGER C. RETIRED	01/16/2025	
DOWNEY, ASHLEY M	SPED SOCIAL WORKER/DISTRICT WIDE, (MA+45) IV 9, 1.0, JARVIS H. TRANSFER	02/24/2025	
JACKSON, GARY A	LTS VOCAL MUSIC TEACHER/ORDEA EAST, (BA+45) III 8, 1.0, Rodrigues G. LOA	02/24/2025	
KEENEY, MCKENZIE K	LTS SPED RESOURCE TEACHER/EAST, (BA) III 1.0, SWANSON S. MATERNITY LEAVE	01/08/2025	
NIELSEN, JULIA J	SPED EBD RESOURCE TEACHER/DENFELD, (BA) III 1, 1.0, NETTLETON J. RESIGNED	02/24/2025	
PETRICH, HOLLY C	SPED ASD SETTING III TEACHER/PIEDMONT, (MA) IV 5, 1.0, JORGENSEN M. TRANSFER	01/22/2025	
SOINE, VICTORIA L	LTS SEB SPECILAIST TOSA/MYERS-WILKINS, (BA) III 1, 1.0, FRISCHMANN B. LOA	02/26/2025	
<u>CERTIFIED LEAVES</u>	<u>POSITIONS</u>	<u>EFFECTIVE DATES</u>	
CARLAND, DANIEL J	SPED ELEMENTARY RESOURCE/PIEDMONT	05/19/2025	06/06/2025
LONG, CATHERINE G	PAWS PROG COORD - DENFELD HS	02/28/2025	04/11/2025
PIERRE, MARGARET L	PREKINDERGARTEN/MYERS WILKINS	08/25/2025	06/05/2026
ROSS, SYDNEY P	SPED RESOURCE TEACHER/DENFELD	08/25/2025	11/14/2025
SUNDELL, VICTORIA L	MENTAL HEALTH COORDINATOR/DW	02/25/2025	02/25/2026
TEMPLE-RHODES, VIRGINIA S	ADULT BASIC ED - DAE	01/02/2025	03/02/2025
WADE, MATTHEW P	READING INTERVENTIONIST/HOMECROFT	08/25/2025	06/05/2026
WOHLWEND, ALEXANDRA A	SPED SCHOOL NURSE/DISTRICT WIDE	08/25/2025	11/17/2025
<u>CERTIFIED RESIGNATION</u>	<u>POSITION</u>	<u>EFFECTIVE DATES</u>	
BORAK, CHARLES E	DEAN OF STUDENTS - ORDEAN-EAST MS	03/28/2025	
HUGHES, KIM M	SPED SETTING III/IV - DENFELD HS	06/06/2025	
MIX, JODI A	SPED ECSE - DW	06/06/2025	
<u>CERTIFIED RETIREMENT</u>	<u>POSITION</u>	<u>EFFECTIVE DATES</u>	
BEAUDRY, MELINDA L	GRADE 4 - LAKEWOOD ES-REVISED FROM 7/1/25	06/06/2025	
BEETCHER, CHERYL L	KINDERGARTEN - STOWE ES	06/06/2025	
BERGMAN, HELEN E	GRADE 2 - STOWE ES	06/06/2025	
HANNU, DEBRA A	VISUAL ARTS - ORDEAN-EAST MS	06/06/2025	
JOHNSTON, DAN L	SPED SEC SETTING III/IV - EAST HS	02/14/2025	
KOLAR, PATRICIA J	GRADE 2 - CONGDON PARK ES	06/06/2025	
MILLER, JENNIFER E	CTE GRAPHIC ARTIST TEACHER- EAST & DENFELD HS	06/06/2025	
PAQUETTE, BARBARA A	SPED RESIDENTIAL - MERRITT CREEK ACADEMY	07/11/2025	
VAN DRUTEN, SUSAN K	ENGLISH - EAST HS	08/26/2025	
VAN LOH, JANE F	PRE K - HOMECROFT ES	06/06/2025	
VICHE, LEIGH ANN	SPED DAPE - LESTER PARK ES	06/06/2025	
<u>NON-CERT APPOINTMENT</u>	<u>POSITION</u>	<u>EFFECTIVE DATES</u>	
ANDERSEN, MISTY D	CERTIFIED LANGUAGE INTERPRETER PARA/DISTRICT WIDE, 31.25/38WKS, \$36.88/HR	02/24/2025	
ARVIDSON-HICKS, KAELENE E	HOURLY MONITOR/LAKEWOOD, 23/38WKS, \$15.00/HR	01/06/2025	
BAER, APRIL N	BUS HELPER/TRANSPORTATION, 25/38WKS, \$16.90/HR	01/21/2025	
BURGOON, JERAMIE M	SUPERVISORY PARA/LINCOLN PARK, 33.75/38WKS, \$20.37/HR, DEHNKE K. LEAVE FOR STUDENT TEACHING	02/03/2025	
CHASTEY, KELLY M	ECFE PARAPROFESSIONA/PIEDMONT, 8/38WKS, \$19.54/HR, GEER M. TRANSFER	01/28/2025	
CHUDOMELKA, ANTONIN J	HOURLY MONITOR/LAURA MACARTHUR, 23/38WKS, \$15.00/HR	02/03/2025	
COBB, SCOTT S	HOURLY PAINTER/DISTRICT WIDE, 23/UP TO 67 WORKING DAYS, \$27.14/HR	02/03/2025	
FOLDESI, MARK T	SPED STUDENT SPECIFIC PARA/LINCOLN PARK, 33.75/38WKS, \$21.42/HR	02/24/2025	
GRAMS, ADELINE G	ECSE PARAPROFESSIONAL/DISTRICT WIDE, 25.25/38WKS, \$19.74/HR, GERSICH B. TRANSFER	02/24/2025	
GROSS, MOLLY J	SPED PROGRAM PARA/PIEDMONT, 31.25/38WKS, DECAMBALIZA S. RESIGNED	01/21/2025	
HABBERSTAD, PAIGE E	SPED KEYZONE PARA/PIEDMONT, 15/38WKS, \$19.88/HR	01/21/2025	
HARYU, RIAN A	CUSTODIAN I/EAST, 40/52WKS, \$17.52/HR, HAKALA W. RESIGNED	02/18/2025	
HATHAWAY, ANGEL R	HOURLY DISHWASHER/MYERS-WILKINS, 12/38WKS, \$14.00/HR	02/03/2025	
HELGESON, SARA T	SPED PROGRAM PARA/CHESTER CREEK, 31.25/38WKS, \$21.07/HR, LAUDERBAUGH G. RESIGNED	01/21/2025	
KOCHEVAR, PETER G	VAN DRIVER/TRANSPORTATION, 40/38WKS, \$20.03/HR	02/10/2025	
LAYMAN, ANTHONY J	SUPERVISORY PARA/EAST, 33.75/38WKS, \$20.34/HR, TROMBLEY M. RESIGNED	01/28/2025	
LOFALD, ERIK C	SUPERVISORY PARA/DENFELD, 33.75/38WKS, FLORESTANO M. TRANSFER	01/06/2025	
LYONS, MICHELLE R	HOURLY MONITOR/MYERS-WILKINS, 23/38WKS, \$15.00/HR	01/28/2025	
MCGUIRE, PEGGY S	NUTRITIONAL SERVICE ASST/LINCOLN PARK, 30/38WKS, \$15.68/HR, PAULSON L. RESIGNED	01/28/2025	
MIELKE, KRYSTA E	HOURLY MONITOR/LAURA MACARTHUR, 23/38WKS, \$15.00/HR	01/03/2025	
MILLER, DILLEYONA D	BUS DRIVER/TRANSPORTATION, 25/38WKS, \$23.08/HR, JOHNSON J. RESIGNED	02/03/2025	
MURRAY, NICHOLAS E	FLOATING CUSTODIAN/DISTRICT WIDE, 40/52WKS, \$18.49/HR,	02/12/2025	
MURRAY, SIERRA L	FLOATING CUSTODIAN/DISTRICT WIDE, 40/52WKS, \$18.49/HR	02/12/2025	
NELSON, EMILY A	SPED BUILDING WIDE PARA/LESTER PARK, 31.25/38WKS, \$20.04/HR, SPECHT D. TERM	02/10/2025	
PRICE, MELISSA A	EXECUTIVE ASSISTANT/TLE, 40/52WKS, \$22.70/HR, BRAUN W. RETIRED	03/03/2025	
ROSS, ELIZABETH S	SPED BUILDING WIDE PARA/MYERS-WILKINS, 31.25/38WKS, \$20.04/HR, LONGAKER S. RESIGNED	02/24/2025	
RYZAK, WILLIAM J	HOULRY DISHWASHER/DISTRICT WIDE, 12/38WKS, \$14.00/HR	01/06/2025	
SIEMSEN, MARY B	SPED PROGRAM PARA/DISTRICT WIDE, 31.25/38WKS, \$22.49/HR, BECKER A. RESIGNED	03/10/2025	
TERESI, WENDY L	PRESCHOOL PARA/PIEDMONT, 23/38WKS, \$21.35/HR, CURNOW L. TRANSFER	01/09/2025	
THOMSON, CHRISTOPHER J	CUSTODIAN I/ORDEAN EAST, 40/52WKS, \$17.52/HR, THOMPSON E. RESIGNED	02/24/2025	
WHITE, SHEILA L	COORDINATOR OF INDIAN ED/DISTRICT WIDE, \$1,979/WEEK, 48 WKS, GARBOW J. RESIGNED	01/13/2025	
WORGREN, JOSHUA S	NETWORK ENGINEER 1/TECHNOLOGY, \$1,456/WK, LITWIN D.	02/24/2025	
<u>NON-CERT LEAVES</u>	<u>POSITIONS</u>	<u>EFFECTIVE DATES</u>	
BLACK, NEIL J	OSSS - DSC	02/12/2025	05/12/2025
ECKSTROM, ALYSSA M	OFFICE SUPPORT SPECIALIST SENIOR/DSC	04/16/2025	07/07/2025
JOHNSON, ELIZABETH A	PRE SCHOOL PARA - STOWE ES	03/26/2025	05/07/2025
RYME, ROBIN A	DIGITAL INNOVATION SPECIALIST/DW	04/23/2025	07/16/2025

<u>NON-CERT RESIGNATION</u>	<u>POSITION</u>	<u>EFFECTIVE DATES</u>
BECKER, ADAM J	SPED PROG PARA SETTING III/IV - DW	02/14/2025
BERGESON, JOSEPHINE M	SPED CHILD SPECIFIC SETTING III/IV - CHESTER CREEK ACADEMY	03/07/2025
COMPO, BERAM L	BUS DRIVER II - TRANSPORTATION	03/03/2025
GUY, TONY R	CHILD NUTRITION ASST - LINCOLN PARK MS	02/03/2025
JOY, STEPHANIE G	OSSS - HOMECROFT ES	06/06/2025
KALWITE, MICHELLE R U	CHILD NUTRITION ASST - LINCOLN PARK MS	01/15/2025
LOCHNER, HALIE M	SPED BW PARA - LAKEWOOD ES	03/07/2025
LONGAKER, SCOTT J	SPED BW PARA - MYERS-WILKINS ES	01/28/2025
LUOTO, KIMBERLY S	SECOND SHIFT ENGINEER 1 - LESTER PARK ES	02/12/2025
MCGUIRE, PEGGY S	CHILD NUTRITION SERVICE ASST - LINCOLN PARK MS	01/30/2025
RUSSELL, KEVIN M	LIFEGUARD PARA - ORDEAN-EAST MS	02/19/2025
RYME, EMILY M	SYSTEM SPECIALIST DESKTOP 1 - DW	02/27/2025
SHATTO, MILLI	HOURLY MONITOR - PIEDMONT ES	02/14/2025
THOMPkins, MIRANDA	HRIS SPECIALIST - DSC	03/14/2025
WALLER, DEEDRA E	PRE-SCHOOL PROG PARA - STOWE ES	02/24/2025
WITUCKI, ASHLEY M	PRE K PARA - PIEDMONT ES	03/07/2025
<u>NON-CERT RETIREMENT</u>	<u>POSITION</u>	<u>EFFECTIVE DATES</u>
COTTINGHAM, JANE M	SPED PROG PARA SETTING III/IV - LAURA MAC ES	06/06/2025
HALLFRISCH, MONICA M	COMMUNITY LIAISON PARA - STOWE ES	09/02/2025
JAZDZEWSKI, MARK W	UTILITY PERSON II - FACILITIES	04/25/2025
LUOMA, DERYN R	SPED PROG PARA SETTING III/IV - MYERS-WILKINS ES	06/06/2025
MCEWEN, TERRY L	PRINT SHOP COORD/PRINTER - FACILITIES	06/30/2025

***REVISED BUDGET

HR/BS Services Committee Monthly Fund Balance Report
MARCH 10, 2025 Committee Meeting

3759110.84

BUDGET SUMMARY

1/10/2025

Percent spent

REVENUES	24-25		24-25		24-25		24-25		24-25	
	CURRENT YEAR ADOPTED BUDGET		CURRENT YEAR REVISED BUDGET adj		RECEIVED TO YEAR TO DATE		RECEIVED ENCUMBERED		BUDGET BALANCE	
	FUND	Jul-24	JULY 24-25		July -June		July -June		July -June	
General	01	\$ 121,223,653.72	\$ 121,764,312.65		\$ 64,506,116.33		\$ 9,349.24		\$ 57,267,545.56	53%
REVISED REVENUE- Special Education			\$ 3,759,110.84		TOTAL REVISED REV = \$4,408,650.74					
REVISED REVENUE - +32 adm adjustment			\$ 288,000.00							
REVISED REVENUE- St Louis County tax adj			\$ 361,539.90							
Food Service	02	\$ 6,000,000.00	\$ 6,000,000.00		\$ 2,839,288.00		\$ -		\$ 3,160,712.00	47%
Transportation	03	\$ 6,332,190.85	\$ 6,332,190.85		\$ 2,057,813.79		\$ -		\$ 4,274,377.06	32%
Community Ed	04	\$ 8,577,600.00	\$ 8,662,818.02		\$ 4,072,210.20		\$ -		\$ 4,590,607.82	47%
Operating Capital	05	\$ 2,772,175.43	\$ 2,772,175.43		\$ 736,470.64		\$ -		\$ 2,035,704.79	27%
Building Construction	06	\$ -	\$ -		\$ -		\$ -		\$ -	
Debt Service Fund	07	\$ 28,067,285.00	\$ 28,067,285.00		\$ 2,413,402.82		\$ -		\$ 25,653,882.18	9%
Trust Fund	08	\$ 276,100.00	\$ 276,100.00		\$ -		\$ -		\$ 276,100.00	0%
Dental Insurance Fund	20	\$ 950,000.00	\$ 950,000.00		\$ 755,774.44		\$ -		\$ 194,225.56	80%
Student Activity	79	\$ 276,264.00	\$ 276,264.00		\$ 286,178.69		\$ -		\$ (9,914.69)	104%
REVENUES	TOTALS:	\$ 174,475,269.00	\$ 179,509,796.69		\$ 77,667,254.91		\$ 9,349.24		\$ 97,443,240.28	43%

EXPENSES	24-25		24-25		24-25		24-25		24-25	
	CURRENT YEAR ADOPTED BUDGET		CURRENT YEAR REVISED BUDGET adj		EXPENSES TO YEAR TO DATE		EXPENSES ENCUMBERED		BUDGET BALANCE	
	FUND	Jul-24	JULY 24-25		July - June		July -June		July - June	
General	01	\$ 122,071,417.00	\$ 123,151,409.84		\$ 77,851,987.71		\$ 2,621,395.99		\$ 42,678,026.14	65%
REVISED EXPENDITURE REDUCTION ESTIMATE ONLY			(\$2,600,000)							
Food Service	02	\$ 6,055,998.00	\$ 6,055,998.00		\$ 3,316,937.07		\$ 1,283,438.62		\$ 1,455,622.31	76%
Transportation	03	\$ 6,783,799.00	\$ 6,783,799.00		\$ 5,843,791.09		\$ 374,934.82		\$ 565,073.09	92%
Community Ed	04	\$ 7,817,759.00	\$ 7,926,977.02		\$ 4,680,005.57		\$ 26,469.18		\$ 3,220,502.27	59%
Operating Capital	05	\$ 6,720,958.43	\$ 6,908,621.43		\$ 5,908,463.44		\$ 546,648.00		\$ 453,509.99	93%
Building Construction	06	\$ 993,431.57	\$ 993,431.57		\$ 629,028.81		\$ 11,985.00		\$ 352,417.76	65%
Debt Service Fund	07	\$ 27,393,530.00	\$ 27,393,530.00		\$ 27,392,333.10		\$ -		\$ 1,196.90	100%
Trust Fund	08	\$ 263,733.00	\$ 263,733.00		\$ -		\$ -		\$ 263,733.00	0%
Dental Insurance Fund	20	\$ 929,564.00	\$ 929,564.00		\$ 921,313.76		\$ -		\$ 8,250.24	99%
Student Activity	79	\$ 379,993.00	\$ 379,993.00		\$ 206,323.34		\$ 12,205.24		\$ 161,464.42	58%
EXPENSES	TOTALS	\$ 179,410,183.00	\$ 178,187,056.86		\$ 126,750,183.89		\$ 4,877,076.85		\$ 49,159,796.12	74%

Extra Curricular Fund 01 Prog 298
Revenue \$ 349,001.29
Expense \$ 376,389.78

**Fundraisers Reported
February 2025**

The following fundraisers were reported in the above timeframe and per Policy 511–Fundraising, require School Board approval:

School	Organization Fundraising	Estimated Profit	Description of Fundraiser
East HS	Track & Field	\$7,800.00	Email Donations

3/3/2025

Duluth Public Schools
709 Portia Johnson Drive
Duluth, MN 55811



1331 Tyler Street NE, Suite 101
Minneapolis, MN 55413
ics-builds.com
(763) 354-2670

Re: Lowell Elementary School Misc. Remodeling - REBID
Duluth, MN 55811

Dear Board Members:

ICS has reviewed the bids that were received on Thursday, February 27, 2025, for the above-referenced project. Our recommendation for award is as follows:

Work Scope 1 – General Construction
Donald Holm Construction – Duluth, MN
BASE BID:

Bid 1337

\$765,710.00

TOTAL

\$765,710.00

Work Scope 2 – Openings
St. Germain's Glass – Duluth, MN
BASE BID:

\$135,100.00

TOTAL

\$135,100.00

Based on the recommendations above, we recommend that the District enter into a contract with the above-mentioned contractors for the total bid amount of Nine Hundred Thousand, Eight Hundred Ten Dollars and No/100 Cents (\$900,810.00).

Upon Board action, we will draft a contract reflecting this amount to each of the respective Contractors.

Enclosed are copies of the official bid tabulation, bid forms and bid securities. Please contact us at 763-354-2670 should you have any questions regarding our recommendation.

Sincerely,

Jason Filipek
ICS Project Manager

Lowell Elementary School Misc. Remodeling

OWNER: Duluth Public Schools #709

CONSTRUCTION MANAGER: ICS Consulting, Inc.

ARCHITECT: DSGW Architects



BID TABULATIONS

Thursday, February 27, 2025 @ 10:00 a.m.

WORK SCOPE 1 - General Construction

	BIDDER	BIDDER	BIDDER	BIDDER
	Donald Holm Construction Co., Inc. 3211 West 3rd Street Duluth, MN 55806 218-628-2257	Gardner Builders Duluth, LLC 2 West 1st Street, Suite #133 Duluth, MN 55802 218-428-1752	Johnson Wilson Constructors, Inc. 4431 West Michigan Street Suite 1 Duluth, MN 55807 218-626-0202	Intercon Group Inc. 1775 Shilhon Road Duluth, MN 55804 218-464-2876
BID SECURITY	X	X	X	X
ADDENDA REC'D.	X	X	X	X
Acknowledged MN Responsible Contractor:	X	X	X	X
BASE BID:	\$765,710.00	\$799,476.00	\$982,299.00	\$1,264,147.00
COMBINED WS BID:	\$916,848.00	\$939,195.00	N/A	N/A

3/3/2025

Duluth Public Schools
709 Portia Johnson Drive
Duluth, MN 55811



1331 Tyler Street NE, Suite 101
Minneapolis, MN 55413
ics-builds.com
(763) 354-2670

Re: Lowell Elementary School Misc. Remodeling - REBID
Duluth, MN 55811

Dear Board Members:

ICS has reviewed the bids that were received on Thursday, February 27, 2025, for the above-referenced project. Our recommendation for award is as follows:

Work Scope 1 – General Construction

Donald Holm Construction – Duluth, MN

BASE BID: \$765,710.00

TOTAL **\$765,710.00**

Work Scope 2 – Openings

St. Germain's Glass – Duluth, MN

BASE BID: \$135,100.00

TOTAL **\$135,100.00**

Based on the recommendations above, we recommend that the District enter into a contract with the above-mentioned contractors for the total bid amount of Nine Hundred Thousand, Eight Hundred Ten Dollars and No/100 Cents (\$900,810.00).

Upon Board action, we will draft a contract reflecting this amount to each of the respective Contractors.

Enclosed are copies of the official bid tabulation, bid forms and bid securities. Please contact us at 763-354-2670 should you have any questions regarding our recommendation.

Sincerely,

Jason Filipek
ICS Project Manager

Lowell Elementary School Misc. Remodeling

OWNER: Duluth Public Schools #709

CONSTRUCTION MANAGER: ICS Consulting, Inc.

ARCHITECT: DSGW Architects



BID TABULATIONS

Thursday, February 27, 2025 @ 10:00 a.m.

WORK SCOPE 2 - Openings

	BIDDER	BIDDER	BIDDER	BIDDER	BIDDER	BIDDER
	St. Germain's Glass 212 North 40th Avenue West Duluth, MN 55807 218-628-0221	Superior Glass Inc. 7500 Tower Avenue Superior, WI 54880 218-451-6501	United Glass Inc. 1402 Progress Parkway Suite C Eveleth, MN 55734 651-633-2529	Donald Holm Construction Co., Inc. 3211 West 3rd Street Duluth, MN 55806 218-628-2257	Mesabi Glass Window & Door Inc. 510 West 25th Street Hibbing, MN 55746 218-262-2010	Murphy Window and Door 12356 314th Avenue NW Princeton, MN 55371 320-980-1987
BID SECURITY	X	X	X	X	X	X
ADDENDA REC'D.	X	X	X	X	X	X
Acknowledged MN Responsible Contractor:	X	X	X	X	X	X
BASE BID:	\$135,100.00	\$141,600.00	\$149,887.00	\$151,138.00	\$151,480.00	\$242,935.00
COMBINED WS BID:	N/A	N/A	N/A	\$916,848.00	N/A	N/A

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 21st day of February, 2025, by and between Infotel Investments, L.L.C. (hereinafter referred to as "Lessor"), and Independent School District No. 709 (hereinafter referred to as "Lessee", whether one or more).

WITNESSETH:

1. **PREMISES & TERMS:** In consideration of the obligation of Lessee to pay rent as herein provided, and in consideration of the other terms, provisions and covenants hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, certain premises (hereinafter referred to as the "Leased Premises" or "premises") situated within the County of St. Louis, State of Minnesota, identified as Suite 300 in the building commonly known as the Arvig Building, consisting of approximately 3,501 usable square feet, as outlined on the floor plan attached hereto as Exhibit A, (hereinafter referred to as the "Building") located at 325 West First Street, Duluth, together with all rights, privileges, easements, appurtenances and immunities belonging to or in any way pertaining to the Leased Premises, and together with the right to use in common with Lessor and other Lessees in the Building, and its and their employees, agents, representatives and invitees, any common areas and facilities of the Building.

To have and to hold for a term of 1 year, commencing on the 1st day of May 2025, and ending on the 30th day of April, 2026. Lessee acknowledges that it has inspected the Leased Premises and accepts them in their present condition as suitable for the purpose for which they are leased, and further acknowledges that no representations as to the repair of the Leased Premises nor promises to alter, remodel or improve the Leased Premises have been made by Lessor.

ACCEPTANCE OF PREMISES: If Lessor does not complete leasehold improvements, if any to be completed by Lessor, and deliver possession of the Leased Premises on or before said commencement date, or if Lessor is unable for reasons beyond its control to deliver possession of the Leased Premises by such date, Lessor shall not thereby be deemed to be in default hereunder, and shall not thereby be liable to Lessee for any loss, damage, cost and expense suffered or incurred by Lessee, nor shall the commencement date of the Lease or the term of the Lease be affected or changed thereby, and Lessee agrees to accept possession of the Leased Premises at such time as Lessor is able to tender the same; provided, however, Lessor hereby waives payment of rent covering any period prior to the tendering of possession to Lessee hereunder.

2. **RENT:** Lessee shall pay to the Lessor as a monthly rent for said premises \$5,707.00, said monthly rent to be paid in advance on the first day of each and every month during the initial term and any extension terms to the initial lease, at the office and to the order of ONEIDA REALTY COMPANY at 1605 Alworth Building, Duluth, Minnesota 55802, or payable to such other person or entity or at such other place as may from time to time be designated by the Lessor in writing. A prorated monthly installment shall be paid at the then current rate for any fraction of a month if the term shall begin on any day except for the first day or shall be terminated on any day except the last day of any month.

3. **ADJUSTMENTS TO RENT:** Effective May 1st of each year of this Lease Lessor shall have the right to increase the rent by the same percentage increase in the CPI-U (Consumer Price Index for all urban consumers and for urban wage earners), or a similar index if the CPI-U has been discontinued, from the preceding calendar year. Lessor shall have the further right, and with sixty (60) days written notice, to increase Lessee's rent on May 1st of each year of this Lease, by a proportionate share of any increase in ad valorem taxes that are payable for the Building and land in such year in excess of the taxes paid in the immediately preceding calendar year. The proportionate share increase shall be an amount determined by a fraction, the numerator of which shall be the square feet of the Leased Premises, and the denominator being the net rentable area of the Building. The result shall be added to the rent otherwise payable hereunder, and shall be paid in twelve (12) equal monthly amounts commencing at May 1st. Lessor shall provide evidence supporting increased rent calculation resulting from CPI increase and/or tax increase.

4. **USE:** The Leased Premises shall be used for the purpose of a general office or school space only. No part of the Leased Premises shall be used for any purpose which constitutes a nuisance or which is illegal, offensive, termed extra hazardous by insurance companies or which may make void or voidable any insurance on the Building or which may increase the premiums therefore, or which will interfere with the general safety, comfort and convenience of the Lessor and

other Lessees of the Building. There shall be no sale of food or beverages by any means without the prior written consent of Lessor. Lessee shall not permit intoxicating liquors to be kept or sold in the Leased Premises.

5. **BUSINESS HOURS:** Usual business hours as used herein shall mean the hours between 7:00 A.M. and 5:00 P.M., Monday through Friday, holidays excepted. Lessee shall also have access to the Building between the hours of 5:00 P.M. and 7:00 A.M., Monday through Friday, Saturday, Sundays and holidays but may be required to comply with reasonable security precautions imposed by Lessor.

6. **REPAIRS BY LESSOR:** Lessor shall at its expense maintain the roof, foundation and the structural soundness of the exterior walls of the Building and the heating, air conditioning, plumbing, elevator and electrical systems in good repair, reasonable wear and tear excepted. Lessee shall repair and pay for any damage caused by the act or negligence of Lessee or Lessee's employees, agents, representatives or invitees, or caused by Lessee's default hereunder. Lessee shall immediately give Lessor written notice of defect or need for repairs, after which Lessor shall have reasonable opportunity to repair same or cure such defect. Lessor's liability hereunder shall be limited to the cost of such repairs or curing such defect.

7. **REPAIRS BY LESSEE:** Lessee shall at its own cost and expense maintain all other parts of the Leased Premises in good repair, reasonable wear and tear excepted, and shall take good care of the Leased Premises and its fixtures and permit no waste. Lessee will keep the whole of the Leased Premises in a clean, sanitary and safe condition, and will at the expiration of the term of this Lease or other termination of the term of this Lease, surrender the same to Lessor, broom clean, and in the same order and condition as they were in at the commencement of the term of this Lease, reasonable wear and tear excepted.

8. **ALTERATIONS BY LESSOR:** Lessee shall permit Lessor to make such alterations, renovations, improvements, restorations and/or repairs as, in the judgment of Lessor, may be deemed necessary or desirable for the Leased Premises, for any other premises in the Building, or for the Building itself (Including access to distribution systems above the ceiling of the Leased Premises). Lessor shall use reasonable efforts to not unreasonably interfere with the conduct of Lessees' business, but Lessor shall in no event be liable to Lessee for any damages in connection with such entry.

9. **ALTERATIONS BY LESSEE:** Lessee shall not make any alterations of, or additions to, the Leased Premises without the prior written consent of Lessor. Lessee will not permit any mechanics', laborers' or materialmen's liens to stand against the Leased Premises or the Building for any labor or material furnished to or for the account of Lessee, or claimed to have been so furnished in connection with any work performed or claimed to have been performed in, on or about the Leased Premises.

At the termination of this Lease, Lessee shall, if Lessor so elects, remove all alterations and additions erected by Lessee and restore the Leased Premises to their original condition; otherwise such improvements shall be delivered up to the Lessor with the Leased Premises. All movable office furnishings and trade fixtures installed by Lessee may be removed by Lessee at the termination of this Lease if Lessee so elects, and shall be removed if required by Lessor. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to damage the primary structure or structural qualities of the Leased Premises. Personal property remaining in the Leased Premises at the expiration or termination of the term of this Lease shall be deemed abandoned, and Lessor may dispose of the same as Lessor deems expedient, and at Lessee's expense.

Notwithstanding anything to the contrary contained in this Lease, Lessor shall in all events have the right to prescribe the weight and position of any safes and other heavy equipment placed in or on the Leased Premises by Lessee. Any and all damage or injury to the Leased Premises or the Building caused by moving the property of Lessee in or out of the Leased Premises, or due to the same being in or on the Leased Premises, shall be repaired by Lessee at its sole cost and expense. No equipment, fixtures, furniture or other bulky matter will be received into or carried in the Building, except in or at such places and in such manner as are approved by Lessor, and all moving of Lessee's property in or out of the Leased Premises shall be done only under the direct control and supervision of Lessor; provided, however, that Lessor shall not be responsible for any damage to, or charges for moving such property.

10. **SIGNS:** The Lessee shall not display, inscribe, print, maintain, or affix on any place in or about the Building any sign, notice, legend, direction, figure or advertisement, except on the doors of the Leased Premises

and on the Building Directory, and then only such name(s) and matter, and in such color, size, style, place and materials, as shall first have been approved by the Lessor. The listing of any name other than that of the Lessee, whether on the doors of the Leased Premises, on the Building Directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Leased Premises or be deemed to be written consent of the Lessor, it being expressly understood that any such listing is a privilege extended by Lessor revocable at will by written notice to Lessee. Lessor shall designate all sources furnishing sign painting and lettering, used on the Leased Premises or in the Building. The Lessor also reserves the right to name the Building and to change the name or street address of the Building. Further, Lessor shall have the right to install and maintain a sign or signs on the exterior or interior of the Building.

11. **ACCESS BY LESSOR:** Lessor, its agents and representatives shall be entitled to keep pass keys to the Leased Premises and shall have the right to enter and inspect the Leased Premises at any time for the purpose of ascertaining the condition thereof or in order to make such repairs as may be required to be made by Lessor under the terms of this Lease or as Lessor may deem necessary. During the period that is six (6) months prior to the end of the term hereof, Lessor and Lessor's agents and representatives shall have the right to enter the Leased Premises at reasonable times for the purpose of showing the Leased Premises and shall have the right to erect on the Leased Premises a suitable sign indicating that the Leased Premises are available. Any such entry by Lessor shall never be deemed an eviction or disturbance of Lessee's possession of the Leased Premises, or render Lessor liable to Lessee for damages, or relieve Lessee from the performance of Lessee's obligations under this Lease. The right of entry reserved shall not be deemed to impose any greater obligation on Lessor to clean, maintain, repair or change the Leased Premises than is specifically provided in this Lease. The Lessor, its agents and representatives may at any time in case of emergency enter the Leased Premises and do such acts as Lessor may deem proper in order to protect the Leased Premises, the Building, or any occupants of the Building.

12. UTILITIES AND SERVICES

a. **AIR CONDITIONING AND HEAT:** Lessor shall furnish air conditioning, if available to the Leased Premises, and heat for normal purposes only, to provide in Lessor's judgment comfortable occupancy Monday through Friday from 8:00 A.M. to 5:00 P.M., holidays excepted. Lessee agrees not to use any apparatus or device, in or upon or about the Leased Premises, which in any way may increase the amount of such services usually furnished or supplied to the Leased Premises, and Lessee further agrees not to connect any apparatus or device with the conduits or pipes, or other means by which such services are supplied, for the purpose of using additional or unusual amounts of such services, without written consent of Lessor. Should Lessee use such services to excess or request the use of such services at other than operating hours listed above, Lessor reserves the right to charge for such services. The charge shall be payable as additional rental. Should Lessee fail to make payment upon demand of Lessor, such failure shall constitute a breach of the obligation to pay rent under this Lease and shall entitle Lessor to the rights hereinafter granted for such breach. Nothing contained herein shall be construed to require Lessor to furnish air conditioning to the Leased Premises or any portion of the Building not currently served by air conditioning.

b. **ELECTRICAL SERVICE:** Lessor shall maintain electrical facilities to provide sufficient power for lighting, typewriters and other office machines of similar low electrical consumption, but not including electricity required for electronic data processing equipment, special lighting in excess of building standard, and any other item of electrical equipment which (singly) consumes more than .5 kilowatts per hour at rated capacity or requires a voltage other than one hundred twenty (120) volts single phase; and provided that if the installation of said electrical equipment requires additional air conditioning capacity above that provided by the building standard system, then the additional air conditioning installation and Operating Costs will be the obligation of Lessee. Lessee shall pay to Lessor, in addition to the monthly rent, the submetered cost of Lessee's electrical consumption, or, at Lessor's option, one-twelfth (1/12) monthly of an amount equal to one dollar (\$1.00) per square foot of Lessee's occupied space. At the same time and manner as Lessor may increase the monthly rent the Lessor may also increase this fixed rate charge by an amount not greater than five percent (5%) of the amount in effect immediately prior to the effective date of the increase. It is understood that Lessee will use reasonable judgment

in preventing waste. It is understood that Lessor does not warrant that any of the services referred to above will be free from interruption from causes beyond the reasonable control of Lessor. Such interruption of service shall never be deemed an eviction or disturbance of Lessee's use and possession of the Leased Premises or any part thereof or render Lessor liable to Lessee for damages by abatement of rent or otherwise or relieve Lessee from performance of Lessee's obligations under this Lease.

c. **LIGHTING:** Lessor shall supply initial lamps, bulbs, starters and ballasts used on the Leased Premises; Lessee agrees to reimburse Lessor for the cost and expense of maintaining and replacing such lamps, bulbs, starters and ballasts.

d. **KEYS:** Lessor shall furnish Lessee with two (2) keys for each corridor door entering the Leased Premises, and additional keys ordered by Lessee at a charge by Lessor. All such keys shall remain the property of Lessor. No additional locks shall be allowed on any door of the Leased Premises without Lessor's written permission, and Lessee shall not make, or permit to be made, any duplicate keys, except those furnished by Lessor. Upon termination of this Lease, Lessee shall surrender to Lessor all keys to the Leased Premises, and give to Lessor the combination of all locks for safes, safe cabinets and vault doors, if any, in the Leased Premises.

e. **ELEVATORS:** Lessor shall furnish passenger elevator service whenever the Building is open. Lessor shall have the right to stop the operation of said elevators whenever alterations, improvements or repairs therein or in the machinery or appliances connected therewith shall be necessary or desirable and shall not be liable for damages for any such stoppage of service.

f. **JANITORIAL:** Lessee shall furnish such janitor service for Lessee's leased areas.

g. **WATER:** Lessor shall provide water for lavatory and toilet purposes.

h. **WASTE:** Lessee shall not waste electricity, water, heat or air conditioning or any other utility, and shall cooperate fully with Lessor to insure the most effective operation of the Building's heating and air conditioning, which shall include closing Venetian blinds and drapes and keeping all windows closed when air conditioning is in use and shall refrain from attempting to adjust any controls other than room thermostats, if any, installed for Lessee's use.

i. **TEMPORARY INTERRUPTION OF SERVICES:** Lessor shall not be liable to Lessee, its agents, employees, representatives, customers or invitees for any inconvenience, loss or damage or for any injury to any person or property caused by or resulting from any casualties, riots, strikes, picketing, accidents, breakdowns or any cause beyond Lessor's reasonable control, or from any temporary failure or lack of services and Lessee shall indemnify Lessor and hold Lessor harmless from any claim or damage because of such inconvenience, loss, damage or injury. No variation, interruption or failure of such services incident to the making of repairs, alterations or improvements or due to casualties, riots, strikes, picketing, accidents, breakdowns or any cause beyond Lessor's reasonable control or temporary failure or lack of such services shall be deemed an eviction of Lessee or relieve Lessee from any of Lessee's obligations hereunder.

13. **ASSIGNMENT AND SUBLETTING:** Lessee shall not have the right to assign, transfer, pledge, or otherwise encumber this Lease, or to sublet the whole or any part of the Leased Premises, without the prior written consent of Lessor. Upon each request made by Lessee to Lessor for Lessor's consent hereunder, Lessee shall pay to Lessor a processing fee not to exceed, in each instance, \$500.00. Notwithstanding any permitted assignment or subletting, Lessee shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Lessor shall have the right to assign any of its rights under this Lease, and upon any such assignment, and provided that the assignee assumes all of Lessor's obligations hereunder, Lessor shall be relieved of any and all such obligations.

14. **FIRE AND OTHER CASUALTY:** If the Building or any part thereof is damaged or destroyed by fire or other casualty, the Lessor shall have the right to terminate this Lease, provided it gives written notice thereof to

the Lessee within ninety (90) days after such damage or destruction. Such notice shall state Lessor's intention to terminate this lease not less than thirty (30) days after Lessee's receipt of such notice. If a portion of the Leased Premises is damaged by fire or other casualty and this Lease is not thereby terminated, the Lessor shall, at its expense, restore the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by the Lessee, to as near the condition which existed immediately prior to such damage or destruction as reasonably possible, and rent shall abate during such period of time as the Leased Premises are untenable in the proportion that the untenable portion of the Leased Premises bears to the entire Leased Premises. The Lessor shall not be responsible to the Lessee for damage to, or destruction of, any furniture, equipment, improvements or other changes made by the Lessee in, on or about the Leased Premises regardless of the cause of the damage or destruction.

15. SUBROGATION:

a. Lessor and Lessee each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties covered by the insurance maintained hereunder, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such times as the releasor's policies shall contain a clause or endorsement to the effect that any release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. Lessor and Lessee each agrees that it will request its insurance carriers to include in its policies such a clause or endorsement.

b. Lessor covenants and agrees to maintain standard fire and extended coverage insurance covering the Building in an amount not less than eighty percent (80%) of the replacement cost thereof. Lessee covenants and agrees to maintain "All Risk" property insurance covering the full replacement value of all of Lessee's leasehold improvements, trade fixtures and personal property within the Leased Premises.

c. Lessee assumes responsibility for protecting the Leased Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Leased Premises closed and secured after normal business hours.

16. LIABILITY: With the exception of those claims arising out of Lessor's gross negligence or willful misconduct, neither Lessor nor any of Lessor's owners, members, shareholders, directors, officers, agents, or other representatives (collectively, with Lessor, the "Lessor Parties") shall be liable to Lessee, or those claiming through or under Lessee, for injury, death or property damage occurring in, on or about the Building and appurtenances thereto, and Lessee shall indemnify the Lessor Parties and hold them harmless from any claim or damage arising out of any injury, death or property damage occurring in, on or about the Leased Premises to Lessee or an employee, customer or invitee of Lessee. Without limiting Lessee's liability hereunder, Lessee agrees, at its own cost and expense to carry public liability insurance protecting Lessor and Lessee in a combined single limit amount of not less than One Million Dollars (\$1,000,000). All policies of insurance shall name both Lessor and Lessee as insured thereunder and shall protect the interests of Lessor. Certificates of said insurance providing for not less than fifteen (15) days notice to Lessor prior to cancellation thereof shall be furnished to Lessor prior to Lessee taking possession of the Leased Premises.

17. EMINENT DOMAIN: If the entire Building is taken by eminent domain, this Lease shall automatically terminate as of the date of taking. If a portion of the Building is taken by eminent domain, Lessor shall have the right to terminate this Lease by giving written notice thereof to Lessee within ninety (90) days after the date of taking. Such notice shall state Lessor's intention to terminate this lease not less than thirty (30) days after Lessee's receipt of such notice. If a portion of the Leased Premises is taken by eminent domain and this Lease is not thereby terminated, Lessor shall, at its expense, restore the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by Lessee, to as near the condition which existed immediately prior to the date of taking as reasonably possible, and rent shall abate during such period of time as the Leased Premises

are untenantable, in the proportion that the untenantable portion of the Leased Premises bears to the entire Leased Premises. If all or any portion of the Building is temporarily taken by eminent domain, this Lease shall remain in full force and effect, and Lessee shall continue to pay rent and be responsible for all other obligations hereunder insofar as such obligations are not affected by the temporary taking. All damages awarded for a taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall belong to, and be the property of, Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold estate hereby created or to the fee of the Leased Premises provided, however, that Lessor shall not be entitled to any award made to Lessee for loss of business, fair value of, and cost of removal of stock and fixtures. The term "eminent domain" shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation.

18. **HAZARDOUS SUBSTANCES:** As used herein, the term "Hazardous Substance" shall mean and include any element, compound, mixture, solution or substance regulated by a federal, state or local law, rule or regulation because of its toxicity, corrosiveness, reactivity, ignitability or carcinogenic effect and shall include petroleum, natural gas and derivatives and synthetics thereof. Lessee shall not cause or permit any Hazardous Substance to be brought upon, kept, or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or invitees, except for such Hazardous Substance as is necessary to Lessee's business. Any Hazardous Substance permitted on the Leased Premises, as provided in the previous sentence, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state and local laws, rules and regulations applicable to the Hazardous Substance and Lessee shall not discharge, leak or emit any Hazardous Substance except in compliance with all federal, state and local laws, rules and regulations applicable to the Hazardous Substance. Lessee hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Substance kept or allowed on the Leased Premises by the Lessee and Lessee shall give immediate notice to the Lessor of any violation or potential violation of the provisions of this Article. Lessee shall defend, indemnify and hold Lessor and its agents harmless from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorneys' fees and consultants' fees, court costs and litigation expenses) of whatever kind or nature arising out of the violation of any provision of this Article. This provision shall survive the termination of this Lease. Lessee is not responsible for any preexisting hazardous substances and shall inform Lessor of any preexisting hazardous substances of which Lessee may be aware.

In the event any material and/or substance is discovered in the Building or premises which is deemed to be hazardous by any local or state law in which the premises is located or by any federal law, the Lessor, its agents, assigns, or employees will assume all liability for the removal and damage caused by the material and/or substance. In addition, upon discovery of the hazardous material and/or substance, Lessee will have a reasonable time in which to exercise the option to remain on the premises for the Lease term or to surrender the premises to the Lessor. In the event the premises are surrendered, Lessee shall pay rent only to time of such surrender and will not be liable for any cost of clean-up or damage to the premises caused by the material and/or substance. The provisions of this paragraph shall not apply if it is determined that the hazardous material and/or substance was introduced into the premises by Lessee.

19. **HOLDING OVER:** Should Lessee, or any of its successors in interest, hold over the Leased Premises or any part thereof, after the expiration of the term of this Lease, such holding over shall constitute and be construed as a tenancy from month to month only. The inclusion of the preceding sentence shall not be construed as Lessor's permission for Lessee to hold over. The monthly rent during any such unauthorized month-to-month tenancy shall be at one and one half (1 1/2) times the amount set forth in Article 2 "Rent" as most recently adjusted in accordance with Article 3. If Lessee holds over with the permission of Lessor, then the rent shall be as most recently adjusted in accordance with Article 3.

20. **QUIET ENJOYMENT:** Lessor represents and warrants that it has full right and authority to enter into this Lease and that Lessee, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from Lessor, subject to the terms and provisions of this Lease.

21. **EVENTS OF DEFAULT:** The following events shall be deemed to be events of default by Lessee under this Lease:

a. Lessee shall fail to pay any installment of the rent hereby reserved or any other charge payable hereunder within five days of the respective due date.

- b. Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- c. Lessee shall file or have filed against it a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder.
- d. A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee.
- e. Lessee shall desert or vacate any substantial portion of the Leased Premises.
- f. Lessee shall assign, transfer, pledge, or otherwise encumber this Lease, or sublet the whole or any portion of the Leased Premises, without Lessor's prior written consent.
- g. Lessee shall fail to comply with any term, provision or covenant of this Lease (other than the foregoing in this Article 21) and shall not cure such failure within ten (10) days, after written notice thereof to Lessee.

22. **DEFAULT:** Lessee hereby agrees that in case Lessee shall default in making its payments hereunder or in performing any of the other agreements, terms, and conditions of this Lease, then, in any such event, in addition to all other rights and remedies available to Lessor by law or by other provisions hereof, at Lessor's option, Lessor may annul and cancel this Lease as to all future rights of Lessee. Lessee further agrees that in case of any such termination Lessee will indemnify the Lessor against all loss of rents and other damage which Lessor may incur by reason of such termination, including, but not limited to, costs of restoring and repairing the Leased Premises and putting the same in rentable condition, costs of renting the Leased Premises to another Lessee, loss or diminution of rents and other damage which Lessor may incur by reason of such termination and all reasonable attorney fees and expenses incurred in enforcing any of the terms of this Lease. Neither acceptance of rent by Lessor, with or without knowledge of breach, nor failure of Lessor to take action on account of any breach hereof, or to enforce its rights hereunder shall be deemed a waiver of any breach, and absent written notice or consent, said breach shall be a continuing one. Lessor's rights and remedies in the event of Lessee's default shall be deemed cumulative, and the exercise of any one or more of such remedies shall not operate to bar the exercise of any other rights or remedies of Lessor hereunder or available at law or in equity.

In the event Lessee fails to pay any installment of rent hereunder as and when such installment is due, or any other charge payable hereunder as and when such charge is due, Lessee, if permitted by law, shall pay to Lessor on demand a late charge in an amount equal to five percent (5%) of such installment or other such charge, and failure to pay such late charge within ten (10) days after demand therefor shall be an event of default hereunder. The provision for such late charge shall be in addition to all Lessor's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner.

23. **SUBORDINATION OF LEASE AND ATTORNMENT:** The rights of Lessee under this Lease shall be and are subject and subordinate at all times to all ground leases, and/or underlying leases, if any, now or hereafter in force against the Building, and to the lien of any mortgage or mortgages now or hereafter in force against such leases and/or the Building, and to all advances made or hereafter to be made upon the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that Lessee's rights under this Lease and possession of the Leased Premises shall not be disturbed so long as Lessee is not in default hereunder. If, by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or in any other manner, Lessor's interest in the Building is transferred to and owned by (a) the lessor under a ground lease or underlying lease now or hereafter in force against the Building, or (b) any mortgagee under a mortgage now or hereafter in force against any such lease and/or the Building, and such lessor or such mortgagee succeeds to Lessor's interest under this Lease, Lessee shall, at the option of such lessor or such mortgagee, be bound to such lessor or such mortgagee under all of the terms, covenants, and conditions of this

Lease for the balance of the term thereof remaining, and any extensions or renewals thereof, with the same force and effect as if such lessor or such mortgagee were the Lessor under this Lease, and Lessee does hereby attorn to such lessor or such mortgagee as its landlord, with the respective rights and obligations of Lessee and such lessor or such mortgagee being the same as now set forth in this Lease. This Article 23 is automatically effective and self-operative, and no further instrument of subordination or attornment shall be required; provided, however, Lessee shall promptly execute such further instruments as may be requested by Lessor to further confirm such subordination and/or attornment. Failure of Lessee to execute any such instrument within thirty (30) days of Lessee's receipt of written request by Lessor shall constitute a breach of this Lease, upon which Lessor may, at its option, cancel this Lease and terminate Lessee's interest therein.

24. **NOTICES:** Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessor to Lessee or by Lessee to Lessor shall be deemed to be complied with, when and if, the following steps are taken;

a. All rent and other payments required to be made by Lessee to Lessor hereunder shall be payable to Lessor at the address hereinbelow set forth or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith.

b. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, certified or registered mail, addressed to the parties hereto at the respective addresses set out opposite their names below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith:

Lessor:

Oneida Realty Company
1605 Alworth Building
306 West Superior Street
Duluth, MN 55802

AND TO

InfoTel Investments, L.L.C.
36227 Fox Hunter Rd
Pequot Lakes, MN 56472

Lessee:

Independent School District No. 709
4316 Rice Lake Road
Duluth, MN 55811

AND TO

Chief Financial Officer
Independent School District No. 709
4316 Rice Lake Road
Duluth, MN 55811

c. Any notice or document required or permitted to be delivered hereunder by Lessor to Lessee also shall be deemed to be delivered if and when delivered personally to Lessee at the Leased Premises.

25. **LAWS, RULES AND REGULATIONS:** Lessee shall observe such laws, ordinances, rules and regulations which from time to time may be put in effect by Lessor or any government agency for the general safety, comfort and convenience of Lessor, occupants, invitees and lessees of said Building or the public at large.

26. **ENERGY; GOVERNMENTAL ACTION:** Wherever in this Lease any terms, covenants or conditions are required to be kept or performed by the Lessor, the Lessor shall be deemed to have kept and performed such terms, covenants and conditions notwithstanding any action taken by the Lessor, if such action is pursuant to any governmental regulations, requirements, directives or requests, or if the Lessor deems such action to be for the benefit of our national interest or the general public. Without limiting the generality of the foregoing, the Lessor may reduce the quantity and quality of all utility and other services and impose such regulations as the Lessor deems necessary in order to conserve energy, and may change the normal hours of operation of the Building. Utility in the sense of this paragraph includes, but is not limited to heating, cooling, electricity, water and all the sources of energy needed to provide such.

a. Throughout the Term of this Lease, Lessee shall observe and comply with all governmental codes, laws, requirements, rules, orders, ordinances and regulations, and orders or recommendations of insurance carriers or fire insurance

rating organizations applicable to the Leased Premises or the business conducted therein, hereinafter called "Legal Requirements", whether or not any work necessary to be done in order to comply with such Legal Requirements by ordinary, extraordinary or otherwise, is required by any existing or future Legal Requirement, or is within the present contemplation of Lessor and Lessee, including, but not limited to, any demolition, reconstruction, alteration or repair of any part of the Leased Premises. It is the intention of the parties that Lessee shall and does hereby assume the entire responsibility of complying with all Legal Requirements which affect the Leased Premises. If any alterations are required, they shall be completed in accordance with Article 9.

27. **LIGHT, AIR & VIEW:** Lessee has no right to light, air, or view over any premises adjoining the Building.

28. **LESSOR'S USE:** It is understood that Lessor may occupy portions of the Building in the conduct of the Lessor's business. In such event, all references herein to other lessee's of the Building shall be deemed to include Lessor as an occupant or lessee.

29. **MISCELLANEOUS TAXES:**

a. Lessee shall pay prior to delinquency all taxes assessed against or levied upon its occupancy of the Leased Premises, or upon the fixtures, furnishings, equipment and personal property of Lessee located in the Leased Premises, and when possible, Lessee shall cause said fixtures, furnishings, equipment and personal property to be assessed and billed separately from the property of Lessor. In the event any or all of Lessee's fixtures, furnishings, equipment and personal property, or Lessee's occupancy of the Leased Premises, shall be assessed and taxed with the property of Lessor, Lessee shall pay to Lessor its share of such taxes within ten (10) days after delivery to Lessee by Lessor of a statement in writing setting forth the amount of such taxes applicable to Lessee's fixtures, furnishings, equipment or personal property, or occupancy of the Leased Premises.

b. If, under the laws of the United States or the State of Minnesota or any political subdivision in which the Leased Premises are situated, a tax or excise on rents or other tax, however described, is levied or assessed against Lessor or the rent reserved hereunder, in lieu of or as a substitute in whole or in part for taxes and assessments commonly known as real estate taxes, Lessee shall pay and discharge such tax or excise on rents or other tax, but only to the extent of the amount thereof which is lawfully assessed or imposed upon Lessor, and which was so assessed or imposed as a direct result of Lessor's ownership of the Leased Premises or of this Lease, or of the rental accruing under this Lease.

30. **ESTOPPEL CERTIFICATE:** Lessee agrees, within ten (10) days after request of Lessor, to deliver to Lessor, or Lessor's designee, including without limitation, the present or any future holder of any mortgage(s) and/or deed(s) of trust and/or ground lease(s) and/or underlying lease(s) on the Leased Premises, or any prospective purchaser of the Leased Premises, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent and other charges have been paid, the unexpired term of this Lease, whether or not Lessor is in default hereunder, and the nature of any such default, and such other matters pertaining to this Lease as may be reasonably requested by Lessor.

31. **MISCELLANEOUS:**

a. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

b. The terms, provisions and covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors, permitted sublessees, and permitted assigns, except as otherwise herein expressly provided.

c. Failure of Lessor to insist, in any one or more instances, upon strict performance of any term, covenant or condition of this Lease, or to exercise any option herein contained shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition or option, but the same shall continue and remain

in full force and effect. The receipt by Lessor of rents with knowledge of a breach in any of the terms, covenants or conditions of the Lease to be kept or performed by Lessee shall not be deemed waiver of such breach, and Lessor shall not be deemed to have waived any provision of this Lease unless expressed in writing and signed by Lessor.

d. The captions of this Lease are for convenience and reference only, and in no way define, limit or describe its scope or content.

e. All preliminary and contemporaneous negotiations are merged and incorporated into this Lease. This Lease contains the entire understandings between Lessor and Lessee and shall not be modified or amended in any manner except by an instrument in writing executed by Lessor and Lessee.

f. Time is of the essence.

g. Lessor and Lessee represent and warrant to the other that it has not engaged or dealt with any broker, finder, or like agent in connection with this Lease.

h. This Lease shall be subject to and governed by the laws of the State of Minnesota, and all questions concerning the making of this Lease, the meaning or intention of any of the terms of this Lease or concerning the validity thereof, and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of the State of Minnesota. All actions to enforce the terms and provisions of this Lease shall be brought and maintained only in St. Louis County District Court venued in Duluth, Minnesota. Nothing in this Section will prevent the docketing, registration, or enforcement of any judgment or order obtained in compliance with this Section in a court in another jurisdiction.

i. Lessee represents and warrants that the undersigned representative of Lessee is duly authorized to lease the Leased Premises and to engage in the transactions and bind Lessee to the obligations set forth in this Lease.

j. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument. The executed counterparts of this Lease may be delivered by electronic means, such as email and/or facsimile, and the receiving party may rely on the receipt of such executed counterpart as if the original had been received.

32. **INVALIDITY OF PARTICULAR PROVISIONS:** If any Article or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during its term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby unless such illegality, invalidity, or unenforceability is, in the sole determination of Lessor, essential to the rights of both parties in which event Lessor has the right to terminate this Lease on written notice to Lessee.

33. **PARKING:** During the initial term of this lease and during any and all extensions thereof, included in this lease are two (2) parking spaces. The parking spaces are located behind the building in an open air parking lot.

34. **BROKERAGE FEES:** Lessee represents and warrants that it has dealt with no broker, agent or other person in connection with this Lease other than Oneida Realty Company, and Lessee hereby indemnifies and holds Lessor harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Lessee with regard to this Lease. The provisions of this Article shall survive the expiration or termination of this Lease.

IN WITNESS WHEREOF, the Lessor and Lessee have duly signed and sealed these presents the day and year first hereinbefore written.

**INDEPENDENT SCHOOL DISTRICT NO. 709,
LESSEE**

By: Simone Zmich
Its: Exec. Dir. Business Services
Date: March 3, 2025

**INFOTEL INVESTMENTS, L.L.C.,
LESSOR**

By: _____
Greg Arvig, President
Date: _____

**FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between ISD 709 – Duluth Public Schools (“Owner”) and
Donald Holm Construction Company, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction includes a 3,000-square-foot addition to the existing Transportation Building garage.

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project scope of work includes extension of existing utilities and services for plumbing and electrical, addition of new equipment for mechanical and related architectural, structural and civil modifications.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Design Tree Engineering and Land-Surveying (Engineer) and DSGW Architects (Architect), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before October 3, 2025, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before November 15, 2025.

ARTICLE 4 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a lump sum of: \$ 820,733.00

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold in accordance with Paragraph 14.02 of the General Conditions.

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 4.0 percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
 - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. General Conditions (pages 1 to 75, inclusive).
 - 3. Supplementary Conditions (pages 1 to 10, inclusive).
 - 4. Specifications as listed in the table of contents of the Project Manual.
 - 5. Drawings consisting of 33 sheets with each sheet bearing the following general title: ISD 709 Transportation Building Addition (General, Architectural, Structural, Civil, Plumbing, Mechanical & Electrical).
 - 6. Addenda (number 1, narrative pages 1 to 4 and associated attachments, inclusive).
 - 7. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed (page 1, dated December 17, 2024, inclusive).
 - b. Contractor's Bid (pages 1 to 4, inclusive).
 - c. Attachment A – Prime Contractor Response and First-Tier Subcontractors List (pages 1 to 4, inclusive)
 - d. Bid bond (pages 1 to 4, inclusive).
 - 8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Performance bond. To be issued following receipt of executed contract.
 - b. Payment bond. To be issued following receipt of executed contract.
 - c. Work Change Directives.

- d. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on December 18, 2024 (which is the Effective Date of the Agreement).

OWNER:

ISD 709 – Duluth Public Schools

By: Bryan Brown

Title: Manager of Facilities

CONTRACTOR

Donald Holm Construction Co, Inc.

By: Ryker C. Holm

Title: Vice President

Attest: _____

Title: _____

Address for giving notices:

709 Portia Johnson Drive

Duluth, MN 55811

Attest: _____

Title: _____

Address for giving notices:

3211 West 3rd Street

Duluth, MN 55806

License No.: _____

(Where applicable)

Agent for service of process:

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

- Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
 - E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
 - F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
 - G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
 - H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

- Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
 - F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
 - G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
 - H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
 - I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
 - J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
 - K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

- attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
 - G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor **4** printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and **none** in electronic portable document format (PDF).

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC-3.01 Delete Paragraph 3.01.C in its entirety.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

No Supplementary Conditions in this Article.

ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Geotechnical Evaluation Report	May 7, 2021, 2024	Subsurface Boring Logs

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		None

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at [location] during regular business hours, or may request copies from Engineer.

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		None

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		None

ARTICLE 6—BONDS AND INSURANCE

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **None**

- E. *Workers' Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Employer's Liability	
Each accident	\$1,000,000.00
Each employee	\$1,000,000.00
Policy limit	\$2,000,000.00

- F. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 4. Any exclusion of coverage relating to earth subsidence or movement.
 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
 6. Any limitation or exclusion based on the nature of Contractor's work.
 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000.00
Products—Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000.00

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$1,000,000.00
Each Accident	\$1,000,000.00

Automobile Liability	Policy limits of not less than:
Property Damage	
Each Accident	\$1,000,000.00
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000.00

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$5,000,000.00
General Aggregate	\$5,000,000.00

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

- SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "...all Work at the Site must be performed during regular working hours, **Monday** through **Friday**. Contractor will not perform Work on a **Saturday, Sunday**, or any legal holiday."

ARTICLE 8—OTHER WORK AT THE SITE

- SC-8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:
- C. Owner intends to contract with others for the performance of other work at or adjacent to the Site.
1. **Design Tree Engineering, Inc.** shall have authority and responsibility for coordination of the various contractors and work forces at the Site.

ARTICLE 9—OWNER'S RESPONSIBILITIES

No Supplementary Conditions in this Article.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 Resident Project Representative

- SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:
- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 3. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
 4. *Review of Work; Defective Work*
 - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Observe whether any Work in place appears to be defective.
 - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
 5. *Inspections and Tests*
 - a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
 - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
 6. *Payment Requests:* Review Applications for Payment with Contractor.
 7. *Completion*
 - a. Participate in Engineer's visits regarding Substantial Completion.
 - b. Assist in the preparation of a punch list of items to be completed or corrected.
 - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - d. Observe whether items on the final punch list have been completed or corrected.
- D. The RPR will not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

No Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No Supplementary Conditions in this Article.

ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

No Supplementary Conditions in this Article.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

No Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

SC-15.01 Add the following new Paragraph 15.01.F:

- F. The Prime Contractor shall pay subcontractors within ten days of receipt of payment from the Owner or pay interest at the rate of 1 ½ percent per month for any part of the month.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 *Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
 - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
 - 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and

- 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

ARTICLE 18—MISCELLANEOUS

No Supplementary Conditions in this Article.

ADDENDUM NO. 1

Date: November 13, 2024

Project: ISD 709 Transportation Building Addition

QuestCDN Project ID#9373790

Project Location: Duluth, Minnesota

Owner: Duluth Public School District 709

Architect: DSGW Architects

Bid Due Date: November 19, 2024, 10:00 am

This Addendum shall be considered part of the contract documents for the above-mentioned project. The following items modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. Where a portion of the Bidding Documents are modified by this Addendum, the unaltered portions of the Bidding Documents shall remain in effect. Receipt of this addendum must be acknowledged on bid form, failure to do so may subject Proposer to disqualification.

CHANGES TO BIDDING REQUIREMENTS

CHANGES TO PROJECT MANUAL AND DRAWINGS:

Section 00 01 00 – Table of Contents:

- 1) Revised.

Section C410 – Bid Form for Construction Contract:

- 1) Revise dates for substantial completion and completed and ready for final payment/owner occupancy to Friday, October 3, 2025 and Monday, November 3, 2025, respectively.
- 2) Delete Item 4.03 regarding liquidated damages.

Section 09 90 00 – Painting and Coating:

- 1) Revised.

Section 21 13 13 – Wet-Pipe Sprinkler Systems:

- 1) Delete Section 21 13 13 in its entirety.

Section 21 13 16 – Dry-Pipe Sprinkler Systems:

- 1) Add Section 21 13 16.

Section 23 09 93 – Sequence of Operations for HVAC Controls:

- 1) Add Item 3.1 – A – 5. To read:
 5. BAS to monitor space temperature in new addition and MAU status.
 - a. If space temperature falls below 65°F, BAS shall send alarm to Owner's facilities team indicating low temperature condition.
 - b. MAU shall be enabled to operate in response to the low temperature alarm.

Section 31 22 00 – Grading:

- 1) Replace section 31 22 00 – Grading specification section with the attached specifications section.

ADDENDUM NO. 1

ISD 709 Transportation Building Addition

Section 33 46 00 – Subdrainage:

- 1) Revised.

Appendix A – Geotechnical Evaluation Report:

- 1) Replace original Geotechnical Evaluation Report dated May 7, 2021 with new report dated November 8, 2024.

Drawing C101 – EXISTING CONDITIONS & REMOVALS:

- 1) Revise extents of landscaping and sidewalk removal as shown on the attached drawing.

Drawing C201 – SITE & GRADING PLAN:

- 1) Revise extents of sidewalk installation as shown on the attached drawing.
- 2) Revise keynote 7 as shown on the drawing.

Drawing C301 – UTILITY PLAN:

- 1) No revisions, shown for reference only.

Drawing C401 – EROSION CONTROL PLAN:

- 1) Revise extents of erosion control measures as shown on the attached drawing.
- 2) Revise silt fence quantity as shown on the attached drawing.

Drawing C501 – CIVIL DETAILS:

- 1) Remove notes referring to unit pricing from “PVC and corrugated polyethylene sewer pipe bedding” details as shown on the drawing.

Drawing S100 – GENERAL NOTES

- 1) Revise geotechnical report number:

Drawing S200 – FOUNDATION PLAN:

- 1) Delete section cut 12/S300
- 2) Revise Vapor retarder to 15mil thickness

Drawing S300 – FOUNDATION DETAILS - CIP:

- 1) Delete erroneous noted detail 5/S301
- 2) Revise insulation Thickness detail 8/S301
- 3) Delete detail 12/S301

Drawing M401 – LEVEL 1 MECHANICAL PLAN (Drawing Not Attached – Narrative Only)

- 1) Delete Keynote 1. This note is superseded by Keynote 8. Change the two Keynote 1 markings to Keynote 8.
- 2) Clarification for Keynote 8: “Extend existing dry-system fire protection line as needed for coverage of new addition.”



ADDENDUM NO. 1

ISD 709 Transportation Building Addition

Drawing E401 – LEVEL 1 MECHANICAL PLAN:

- 1) Revised Keyed Notes as indicated on attached drawing.
- 2) Omitted Keyed Note 1 designation and existing door devices shown at existing Southeast door.
- 3) Omitted keyed Note 3 and new devices at new South door.
- 4) Added Keyed Note 3 and new door devices at new Southeast door.

Architectural Addendum One:

- 1) See attached architectural drawing sheets.:
 - a) Drawing G1.1 – LIFE SAFETY PLAN & SUMMARY
 - b) Drawing A2.1 – FIRST FLOOR PLAN
 - c) Drawing A4.1 – SCHEDULES & TYPES
 - d) Drawing A6.1 – WALL SECTIONS
 - e) Drawing A8.1 - DETAILS

PRODUCT APPROVALS:

Section / Drawing No. & Schedule	Material / Product / ID	Approved Manufacturer
23 09 00, 2.15	CO/NO2 Gas Monitor Sensors	CET; Brasch Env. Tech.
23 55 00, 2.2	Fuel-Fired Heaters	Advanced Radiant Systems

QUESTIONS FROM PROPOSERS:

Question 1: The spec book and bid form mention liquidated damages multiple times, are there any liquidated damages associated with this project?

Answer 1: Eliminate references to liquidated damages in the specifications and bid form.

Question 2: The bid form provided notes to provide a list of proposed subcontractors. Please confirm if there will be a form to provide this info.

Answer 2: The bidding contractor to provide a list of subcontractors in format at their discretion.

Question 3: Spec section 26 08 00 Testing and commissioning of electrical systems notes to provide 3rd party commissioning agent info with the bid. Please clarify if this is required.

Answer 3: The 3rd-party commissioning agent will be direct to Owner.

Question 4: Please clarify the use of the existing; water, sewer, electric, and gas services. Who will pay the cost of these items?

Answer 4: The school district will be paying for the cost of existing utility services during construction.



ADDENDUM NO. 1

ISD 709 Transportation Building Addition

ATTACHMENTS:

Addendum One – DSGW Architects Narrative pages

Section 00 01 00 – Table of Contents
Section C410 – Bid Form for Construction Contract
Section 09 90 00 – Painting and Coating
Section 21 13 16 – Dry-Pipe Sprinkler Systems
Section 23 09 00 – Instrumentation and Control for HVAC
Section 23 09 93 – Sequence of Operations for HVAC Controls
Section 23 55 00 – Fuel-Fired Heaters
Section 31 22 00 – Grading
Section 33 46 00 – Subdrainage
Appendix A – Geotechnical Evaluation Report

Drawing G1.1 – LIFE SAFETY PLAN & SUMMARY
Drawing A2.1 – FIRST FLOOR PLAN
Drawing A4.1 – SCHEDULES & TYPES
Drawing A6.1 – WALL SECTIONS
Drawing A8.1 – DETAILS

Drawing C101 – EXISTING CONDITIONS & REMOVALS
Drawing C201 – SITE & GRADING PLAN
Drawing C301 – UTILITY PLAN
Drawing C401 – EROSION CONTROL PLAN
Drawing C501 – CIVIL DETAILS
Drawing S100 – GENERAL NOTES
Drawing S200 – FOUNDATION PLAN
Drawing S300 – FOUNDATION DETAILS - CIP
Drawing E401 – LEVEL 1 MECHANICAL PLAN:

Pre-Bid Meeting Sign-In Sheet from 11/12/24

END OF ADDENDUM 1



INDEPENDENT SCHOOL DISTRICT NO. 709

Duluth Public Schools
709 Portia Johnson Drive
Duluth, Minnesota 55811
218-336-8907

ISD 709
DULUTH PUBLIC SCHOOLS

DEC 17 2024

APPROVED BY
THE SCHOOL BOARD

MEMORANDUM

To: Simone Zurich, Executive Director of Business Services
From: Cathy Holman, Purchasing Coordinator
Subject: Bid #1333 Transportation Building Addition
Date: 12/2/2024

Five (5) vendors responded with the following results:

<u>VENDOR</u>	<u>TOTAL</u>
Nordic Group Inc	\$1,278,695.00
Max Gray Construction	\$912,000.00
Lake Head Construction	\$898,100.00
Johnson Wilson Construction	\$872,000.00
Donald Holm Construction	\$820,733.00

Bryan Brown and Jeremy DeGraef from the district Facilities Department reviewed the bids along with Paul Quirin from Design Tree Engineering.

Bryan Brown, Facilities Manager, and Paul Quirin from Design Tree Engineering recommend awarding Bid #1333 meeting specifications as submitted to Donald Holm Construction for the sum of \$820,733.00.

Program: Facilities

Fund Custodian: Bryan Brown Facilities


Jill Lofald, Board Chair

BID FORM FOR CONSTRUCTION CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—OWNER AND BIDDER

- 1.01 This Bid is submitted to: **ISD 709 – Duluth Public Schools**
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2—ATTACHMENTS TO THIS BID

- 2.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. List of Proposed Subcontractors;
 - C. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such authority within the time for acceptance of Bids;
 - D. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - E. Responsible contractor forms.

ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES

- 3.01 *Lump Sum Bids*
- A. Bidder will complete the Work in accordance with the Contract Documents for the following lump sum (stipulated) price(s), together with any Unit Prices indicated in Paragraph 3.02:
 - 1. Lump Sum Price (Single Lump Sum)

Lump Sum Bid Price	\$820,733.00
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Eight Hundred Twenty Thousand Seven Hundred Thirty Three & 00/100 Dollars

ARTICLE 4—TIME OF COMPLETION

- 4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 4.02 Bidder agrees that the Work will be substantially complete on or before August 29, 2025 October 3, 2025 and will be completed and ready for final payment (and Owner occupancy) in accordance with Paragraph 15.06 of the General Conditions on or before September 1, 2025 November 3, 2025. [Addendum #1 dated 11/13/24]

- 4.03 ~~*Bidder accepts the provisions of the Agreement as to liquidated damages,*~~ *[Addendum #1 dated 11/13/24]*

ARTICLE 5—BIDDER'S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA

5.01 *Bid Acceptance Period*

- A. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

5.02 *Instructions to Bidders*

- A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

5.03 *Receipt of Addenda*

- A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
1	11/13/2024

ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Bidder's Representations*

- A. In submitting this Bid, Bidder represents the following:
1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
 2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the

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effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's) safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

6.02 *Bidder's Certifications*

A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed Individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:
 - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
 - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
 - c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
 - d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

BIDDER hereby submits this Bid as set forth above:

Bidder:

Donald Holm Construction Co., Inc.

(typed or printed name of organization)

By:

RH

(individual's signature)

Name: Ryker C. Holm

(typed or printed)

Title: Vice President

(typed or printed)

Date: 11/19/2024

(typed or printed)

If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.

Attest:

RH

(individual's signature)

Name: Ryker C. Holm

(typed or printed)

Title: Vice President

(typed or printed)

Date: 11/19/2024

(typed or printed)

Address for giving notices:

3211 W 3rd Street, Duluth, MN 55806

Bidder's Contact:

Name: Ryker C. Holm

(typed or printed)

Title: Vice President

(typed or printed)

Phone: 218-628-2257

Email: ryker@donaldholmconst.com

Address:

3211 W 3rd Street, Duluth, MN 55806

Bidder's Contractor License No.: (if applicable) N/A

**ATTACHMENT A
PRIME CONTRACTOR RESPONSE**

RESPONSIBLE CONTRACTOR VERIFICATION AND CERTIFICATION OF COMPLIANCE

PROJECT NUMBER: 020116.5

This form includes changes by statutory references from the Laws of Minnesota 2015, chapter 64, sections 1-9. This form must be submitted with the response to this solicitation. A response received without this form, will be rejected.

Minn. Stat. § 16C.285, Subd. 7. **IMPLEMENTATION.** ... any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project...

Minn. Stat. § 16C.285, Subd. 3. **RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.** "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

- | | |
|-----|---|
| (1) | <p>The Contractor:</p> <ul style="list-style-type: none">(i) is in compliance with workers' compensation and unemployment insurance requirements;(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative. |
| (2) | <p>The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.03, 181.101, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:</p> <ul style="list-style-type: none">(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is "repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;(iv) has been found by the commissioner of Labor and Industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;*(vii) has been convicted of a violation of section 609.52, subd 2 (19). |

(3)	The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;*
(4)	The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;*
(5)	The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;*
	* Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.
(6)	The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and
(7)	All subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Minn. Stat. § 16C.285, Subd. 5. SUBCONTRACTOR VERIFICATION.

A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Subd. 5a. Motor carrier verification. A prime contractor or subcontractor shall obtain annually from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each motor carrier. A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subdivision 3 after submitting its annual verification. A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet all the minimum criteria in subdivision 3. Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

Minn. Stat. § 16C.285, Subd. 4. VERIFICATION OF COMPLIANCE.

A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3, with the exception of clause (7), at the time that it responds to the solicitation document.

A contracting authority may accept a signed statement under oath as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required minimum criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section provided that it contains an electronic signature as defined in section 325L.02, paragraph (h).

CERTIFICATION

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. § 16C.285, and
- 2) if my company is awarded a contract, I will submit Attachment A-1 prior to contract execution, and
- 3) if my company is awarded a contract, I will also submit Attachment A-2 as required.

Authorized Signature of Owner or Officer:

Ryker C. Holm

Printed Name:

Ryker C. Holm

Title:

Vice President

Date:

11/19/2024

Company Name:

Donald Holm Construction Co., Inc.

NOTE: Minn. Stat. § 16C.285, Subd. 2, (c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

ATTACHMENT A-1

FIRST-TIER SUBCONTRACTORS LIST

SUBMIT PRIOR TO EXECUTION OF A CONSTRUCTION CONTRACT

PROJECT NUMBER: 020116.5

Minn. Stat. § 16C.285, Subd. 5. A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

FIRST TIER SUBCONTRACTOR NAMES* (Legal name of company as registered with the Secretary of State)	Name of city where company home office is located
Northern Concrete	Cotton, MN
M& J, LLC	Proctor, MN
A.G. O'Brien	Hermantown, MN
Belknap Electric	Superior, WI
FirePro Sprinkler Specialists, Inc.	Hermantown, MN
Doorco	Duluth, MN
CMC Construction	Duluth, MN
KTM Paving	Hermantown, MN

*Attach additional sheets as needed for submission of all first-tier subcontractors.

SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-1

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

All first-tier subcontractors listed on attachment A-1 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.

Authorized Signature of Owner or Officer: <i>Ryker C. Holm</i>	Printed Name: Ryker C. Holm
Title: Vice President	Date: 11/19/2024
Company Name: Donald Holm Construction Co., Inc.	



AIA Document A310™ – 2010

Bond No. RB0096148

Bid Bond

CONTRACTOR:

(Name, legal status and address)
Donald Holm Construction Co., Inc.
3211 West Third Street

Duluth, MN 55806

OWNER:

(Name, legal status and address)
ISD#709-Duluth Public Schools

SURETY:

(Name, legal status and principal place of business)

Granite Re, Inc.
14001 Quailbrook Drive

Oklahoma City, OK 73134

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

Bond Amount: Five Percent of the Bid Amount (5% of Bid Amount)

PROJECT: Project No.- 020116.50- ISD 709 Transportation Building Addition

(Name, location or address, and Project number, if any)

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 13th day of November, 2024

(Witness)

(Witness)

Donald Holm Construction Co., Inc.
(Principal) (Seal)
(Title)
Granite Re, Inc.
(Surety) (Seal)
(Title) Attorney-in-Fact Troy Staples

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Init

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061110

ACKNOWLEDGMENT OF PRINCIPAL (Individual)

State of _____)
County of _____)

On this _____ day of _____, in the year _____, before me personally come(s) _____ to me known and known to me to be the person(s) who (is) (are) described in and executed the foregoing instrument and acknowledge(s) to me that he/she executed the same.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Partnership)

State of _____)
County of _____)

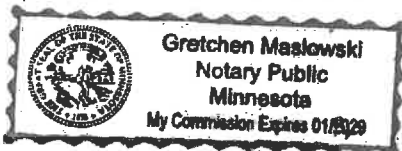
On this _____ day of _____, in the year _____, before me personally come(s) _____ a member of the co-partnership of _____ to me known and known to me to be the person who is described in and executed the foregoing instrument and acknowledges to me that he/she executed the same as for the act and deed of the said co-partnership.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL (Corporation)

State of Minnesota)
County of Carlton)

On this 19th day of November, in the year 2024, before me personally come(s) Ryker C. Holm to me known, who, being duly sworn, deposes and says that he/she is the Vice President of the Donald Holm Construction Co., Inc. the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

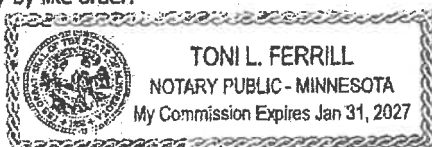


Gretchen Maslowski
Notary Public

ACKNOWLEDGMENT OF SURETY

State of Minnesota)
County of Dakota)

On this 13th day of November, in the year 2024, before me personally come(s) Troy Staples, Attorney(s)-in-Fact of Granite Re, Inc. with whom I am personally acquainted, and who, being by me duly sworn, says that he/she is (are) the Attorney(s)-in-Fact of Granite Re, Inc. company described in and which executed the within instrument; that he/she know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he/she signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Toni Ferrill
Notary Public

GRANITE RE, INC.
GENERAL POWER OF ATTORNEY

Know all Men by these Presents:

That GRANITE RE, INC., a corporation organized and existing under the laws of the State of MINNESOTA and having its principal office at the City of OKLAHOMA CITY in the State of OKLAHOMA does hereby constitute and appoint:

TOM LAHL; TOM KEMP; LISA M. FRANCOUR; JENNIFER BOYLES; ZACHARY PATE; TROY STAPLES; NICHOLAS HOCHBAN; NICK DENN its true and lawful Attorney-in-Fact(s) for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said GRANITE RE, INC. a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said GRANITE RE, INC. through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said:

TOM LAHL; TOM KEMP; LISA M. FRANCOUR; JENNIFER BOYLES; ZACHARY PATE; TROY STAPLES; NICHOLAS HOCHBAN; NICK DENN may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said GRANITE RE, INC. has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its President and Assistant Secretary, this 31st day of July, 2023.

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)




Kenneth D. Whittington, President


Kyle P. McDonald, Assistant Secretary

On this 31st day of July, 2023, before me personally came Kenneth D. Whittington, President of the GRANITE RE, INC. Company and Kyle P. McDonald, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said, that they, the said Kenneth D. Whittington and Kyle P. McDonald were respectively the President and the Assistant Secretary of GRANITE RE, INC., the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order as President and Assistant Secretary, respectively, of the Company.

My Commission Expires:
April 21, 2027
Commission #: 11003620




Notary Public


GRANITE RE, INC.
Certificate

THE UNDERSIGNED, being the duly elected and acting Assistant Secretary of Granite Re, Inc., a Minnesota Corporation, HEREBY CERTIFIES that the following resolution is a true and correct excerpt from the July 15, 1987, minutes of the meeting of the Board of Directors of Granite Re, Inc. and that said Power of Attorney has not been revoked and is now in full force and effect.

"RESOLVED, that the President, any Vice President, the Assistant Secretary, and any Assistant Vice President shall each have authority to appoint Individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the Company in the course of its business. On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the Company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affixed the corporate seal of the Corporation this
13th day of November, 2024.




Kyle P. McDonald, Assistant Secretary



**PATE
BONDING
INC.**

1276 So. Robert St. • West St. Paul, MN 55118 • Phone: (651) 457-6842 • Fax: (651) 457-7531 • Web Site: www.patebonding.com

Donald Holm Construction Co., Inc.
3211 West Third Street
Duluth, MN 55806

Bid Bond Results Form

PROJECT OWNER: ISD#709-Duluth Public Schools

BID DATE: November 19th 2024

PROJECT NAME: Project No.- 020116.50- ISD 709 Transportation Building Addition

APPROX. BID AMOUNT: *\$1,000,000.00

** If your bid increases by 10% or more from this estimate, please contact our office for approval prior to the bid letting.*

BOND NUMBER: RB0096148

General Agreement of Indemnity and Surety Recommends Updating Bank Letter Of Credit

PLEASE LIST THE FIRST THREE BIDDERS IF KNOWN

<i>Contractor's Name</i>		<i>Amount</i>	<i>Bid Security</i>	
			<i>Bid Bond</i>	<i>Check</i>
Low	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
2nd	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
3rd	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
Your Bid If Not Listed Above		\$ _____	<input type="checkbox"/>	<input type="checkbox"/>

Comments

By: _____
Date: _____

PLEASE RETURN THIS FORM TO PATE BONDING, INC.

Your assistance in providing us with all of your bid results is appreciated

PBI-JP

Delivery Instructions: [] COURIER [] EMAIL [] FAX [] MAIL [] OVERNIGHT [] PICKUP [] OTHER _____

Please review your bond to ensure it is as you ordered and that it is in the proper form which includes the correct names, bond amounts and dates before you submit it. By affixing your signature, executing and providing this bond to the obligee you are verifying, and we will justifiably assume, the bond has been issued correctly with the best interests and requirements of all parties being considered. Contact us immediately if any correction is required.

MEMORANDUM

TO: Curriculum Dept.
FROM: Angie Frank, Adult Diploma Program
SUBJECT: High School Diploma
DATE: 2/7/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Sophia Flink-Adduci

2/7/2025

MEMORANDUM

TO: Curriculum Dept.

FROM: Angie Frank, Adult Diploma Program

SUBJECT: High School Diploma

DATE: 2/7/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Jayden Hester

2/7/2025

March 3, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Evan James Butchart	Duluth Public Schools	2/10/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Valarie Wagenbach
Administrative Assistant
Area Learning Center

MEMORANDUM

TO: Curriculum Dept.

FROM: Angie Frank, Adult Diploma Program

SUBJECT: High School Diploma

DATE: 2/13/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Paige Stojevich

2/13/2025

February 13, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Brant Isaac White	Duluth Public Schools	2/13/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Valarie Wagenbach
Administrative Assistant
Area Learning Center

February 27, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Joseph L Howard	Duluth Public Schools	2/27/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Kathleen Wilson
Sr. Clerical
Area Learning Center

March 4, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Tobias Christopher	Duluth Public Schools	3/4/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Kathleen Wilson
Sr. Clerical
Area Learning Center

March 4, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Darla Ellen Elizabeth Anderson	Duluth Public Schools	3/4/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Valarie Wagenbach
Administrative Assistant
Area Learning Center

MEMORANDUM

TO: Curriculum Dept.

FROM: Angie Frank, Adult Diploma Program

SUBJECT: High School Diploma

DATE: 3/5/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Craig Guntzburger

3/5/2025

March 6, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Kylie Elizabeth Laine	Duluth Public Schools	3/6/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Valarie Wagenbach
Administrative Assistant
Area Learning Center

March 11, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Sydni Jo Telando	Duluth Public Schools	3/10/2025
Avera Scheibelhut	Duluth Public Schools	3/10/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Kathleen Wilson
Sr. Clerical
Area Learning Center

March 10, 2025

Anthony Bonds, Assistant Superintendent
Independent School District 709
4316 Rice Lake Rd, Suite 108
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Prescott Nygaard	Duluth Public Schools	3/10/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle
Principal

Kathleen Wilson
Sr. Clerical
Area Learning Center



**Duluth Public
Schools**

Every Student. Every Day.

Shannon Brown <shannon.brown@isd709.org>

Fwd: Diploma request Lucy Berkey

2 messages

Wed, Feb 26, 2025 at 8:01 AM

Haley Anderson <haley.anderson@isd709.org>
To: Shannon Brown <shannon.brown@isd709.org>

Hey Shannon,
Are we able to get a diploma for her?

thank you,

----- Forwarded message -----

From: **Lisa Post** <christine.post@isd709.org>
Date: Tue, Feb 25, 2025 at 1:10 PM
Subject: Diploma request Lucy Berkey
To: Haley Anderson <haley.anderson@isd709.org>
Cc: Julie Guddeck <julie.guddeck@isd709.org>

Haley,

I need to request a diploma for Lucy Berkey with a graduation date of 3/13/25. The diploma would be via East High School.

I understand the diploma may take 3-4 weeks to receive. Once you get the signed diploma, could you let me know and I'll either come and pick it up or stop by my infrequently visited mailbox at Denfeld, as I will then need to mail it to Gilbert, MN.

FYI, this is not a replacement diploma.

Thanks for your assistance.

Christine "Lisa" Post

Work Experience Teacher
Bridge Program ISD #709

Mailbox at Denfeld High School-Bridge Program

christine.post@isd709.org
(218)626-7931 (cell)
(218)336-8700 x.2091 (office)

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--

Haley Anderson
Senior Office Support Specialist
Duluth East High School

146



**Duluth Public
Schools**

Every Student. Every Day.

Shannon Brown <shannon.brown@isd709.org>

Fwd: Diploma request Bunnell, Lucas

1 message

Tracy Robertson <tracy.robertson@isd709.org>
To: Shannon Brown <shannon.brown@isd709.org>

Mon, Mar 3, 2025 at 1:05 PM

Good afternoon! Is this doable?

Appreciatively,

Tracy Robertson
Lead Administrative Assistance
Denfeld High School
(218) 336-8830 ext. 2757
tracy.robertson@isd709.org



Our Mission: Denfeld's **Spirit** creates a safe and welcoming environment that provides **Opportunities** for all. We **Achieve** academic success, build relationships, and show **Respect** for all, so our students can accomplish their dreams, contribute to their communities, and improve our world.

Our Vision: We will work with our communities to:

- Offer engaging and differentiated academics with multiple tiers of support
- Foster accountability through proactive and restorative systems
- Prioritize relationships through social and emotional learning



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----- Forwarded message -----

From: **Lisa Post** <christine.post@isd709.org>
Date: Mon, Mar 3, 2025 at 12:26 PM
Subject: Diploma request Bunnell, Lucas
To: Tracy Robertson <tracy.robertson@isd709.org>

Hi Tracy,

I'd like to request a diploma for Lucas Bunnell with graduation date of April 7, 2025. Thank you.

Christine "Lisa" Post

Work Experience Teacher
Bridge Program ISD #709

Mailbox at Denfeld High School-Bridge Program

christine.post@isd709.org
(218)626-7931 (cell)
(218)336-8700 x.2091 (office)

Confidentiality Notice: This E-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply E-mail and destroy all copies of the original message.

DISTRICT 709 FIELD TRIP REQUESTS

In accordance with School District Policy District 6160, District 709 recognizes properly planned, well conducted, and carefully supervised field trips may be a vital part of the curriculum. School field trips are encouraged within available resources and requirements outlined below.

DIRECTIONS: All staff are required to submit a Field Trip Request **prior** to the field trip being finalized with the involved students and to:

- Receive administrative and/or extra-curricular coordinator approval for all instructional and supplementary field trips
- Receive administrative reviewal and school board approval for all extended trips (Exceptions may be granted by the school board chair to accommodate emergencies.)

DEFINITIONS:

Instructional Trips - Trips that take place during the school day, relate directly to a course of study, and require student participation. Fees may not be assessed against students.

Supplementary Trips - Trips in which students voluntarily participate in and which often take place outside the regular school day, but do not include overnight stays. Financial contributions may be requested of students.

Extended Trips Within Minnesota and Continental United States - Trips that involve one or more overnight stops within Minnesota or the Continental United States and may be instructional or supplementary and are voluntary in nature. Extended field trips require school board approval prior to the trip.

INSTRUCTIONAL TRIP ACTION

Principal: ☐ Approved Name: _____
☐ Not Approved Date: _____

SUPPLEMENTAL TRIP ACTION

Principal: ☐ Approved Name: _____
☐ Not Approved Date: _____

Instructional/Supplemental Trips need not be sent to District office.

EXTENDED TRIP ACTION

Principal: ☒ Recommended Name: Kerry Hocking
☐ Not Recommended Date: 3-7-25

Assistant Superintendent: ☒ Recommended Name: Anthony Br I
☐ Not Recommended Date: 3/11/25

School Board: ☐ Approved Name: _____
☐ Not Approved Date: _____

All extended trip proposals must be sent to the Assistant Superintendent's Office to be placed on the Education Committee meeting agenda for approval.

FIELD TRIP REQUEST FORM

Date of Submission:

Type of Trip: ☒ Instructional ☐ Supplementary ☐ Extended

1. Organization/Grade/Course Planning Trip: _____
2. Contact Person (Responsible for Checklist Completion): Jonathan Grimsby - Duluth East Band Director
3. Field Trip Date(s): April 11-12, 2025 Destination: Eau Claire, WI Jazz Festival
4. Field Trip Overview (Include events, establishments and locations): Performances/Competition at UW, Eau Claire
Travel by motor coach.
5. Field Trip Departure from School (Date and Time): 4:30 pm, April 11, 2025
Field Trip Return to School (Date and Time): 2:00 am, April 12th, 2025
6. Objectives of Field Trip: Performance and Clinic sessions with Jazz Professionals - represent the Duluth
community with style and panache.
7. Relationship to Curriculum or Student Learning: Directly aligns with our MN State standards and curriculum maps -
Clinic workshops will reinforce benchmarks and goals - performances will enhance the application of knowledge.
8. Planned Follow-up Field Trip Activities: Continued instruction throughout the 2024 - 2025 academic year.
9. Field Trip Budget Request

Estimated Expenses		
Total Admission/Fees	paid by band account	\$
Total Meals	paid by jazz concert revenue	\$
Total Lodging		\$771.12 (including
Total Transportation		\$ tax)
<input type="checkbox"/> School District Vehicle(s)		
<input checked="" type="checkbox"/> Commercial Transportation Carrier ~ Name: <u>MN Coaches</u>		
<input type="checkbox"/> Private Vehicle (requires certificate of insurance) ~ Name: _____		
Total Additional Stipends:		\$
Other:		\$
Total		\$ 155.40/student

Revenues		
District Budget	Code:	\$
Booster Group		\$
Donations		\$
Student Fees		\$
Total Additional Stipends:		\$
Total		\$

11. Reviewed/Completed Request Checklist: ☐ Yes ☐ No

RETURN COMPLETED REQUEST TO BUILDING PRINCIPAL

FIELD TRIP REQUEST CHECKLIST - All Field Trips

DIRECTIONS: Please complete checklist. No attachments are necessary.

- ☒ Develop and Communicate Student Discipline Expectations
- ☒ Forward Field Trip Explanation and Fee Structure Letter Sent to Parents/Guardians
- ☒ Collect Parent/Guardian Permission for Student Participation in Field Trip (Include request for special information - i.e. allergies, medications, special needs.)
- ☒ Gain Access to Cell Phone for Field Trip
- ☒ Plan Arrangements for Early Pick-Up or Late Drop-Off Students (if necessary).
Guide: May choose to leave message on school voice mail to help with late drop off.
- ☒ Plan Meal Arrangements (if necessary)
Reminder: Notify food service of non-participation.
- ☒ Plan Administration of Student Medication and First Aid Needs (if necessary)
Guide: Contact School Nurse.
- ☒ Develop and Communicate Action Plan if Student Gets Lost on Trip
- ☒ Arrange Adult Chaperones for Field Trip (if necessary)
Guide: One (1) adult for every twenty (20) students depending on field trip. Parent volunteers are encouraged when possible or appropriate.
- ☒ Develop and Communicate Teacher and Adult Chaperone Expectations
Example: Supervision duties, no smoking, no alcohol
- ☒ Planned Itinerary

TIME

LOCATION

See attached example from prior trip in 2023 - itinerary cannot be set until contest managers set the times.

- ☒ Maintain Student Roster and Check-in/Check-out Procedure
- ☒ Arrangement for Safety Needs (i.e. crossing guards)

Signature of Contact Person: Jonathan Grimsby

FIELD TRIP REQUEST CHECKLIST – Extended Trip Only

DIRECTIONS: Please complete checklist and attach all appropriate materials.

- ☒ Develop and Complete Field Trip Itinerary and Emergency Telephone Contacts Letter to Parents/Guardians
Note: Attach tentative planned itinerary.
- ☒ Arrange Funding of Expenses During Trip
- ☒ Arrange Meal Plans
- ☒ Arrange Lodging Plans and Room Assignments
- ☒ Collect Family Emergency Information for Students
Example: Home phone numbers, emergency contacts, medical information
- ☒ Additional Information
Note: Provide any additional information.

Signature of Contact Person: Jonathan Grimsby

Eau Claire Jazz Trip Itinerary - As of 4/19/23



Hello Jazz Band,

Here is an itinerary for our trip to the Eau Claire Jazz Festival from Friday, April 21, 2023 through Sunday, April 23, 2023.

Friday, April 21, 2023

4:45 pm - Load Coach Bus and leave for Eau Claire, WI

(Bring a snack for the bus)

7:45 pm - Arrive in Eau Claire/check into Hotel for Dinner

Fairfield by Marriott (715) 831-1000

1666 Princeton Crossing

Eau Claire, Wisconsin 54703

8:00 pm - Taco Bar Hosted by chaperones in hotel

10:30 pm - ROOM CHECK & LIGHTS OUT

Saturday, April 21, 2023

7:00 am - Breakfast at hotel

8:30 am - Check out of hotel/Load Bus - Depart for the University of Wisconsin, Eau Claire *(don't leave anything behind, we are not coming back!)*

9:00 am - Arrive at University of Wisconsin, Eau Claire

PERFORMANCE SCHEDULE Linked Here MASTER CLASS SCHEDULE Linked Here

9:00 am - 11:45 am Competition/Master Classes/Performances

12:00 pm - Lunch provided by parents (brought in coolers on bus)

1:00 pm - 4:30 pm Additional clinic sessions/performance/awards

2:30 pm - **Duluth East Warm up** in "Centennial A-B"

3:00 pm - **Duluth East PERFORMANCE** in "Ojibwe Ballroom"

3:30 pm - **Duluth East SIGHTREADING** session in "Ho-Chunk"

4:30 pm - Awards Ceremony in "Ojibwe"

5:30 pm - Dinner *(purchased using concert at Pier B revenue)*

Tony Capony Pizza

2501 Mondovi Road

7:30 pm - "Headliner Concert"

Pablo Center at the Confluence

128 Graham Avenue

10:00 pm - Depart for Duluth East High School

1:00 am (4/23/23) - Approximate arrival at Duluth East High School



CLASS AA HIGH SCHOOL BIG BAND

PERFORMANCE IN DAVIES CENTER, OJIBWE BALLROOM

	WARM UP	PERFORMANCE	SIGHTREADING
7:30-8:00			
8:00-8:30	NORTH HIGH SCHOOL JAZZ ENSEMBLE		
8:30-9:00	ROSEMOUNT HIGH SCHOOL	NORTH HIGH SCHOOL JAZZ ENSEMBLE	
9:00-9:30	EAU CLAIRE MEMORIAL HIGH SCHOOL	ROSEMOUNT HIGH SCHOOL	NORTH HIGH SCHOOL JAZZ ENSEMBLE
9:30-10:00	BRAINERD HIGH SCHOOL	EAU CLAIRE MEMORIAL HIGH SCHOOL	ROSEMOUNT HIGH SCHOOL
10:00-10:30	FOND DU LAC HIGH SCHOOL	BRAINERD HIGH SCHOOL	EAU CLAIRE MEMORIAL HIGH SCHOOL
10:30-11:00	OCONOMOWOC HIGH SCHOOL	FOND DU LAC HIGH SCHOOL	BRAINERD HIGH SCHOOL
11:00-11:30	MAPLE GROVE SENIOR HIGH SCHOOL	OCONOMOWOC HIGH SCHOOL	FOND DU LAC HIGH SCHOOL
11:30-12:00		MAPLE GROVE SENIOR HIGH SCHOOL	OCONOMOWOC HIGH SCHOOL
12:00-12:30			MAPLE GROVE SENIOR HIGH SCHOOL
12:30-1:00			
1:00-1:30			
1:30-2:00	FRANKLIN HIGH SCHOOL		
2:00-2:30	JANESVILLE CRAIG HIGH SCHOOL	FRANKLIN HIGH SCHOOL	
2:30-3:00	DULUTH EAST JAZZ BAND	JANESVILLE CRAIG HIGH SCHOOL	FRANKLIN HIGH SCHOOL
3:00-3:30	ROSEVILLE AREA HIGH SCHOOL	DULUTH EAST JAZZ BAND	JANESVILLE CRAIG HIGH SCHOOL
3:30-4:00		ROSEVILLE AREA HIGH SCHOOL	DULUTH EAST JAZZ BAND
4:00-4:30			ROSEVILLE AREA HIGH SCHOOL

AWARD CEREMONY IN OJIBWE

4:30			
ROOM	CENTENNIAL A-B	OJIBWE BALLROOM	HO-CHUNK
STORAGE:	MENOMINEE		

DISTRICT 709 **FIELD TRIP REQUESTS**

In accordance with School District Policy District 6160, District 709 recognizes properly planned, well conducted, and carefully supervised field trips may be a vital part of the curriculum. School field trips are encouraged within available resources and requirements outlined below.

DIRECTIONS: All staff are required to submit a Field Trip Request **prior** to the field trip being finalized with the involved students and to:

- Receive administrative and/or extra-curricular coordinator approval for all instructional and supplementary field trips
- Receive administrative reviewal and school board approval for all extended trips (Exceptions may be granted by the school board chair to accommodate emergencies.)

DEFINITIONS:

Instructional Trips - Trips that take place during the school day, relate directly to a course of study, and require student participation. Fees may not be assessed against students.

Supplementary Trips - Trips in which students voluntarily participate in and which often take place outside the regular school day, but do not include overnight stays. Financial contributions may be requested of students.

Extended Trips Within Minnesota and Continental United States - Trips that involve one or more overnight stops within Minnesota or the Continental United States and may be instructional or supplementary and are voluntary in nature. Extended field trips require school board approval prior to the trip.

INSTRUCTIONAL TRIP ACTION

Principal: ☐ Approved Name: _____
☐ Not Approved Date: _____

SUPPLEMENTAL TRIP ACTION

Principal: ☐ Approved Name: _____
☐ Not Approved Date: _____

Instructional/Supplemental Trips need not be sent to District office.

EXTENDED TRIP ACTION

Principal: ☒ Recommended Name: Carrie Thompson
☐ Not Recommended Date: 2-27-25

Assistant Superintendent: ☒ Recommended Name: [Signature]
☐ Not Recommended Date: 3/4/25

School Board: ☐ Approved Name: _____
☐ Not Approved Date: _____

All extended trip proposals must be sent to the Assistant Superintendent's Office to be placed on the Education Committee meeting agenda for approval.

FIELD TRIP REQUEST FORM

Date of Submission:

Type of Trip: ☒ Instructional ☐ Supplementary ☒ Extended

1. Organization/Grade/Course Planning Trip: Laura Mac 5th Grade

2. Contact Person (Responsible for Checklist Completion): Adam Metzer

3. Field Trip Date(s): 5/14 - 5/16 Destination: Wolf Ridge ELC

4. Field Trip Overview (Include events, establishments and locations): Environmental classes and Outdoor education experiences

5. Field Trip Departure from School (Date and Time): 5/14/25 9:00 AM

Field Trip Return to School (Date and Time): 5/16/25 1:45 PM

6. Objectives of Field Trip: Environmental education classes

7. Relationship to Curriculum or Student Learning: Addresses MN science, and social studies standards, and SEL outcomes.

8. Planned Follow-up Field Trip Activities: Journaling & Reflection Project

9. Field Trip Budget Request

See Attached

Estimated Expenses	
Total Admission/Fees	\$
Total Meals	\$
Total Lodging	\$
Total Transportation	\$
<input type="checkbox"/> School District Vehicle(s)	
<input type="checkbox"/> Commercial Transportation Carrier ~ Name: _____	
<input type="checkbox"/> Private Vehicle (requires certificate of insurance) ~ Name: _____	
Total Additional Stipends:	\$
Other:	\$
Total	\$

Revenues		
District Budget	Code:	\$
Booster Group		\$
Donations		\$
Student Fees		\$
Total Additional Stipends:		\$
Total		\$

11. Reviewed/Completed Request Checklist: ☐ Yes ☐ No

RETURN COMPLETED REQUEST TO BUILDING PRINCIPAL

Wolf Ridge Budget 2024-25 SY	
Tution Per Person	\$180
Number of Attendees	43.00
Deposit Amount	\$80
Expenses	
WR Tution	\$7,740
Transporation	\$1,000
Total Expenses	\$8,740
Funding	
Student Deposits	\$3,440
Grants	We received a large grant from Wolf Ridge this \$9,200 year.
Donations	\$0
Total Funding	\$12,640
Total Funding	\$12,640
Total Expenses	\$8,740
	Excess funds will be used to cover adult \$3,900 chaperone support.

FIELD TRIP REQUEST CHECKLIST - All Field Trips

DIRECTIONS: Please complete checklist. No attachments are necessary.

- ☒ Develop and Communicate Student Discipline Expectations
- ☒ Forward Field Trip Explanation and Fee Structure Letter Sent to Parents/Guardians *10/9/24*
- ☐ Collect Parent/Guardian Permission for Student Participation in Field Trip (Include request for special information - i.e. allergies, medications, special needs.)
- ☐ Gain Access to Cell Phone for Field Trip
- N/A* ☐ Plan Arrangements for Early Pick-Up or Late Drop-Off Students (if necessary).
Guide: May choose to leave message on school voice mail to help with late drop off.
- N/A* ☐ Plan Meal Arrangements (if necessary)
Reminder: Notify food service of non-participation.
- ☒ Plan Administration of Student Medication and First Aid Needs (if necessary)
Guide: Contact School Nurse.
- ☒ Develop and Communicate Action Plan if Student Gets Lost on Trip
- ☒ Arrange Adult Chaperones for Field Trip (if necessary)
Guide: One (1) adult for every twenty (20) students depending on field trip. Parent volunteers are encouraged when possible or appropriate.
- ☒ Develop and Communicate Teacher and Adult Chaperone Expectations
Example: Supervision duties, no smoking, no alcohol
- ☒ Planned Itinerary

SEE ATTACHED

TIME

LOCATION

- ☒ Maintain Student Roster and Check-in/Check-out Procedure
- ☒ Arrangement for Safety Needs (i.e. crossing guards)

Signature of Contact Person: _____

FIELD TRIP REQUEST CHECKLIST – Extended Trip Only

DIRECTIONS: Please complete checklist and attach all appropriate materials.

- ☒ Develop and Complete Field Trip Itinerary and Emergency Telephone Contacts Letter to Parents/Guardians
Note: Attach tentative planned itinerary.
- N/A* ☒ Arrange Funding of Expenses During Trip
- ☐ Arrange Meal Plans
- ☒ Arrange Lodging Plans and Room Assignments
- ☒ Collect Family Emergency Information for Students
Example: Home phone numbers, emergency contacts, medical information
- ☐ Additional Information
Note: Provide any additional information.

Signature of Contact Person: _____

Wolf Ridge May 31- June 2 Detail Schedule

Time	Learning Group A	Learning Group B	Learning Group C
Wednesday May 31st			
7:35	Arrive at LM, gather in Large Muscle Room. (near front entrance) Students should get breakfast & eat in cafeteria. Label student luggage. All student (labeled!) meds to Pav/Rudolph.		
8:15	Begin loading the bus, everyone should have a bathroom break before we head out. Students load bags onto the trailer.		
8:30			
10:30	Arrive at		ed.
10:45 - 11:30	Meet with WR staff for welcome continues		a quick nature walk or 2
12:15			
1:30 - 4:30	Ojibwe Heritage ED5		Superior View Hike ED7
5:15			
6:30 - 9:00	Skyview Ropes ED Lobby 6:30 - 9		Evening Presentation SC1 6:30 - 7:15 Planetarium Sc1 7:15 - 8:15
9 - 9:30	Get ready for bed - quiet journal/reading time in dorm room		
9:30	Bedtime- Lights Out		
Thursday June 1st			
7:00	Wake Up and Getting Ready		
7:30	Breakfast - Fireplace Dining Hall		
8:30 - 11:30	Small Mammals ED4	Ojibwe Heritage ED5	Wetlands SC3
12:15	Lunch - Fireplace Dining Hall		
1:30 - 4:30	Wetlands SC3	Superior View Hike ED4	Small Mammals ED5
5:30	Dinner - Fireplace Dining Hall		
6:30 - 9:15	Evening Program 6:30-7:15 Planetarium 7:15 - 8:15 Campfire	Evening Program 6:30-7:15 Night Hike/Campfire set-up 7:15-8 Campfire	Skyview Ropes ED Lobby Campfire
9:15 - 9:30	Get ready for bed - quiet journal/reading time in dorm room. Start consolidating things into bags.		
9:30	Bedtime, Lights Out		

2024
Schedule,
Rooms, etc.

160

2024
Schedule,
Rooms, etc.

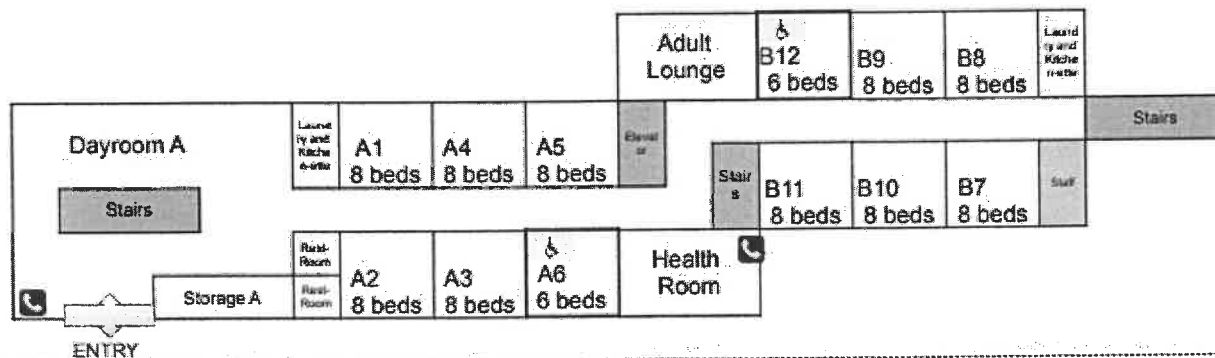
	Final Day! Need to be packed up and out of rooms before our last class.		
	Friday June 2nd		
7:00	Everybody up and getting ready - bags packed and in lobby!		
7:30 - 8:30	Breakfast - Fireplace Dining Hall Bags packed and in lobby! Moved out of rooms!		
8:30 - 11:30	Superior View Hike ED11	Wetlands SC3	Ojibwe Heritage ED5
11:30 - 12:00	Double check that rooms are clean and nothing if left, Begin loading the bus at 12:00. Pick up our to-go lunch, BATHROOM BREAK!		
12:15	Everyone on the bus, headcount, start passing out lunch when we are on the highway.		
1:30	Arrive back at LM. Load back into the Large Muscle Room		
1:30 - 2:15	Check out students whose parents come to pick them up. Every student needs to sign out with teacher. Return meds.		

Learning Group A Nikki, Jim, & Tommie		Learning Group B Gwen, Josh, & Amber		Learning Group C Colleen, Sam	
A1	B10	A4	B11	A3	B9
Keily	Aaron	Maddi	Cooper	Isabella	Aiden
Lexie	Perrin	Katrina	Atticus	Halle	Kortez
Lexi	Josh	Journie	Gauge	Jaylynn	Caiden
Zameria	Channing	Cassidy	Zeke	Maria	Jer H.
Zoey	Chase	Savanna	Byron	Jazmine	Julian
Fiona		Josey		Audri	
Z		Amarhea		Talia	
B12		A2		A5	
Kristian	Ian	Ava	Trinity	Norah	Kaycen
Jerimiah B	Beau	Mina	Ana	Brooklyn	Piper
		Athena	Angel		
		Allie			

Dorm Assignments

A1	A2	A3	A4	A5	B10	B11	B9	B12
Nikki	Amber	Colleen	Gwen		Jim	Josh	Sam	Tommie
Keily	Mina	Isabella	Maddi	Norah	Aaron	Cooper	Aiden	Kristian
Lexie	Athena	Halle	Katrina	Kaycen	Perrin	Byron	Kortez	Jerimiah B
Lexi	Allie	Jaylynn	Journie	Piper	Josh	Atticus	Caiden	Ian
Zameria	Ava	Maria	Cassidy	Brooklyn	Channing	Gauge	Jer H.	Beau
Zoey	Trinity	Jazmine	Savanna		Chase	Zeke	Julian	
Fiona	Ana	Audri	Josey					
Z	Angel	Talia	Amarhea					

Summit Lodge (we don't have rooms B8, or B7) Teacher's room will be A6



Kitchen Patrol (KP)

Wed. Lunch	Wed. Dinner	Thur. Bfast	Thur. Lunch	Thur. Dinner	Fri. Bfast
11:45am	4:45pm	7:00am	11:45am	4:45pm	7:00am
Sam	Gwen	Nikki	Tommie	Amber	Colleen
Aiden	Maddi	Beau	Kristian	Mina	Norah
Kortez	Savanna	Keily	Jerimiah B	Athena	Kaycen
Caiden	Joesy	Lexie	Ian	Allie	Piper
Jer H.	Katrina	Lexi	Aaron	Ava	Brooklyn
Julian	Amarhea	Fiona	Cooper	Trinity	Maria
		Zameria		Ana	

- Feel free to change up KP students/adults; as long as we have about 5 for each meal.

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WOLF RIDGE
ENVIRONMENTAL LEARNING CENTER

Current family
letter. Permission
forms. Behv.
expectations

Dear 5th Grade Families,

We are excited to announce that the 5th grade class will visit the Wolf Ridge Environmental Learning Center this school year.

Included in this letter, to be RETURNED -

- ☐ Wolf Ridge Student/Guardian Agreement by December 20th, 2024
- ☐ Permission Form by March 1st, 2025 (\$80.00 payment also due at this time)

Wolf Ridge website <https://wolf-ridge.org/>

This trip is an amazing opportunity for our students to learn new skills, practice science inquiry, work as a community, have experiences outdoors, and have fun with their peers. Wolf Ridge is often a trip children remember their whole lives!

Important Points -

- **When:** Wednesday - Friday **May 14th - 16th, 2025**
- **Where:** Near Finlayson, MN (about 70 miles northeast of Duluth)
- **What:** A three day, two night learning experience focused on outdoor education, science, inquiry, and team building.
- **Cost:** ~~\$220.00~~ ⇒ **80.00 per student to be paid by families**

We were awarded a generous scholarship/grant from Wolf Ridge!!!

We have never had a student not attend this trip due to finances, we are happy to work out a plan with families, please reach out to us! :)

- **Fundraising:** We are doing only 1 fundraiser this year: Kwik Trip Car Wash cards ran until Holiday Break in December. Fundraising is on an individual basis; If you choose to fundraise, the money first goes directly to your student.
- **Chaperones:** Please contact us with interest, there will be a background check.
- **Due Dates:** We are asking families to **pay \$80.00 by March 1st, 2025.**

We will communicate how much your student owes based on any previous deposits of money or fundraised amounts. Money can be paid at any time, checks can be made out to Laura MacArthur PTO.

- A parent/guardian/chaperone **information meeting will be held Wed. April 9th** in Ms. Pav's room at 3:30pm

Please take time to review the following **pro-tips** with your student before our trip:

- ☐ **Medications-** Teachers will be responsible for supervising any medication needed. Please have medication labeled and direction clearly written to make this process safe and efficient.
- ☐ **Meals-** Food as Wolf Ridge is high quality, varied, and plentiful. Please encourage your student to have a positive attitude towards eating something that may be different than what they are used to.
- ☐ **Physical Exertion** - Our learning takes place outdoors and requires lots of walking and climbing. The weather may be hot or cold. It may be raining, sleeting, or snowing. There may be bugs. This is all part of the experience and a positive attitude as well as proper preparedness makes everyone's experience better.
- ☐ **Sleep** - Please work to ensure that your student is prepared to sleep away from home for two nights. They should be able to fall asleep independently.
- ☐ **Representing our School** - This trip is a big deal for Laura MacArthur. Many people have worked very hard to make this trip a success and we want to impress everyone who interacts with us. This is a time for everyone to be their best!
- ☐ **Participation** - There is no nurses office, places to take breaks, or extra adults to walk students to class like we have at school. Students must stay with their dorm/learning group at all times in order for everyone to participate and be safe.

Over the next few months, we expect and require that each student act responsibly, respectfully, and safely inside and outside of school in order to earn the privilege to attend the trip.

Rules for Wolf Ridge:

******Please review prior to your trip.***

1. Students must be with an adult at all times. You will always stay with your dorm group adult or your leaning group adult(s). Your dorm group is your team.
2. No one is allowed to go back to the dorm without an adult.
3. Shoes or boots are not allowed in the dorm rooms. Leave them lined up neatly outside your door in the hallway.
4. Keep the rooms clean and neat at all times so you are ready for inspection for the conservation challenge award.
5. We are walking at all times within the buildings and if instructed by any adult.
6. Be on your best behavior at all times. We are representing Laura MacArthur Elementary School, our community, ourselves, and our families!
7. Remember- All electronic devices, food, and gum are to stay home. Wolf Ridge does not allow these items.

FAQ

What will my student need to bring?

Please see the packing list!

Practical clothing for being outside in the late spring (jacket and good walking shoes, plus mud/snow boots), toiletries, and bedding (sleeping bag/blankets & pillow), a water bottle, and any medications that your child uses.

Also students should bring a book to read and/or a journal to write in during quiet time before bed.

What if my child is not able to go to Wolf Ridge?

Students who are not able to attend the Wolf Ridge trip will come to school as normal and have regular work to complete as well as helping opportunities in other areas of the building.

Can my student bring a cellphone?

Wolf Ridge does not allow TECHNOLOGY such as ipods/mp3 players, ipads/notebooks, Kindles, and cell phones, etc. as they tend to be distracting/problematic and take away from the outdoor experience.

Can my child bring food with them?

No need! Meals and snacks will be provided. They are well fed (all 3 meals), snacks are provided twice per day. Extra food in dwelling areas attracts mice as doors are often open with people going in and out. **Please do not allow your child to bring any candy, snack, or any food with them. Food is not allowed in the dorms.**

How does the overnight experience of the trip work?

There will be dorm rooms for students and adults with 6-8 people per room (4 bunk beds). Boys and girls will have separate assigned rooms with an adult in each room as well (as long as we have enough chaperones). There are sinks and a private bathroom/shower in each room with cubie areas for things. Quiet hours are 9:30pm to 6:30 am.

8
J

Wolf Ridge Packing List
(subject to change due to weather)

- ☐ Clothes (Long pants, shorts, short sleeve shirts, sweatshirt, light jacket, socks (long) and underwear)
- ☐ Shoes (good for walking/hiking and a pair boots for slush/snow/mud)
- ☐ Pajamas
- ☐ Bedding (sleeping bag + pillow or blanket, sheet, and pillow)
- ☐ Book/Journal & Pen/Pencil
- ☐ Hat
- ☐ Water Bottle
- ☐ Toiletries (toothbrush, toothpaste, soap, deodorant)
NO body spray! (If you smell good, you'll smell good to any bugs.)
- ☐ Towel
- ☐ Sunscreen & Bug Repellent

PLEASE DO NOT BRING THE FOLLOWING ITEMS

Toys	Candy	Stuffed Animals	Electronics
Flashlights	Body Spray	Gum	Snacks
Slime/fidgets			

Wolf Ridge - Student & Guardian Agreement

***Please read through together & return signed to school before winter break -
DUE BACK by December 20th, 2024

We all agree to the following....

Students	Guardians (Families)	Teachers
<ul style="list-style-type: none"> • I will SOAR in school and in the community • I will have fewer than 3 major Referrals 2nd semester • I will attend school to be prepared for the trip (80% 2nd Semester, excluding excused absences) • I will represent my school with pride & outstanding behavior at Wolf Ridge 	<ul style="list-style-type: none"> • We will be reachable and responsive before and during the trip • We will make sure that forms are completed and turned on time • We will help our student fundraise/pay for this experience • <i>If required: I will attend Wolf Ridge with my student to support positive participation.</i> 	<ul style="list-style-type: none"> • Plan, supervise, and organize a successful experience. • Communicate important field trip information to families at conferences, in newsletters, and electronically • Notify families of behavior incidents that may affect trip participation. • Prepare students for the trip by pre teaching

Behavior Expectation at School - This overnight field trip opportunity is a privilege, not a right, even if you have paid. In order for everyone to be safe and participate fully in this experience, students must demonstrate that they can SOAR at school. We hold students to the following standards for behavior during second semester:

Invited to Attend Wolf Ridge Independently	Invited to Attend Wolf Ridge ONLY WITH a Parent or Guardian Chaperone
<ul style="list-style-type: none"> • 3 or fewer Major Office Discipline Referrals 2nd Semester • No In School or Out of School Suspension 2nd Semester 	<ul style="list-style-type: none"> • More than 3 Office Discipline Referrals 2nd Semester • Any In or Out of School Suspension 2nd Semester

- Teachers or Administrators will contact parents whenever a discipline event occurs in school that will affect Wolf Ridge.
- Notice will be given if your child will require a chaperone.

Behavior Expectations at Wolf Ridge

Minor Behaviors	<ul style="list-style-type: none"> Students will be reminded by staff/chaperones to meet our SOARing expectations If a second minor incident occurs, students will problem solve with a teacher and parent contact will be made.
Major Behaviors	<ul style="list-style-type: none"> Any major behavior incident occurring on this trip will result in a student being asked to leave Wolf Ridge. This will require an adult to come and pick up this student, or a staff member to drive them back to school at parent expense.

School Levels of Referral Write-Ups:

Staff/Teacher Managed		Administration/Office Managed	
<p><u>Level 1 - Incidental</u> <i>Doesn't significantly violate the rights of others. Doesn't put others at risk. Not chronic.</i></p> <ul style="list-style-type: none"> -out of seat -noise making -horseplay -minor arguments -loud noise -refusal to follow directions (non chronic) -unprepared for class -missing homework -running in hallway -Dress Code -consensual display of affection 	<p><u>Level 2 - Minor</u> <i>Doesn't significantly violate the rights of others. Doesn't put others at risk.</i></p> <ul style="list-style-type: none"> -disruption -disrespect -defiance -inappropriate language -cell phone violation -leaving assigned area -misuse of technology -avoiding staff -refusal to participate in class -refusal to follow directions -property misuse -interruptions -academic dishonesty 	<p><u>Level 3 - Major</u> <i>Violates the rights of others. Puts self or others at risk, or chronic</i></p> <ul style="list-style-type: none"> -verbal aggression/abusive language -physical aggression -harassment -bullying/cyber bullying -minor property damage/vandalism -leaving building without permission -repeated or prolonged defiance or disrespect -gang display -forgery/plagiarism -attendance issues -technology violation -hazing -gambling -photographic or recording misuse -Intimidation -tobacco -theft -record and identification falsification -threats/intimidation -extortion 	<p><u>Level 4 - Unlawful</u> <i>Unlawfully violates the rights of others. Puts self or others at risk, or are chronic.</i></p> <ul style="list-style-type: none"> -robbery -significant property damage/vandalism -assault -sexual assault -illegal or prescription drug, alcohol possession -weapon possession -arson -bomb threats -homicide -gang activity -pyrotechnics -fighting -terroristic threats -trespassing

We are not expecting any early trips home for students if expectations are being followed and students are striving to do their personal best!

Please contact us with any questions or concerns!

5th Grade Team

Kalina Pavlisich ext. 2230

kalina.pavlisich@isd709.org

Adam Metzger ext. 1291

adam.metzger@isd709.org

Wolf Ridge Student/Guardian Agreement Signature Sheet

RETURN BY DECEMBER 20TH, 2024

By signing below, I understand the following and am willing to comply with the set expectations:

- I have reviewed the Wolf Ridge Student and Guardian Agreement regarding everyone's expectations. I understand that this is a requirement for students.
- I understand that if it is required, students may be asked to leave Wolf Ridge due to not complying with the behavior expectations. If my child is required to come home, **I will drive to Wolf Ridge to pick him/her up.** If I cannot drive there, I know that I will be charged approx \$0.75/per mile to offset staff costs of driving him/her home and will pay this cost within 5 school days of the incident.

Student Name (Printed)

Student Signature

Guardian Signature

Date



Please return by 3/1/2025

Permission Form

I give my student permission to attend the 5th Grade Wolf Ridge field trip Wednesday May 16th - Friday May 18th 2025. I understand this is a three-day/two-night trip.

☐ Yes, I give permission

☐ No, I do not give permission/ my student is not attending this trip

Student Name: _____

Guardian Signatarure _____

Payment (check one please)

*Checks can be made payable to Laura MacArthur PTO

☐ I am enclosing the full amount of \$80.00

☐ Other amount (please write in/explain) _____

☐ We are fundraising the money by selling carwash cards

☐ I am not paying because my student will not be attending

Chaperones - If you are interested in being a chaperone for this trip please indicate below and we will contact you with additional information. Chaperones must be over 18 years of age - preferably the guardian of one of the students in attendance for the trip. Chaperones will need to have a background check completed (no charge).

☐ I would like to be considered for chaperoning the Wolf Ridge trip.

Name (print) _____

Email _____

Phone _____



STUDENT NAME:

Medication Name		What is this med for?	
How many doses are you sending?		What is the dose size?	
When should the child take this?			
Side Effects?			

For Staff Use ONLY (Please record your initials)

Wed Noon	Wed Evening	Thur Morning	Thur Noon	Thur Evening	Fri Morning

Notes:

**DATA SHARING AGREEMENT FOR RELEASE
OF DATA UNDER “SCHOOL OFFICIAL” EXCEPTION**

This Data Sharing Agreement (“Agreement”) between Independent School District No. 709, Duluth Public Schools (“District”) and THE COLLEGE OF ST. SCHOLASTICA, UPWARD BOUND, is entered into as of July 1, 2025 (“Effective Date”). The District and THE COLLEGE OF ST. SCHOLASTICA, UPWARD BOUND are referred to collectively as the “Parties.”

WHEREAS, certain individuals affiliated with THE COLLEGE OF ST. SCHOLASTICA, UPWARD BOUND (hereinafter “Requesting Entity”) will provide *EDUCATIONAL SUPPORT* to the District for the 2025-2026 school year; and

WHEREAS, the services to be provided by individuals affiliated with Requesting Entity are institutional services and functions for which the District would otherwise use its own employees; and

WHEREAS, the District anticipates individuals affiliated with Requesting Entity will be required to access personally identifiable information related to students and educational data in order to effectively provide services to the District; and

WHEREAS, both the Family Educational Rights and Privacy Act (“FERPA”) and the Minnesota Government Data Practices Act (“MGDPA”) allow certain contractors, consultants, volunteers, and other parties to access information that would otherwise be protected from disclosure under a “school official” exception; and

WHEREAS, individuals affiliated with Requesting Entity will be providing services in a manner that meets the relevant requirements to qualify as a “school official” under both FERPA and the MGDPA; and

WHEREAS, the Parties wish to enter into this Agreement in order to outline in greater detail the terms and conditions upon which individuals affiliated with Requesting Entity will be granted access to certain protected student data as a “school official.”

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree to the following:

1. **Services Provided to District.** Requesting Entity is a NON-PROFIT ORGANIZATION whose TUTOR will provide *EDUCATIONAL SUPPORT* to the District. The services to be provided to the District are institutional services and functions for which the District would otherwise use its own employees.
2. **Protected Student Data Defined.** “Protected Student Data” means any data defined as “personally identifiable information” contained in educational records as the term is defined in FERPA and its implementing regulations, 20 U.S.C. §

1232g and 34 C.F.R. § 99.31, or “educational data” as defined in the MGDPA, Minn. Stat. § 13.32.

3. **Types of Data to be Accessed.** In the course of providing the services described in Paragraph 1, individuals affiliated with Requesting Entity will have a legitimate need to access Protected Student Data in the form of ATTENDANCE, GRADES, GRADEBOOK, TRANSCRIPTS, TEST SCORES AND SCHEDULES. The data described in this Paragraph is subject to disclosure restrictions imposed by FERPA and the MGDPA.
4. **District’s Control over Use and Maintenance of Data.** The following terms and conditions will govern the manner in which individuals affiliated with Requesting Entity will have access to Protected Student Data:
 - a. *TUTOR* shall be the only representatives of Requesting Entity granted access to Protected Student Data in accordance with the terms of this Agreement. Protected Student Data shall not be shared with any employee, agent, volunteer, or other affiliate of Requesting Entity who is not within the group of individuals defined in this Paragraph. Prior to being granted access to Protected Student Data, each TUTOR must review and sign the acknowledgement and consent form attached hereto as Exhibit A.
 - b. Requesting Entity shall not attempt to use, access, or maintain Protected Student Data for any reason other than purposes legitimately necessary for its TUTOR to provide the services referenced in Paragraph 1. Requesting Entity shall not maintain its own files, documents, or any other form of records containing Protected Student Data or attempt to obtain access to Protected Student Data for anyone other than an individual described Paragraph 4(a).
 - c. The use and maintenance of Protected Student Data by TUTOR shall be at all times subject to the District’s direct control.
 - d. Individuals providing services as TUTOR shall be granted access to Protected Student Data through the District’s Infinite Campus system in a manner deemed appropriate by the District. Requesting Entity shall supply the District with a list of the names of the individuals providing services as TUTOR to the principal of the building in which each individual will be providing services. Upon receipt of the list of names, the District will determine using its sole discretion the extent to which each individual will be granted access to Protected Student Data through the Infinite Campus system. Under no circumstance will an individual be granted greater access to Protected Student Data than what is legitimately necessary to effectively provide the services listed in Paragraph 1. The District retains the right to alter at any time and in its sole discretion the manner in which individuals

providing services as TUTOR access Protected Student Data. No individual will be granted access to Protected Student Data unless the person has signed the form attached as Exhibit A and provided a copy to the principal of the building in which the individual will be providing services.

- e. The individuals providing services as TUTOR shall not copy, duplicate, alter, modify, or otherwise make changes to or reproductions of Protected Student Data unless legitimately necessary to perform the services described in Paragraph 1. If any individual who has been granted access to data in accordance with this agreement has maintained copies or other reproductions of Protected Student Data for legitimate purposes, such copies or other reproductions must be destroyed within 30 days of the expiration of this Agreement.
 - f. The District reserves the right to restrict, modify, or discontinue the use and maintenance of Protected Student Data authorized by this agreement for any reason. If the District exercises its sole discretion to restrict or cancel access to data, Requesting Entity and/or its affected representatives shall destroy any copies or reproductions of data which they no longer have access in accordance with the timeframe and requirements of Paragraph 4(f) of this Agreement.
5. **Redisclosure of Protected Student Data.** In the course of performing the services described in Paragraph 1, the Parties agree that individuals providing services to the district as TUTOR shall not redisclose Protected Student Data to any representative of Requesting Entity not within the class of individuals identified in Paragraph 4(a) or any person or party other than a school official with a legitimate need to access the data unless disclosure is specifically authorized or required by law. In the event a parent or eligible student requests disclosure of Protected Student Data to a third party, Requesting Entity and its representatives shall direct the requesting parent or eligible student to the appropriate building principal, who will process each request to disclose Protected Student Data in accordance with applicable District policies and procedures.
6. **Data Related to TUTOR Evaluations.** The Parties agree that data maintained by the District with respect to individuals who perform services on a voluntary basis for the District is defined as personnel data by the MGDPA, Minn. Stat. § 13.43. In the event Requesting Entity requests information from the District that is not classified as public data pursuant to Minn. Stat. § 13.43, subd. 2, Requesting Entity shall obtain a written consent of the subject of the data prior to requesting the data from the District.

7. **Term.** This agreement shall be valid from the date duly approved by both Parties through June 30, 2026. On July 1, 2026, this agreement shall terminate and the District will terminate the ability of the individuals described in Paragraph 4(a) to access Protected Student Data.
8. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign or transfer this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party.
9. **Amendment/Modification.** This Agreement may be amended or modified only by a writing executed by the Parties. No custom or practice of the Parties at variance with the terms hereof will have any effect.
10. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties relative to the subject matter hereof. The parties have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date first written above.

DATE: 3.13.25

By: [Signature]
Director of Assessment / Evaluation / Performance

DATE: 3-13-25

By: AMY GALAROWICZ agalarrow@css.edu

Title: DIRECTOR, UPWARD BOUND @ CSS

Phone: 218. 723-6760

DATE: _____

By: _____
School Board Chair, Duluth School District 709

**DATA SHARING AGREEMENT FOR RELEASE
OF DATA UNDER "SCHOOL OFFICIAL" EXCEPTION**

This Data Sharing Agreement ("Agreement") between Independent School District No. 709, Duluth Public Schools ("District") and THE REGENTS OF THE UNIVERSITY OF MINNESOTA THROUGH ITS DULUTH CAMPUS UPWARD BOUND, is entered into as of July 1, 2025 ("Effective Date"). The District and THE REGENTS OF THE UNIVERSITY OF MINNESOTA THROUGH ITS DULUTH CAMPUS UPWARD BOUND PROGRAM are referred to collectively as the "Parties."

WHEREAS, certain individuals affiliated with THE REGENTS OF THE UNIVERSITY OF MINNESOTA THROUGH ITS DULUTH CAMPUS UPWARD BOUND (hereinafter "Requesting Entity") will provide *EDUCATIONAL SUPPORT* to the District for the 2025-2026 school year; and

WHEREAS, the services to be provided by individuals affiliated with Requesting Entity are institutional services and functions for which the District would otherwise use its own employees; and

WHEREAS, the District anticipates individuals affiliated with Requesting Entity will be required to access personally identifiable information related to students and educational data in order to effectively provide services to the District; and

WHEREAS, both the Family Educational Rights and Privacy Act ("FERPA") and the Minnesota Government Data Practices Act ("MGDPA") allow certain contractors, consultants, volunteers, and other parties to access information that would otherwise be protected from disclosure under a "school official" exception; and

WHEREAS, individuals affiliated with Requesting Entity will be providing services in a manner that meets the relevant requirements to qualify as a "school official" under both FERPA and the MGDPA; and

WHEREAS, the Parties wish to enter into this Agreement in order to outline in greater detail the terms and conditions upon which individuals affiliated with Requesting Entity will be granted access to certain protected student data as a "school official."

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree to the following:

1. **Services Provided to District.** Requesting Entity is a CONSTITUTIONAL CORPORATION whose TUTOR will provide *EDUCATIONAL SUPPORT* to the District. The services to be provided to the District are institutional services and functions for which the District would otherwise use its own employees.

2. **Protected Student Data Defined.** "Protected Student Data" means any data defined as "personally identifiable information" contained in educational records as the term is defined in FERPA and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. § 99.31, or "educational data" as defined in the MGDPA, Minn. Stat. § 13.32.
3. **Types of Data to be Accessed.** In the course of providing the services described in Paragraph 1, individuals affiliated with Requesting Entity will have a legitimate need to access Protected Student Data in the form of ATTENDANCE, GRADES, GRADEBOOK, TRANSCRIPTS, TEST SCORES AND SCHEDULES. The data described in this Paragraph is subject to disclosure restrictions imposed by FERPA and the MGDPA.
4. **District's Control over Use and Maintenance of Data.** The following terms and conditions will govern the manner in which individuals affiliated with Requesting Entity will have access to Protected Student Data:
 - a. *TUTOR* shall be the only representatives of Requesting Entity granted access to Protected Student Data in accordance with the terms of this Agreement. Protected Student Data shall not be shared with any employee, agent, volunteer, or other affiliate of Requesting Entity who is not within the group of individuals defined in this Paragraph. Prior to being granted access to Protected Student Data, each TUTOR must review and sign the acknowledgement and consent form attached hereto as Exhibit A.
 - b. Requesting Entity shall not attempt to use, access, or maintain Protected Student Data for any reason other than purposes legitimately necessary for its TUTOR to provide the services referenced in Paragraph 1. Requesting Entity shall not maintain its own files, documents, or any other form of records containing Protected Student Data or attempt to obtain access to Protected Student Data for anyone other than an individual described Paragraph 4(a).
 - c. The use and maintenance of Protected Student Data by TUTOR shall be at all times subject to the District's direct control.
 - d. Individuals providing services as TUTOR shall be granted access to Protected Student Data through the District's Infinite Campus system in a manner deemed appropriate by the District. Requesting Entity shall supply the District with a list of the names of the individuals providing services as TUTOR to the principal of the building in which each individual will be providing services. Upon receipt of the list of names, the District will determine using its sole discretion the extent to which each individual will be granted access to Protected Student Data through the Infinite Campus system. Under no circumstances will an individual be granted greater access


to Protected Student Data than what is legitimately necessary to effectively provide the services listed in Paragraph 1. The District retains the right to alter at any time and in its sole discretion the manner in which individuals providing services as TUTOR access Protected Student Data. No individual will be granted access to Protected Student Data unless the person has signed the form attached as Exhibit A and provided a copy to the principal of the building in which the individual will be providing services.

- e. The individuals providing services as TUTOR shall not copy, duplicate, alter, modify, or otherwise make changes to or reproductions of Protected Student Data unless legitimately necessary to perform the services described in Paragraph 1. If any individual who has been granted access to data in accordance with this agreement has maintained copies or other reproductions of Protected Student Data for legitimate purposes, such copies or other reproductions must be destroyed within 30 days of the expiration of this Agreement.
 - f. The District reserves the right to restrict, modify, or discontinue the use and maintenance of Protected Student Data authorized by this agreement for any reason. If the District exercises its sole discretion to restrict or cancel access to data, Requesting Entity and/or its affected representatives shall destroy any copies or reproductions of data which they no longer have access in accordance with the timeframe and requirements of Paragraph 4(f) of this Agreement.
5. **Redisclosure of Protected Student Data.** In the course of performing the services described in Paragraph 1, the Parties agree that individuals providing services to the district as TUTOR shall not redisclose Protected Student Data to any representative of Requesting Entity not within the class of individuals identified in Paragraph 4(a) or any person or party other than a school official with a legitimate need to access the data unless disclosure is specifically authorized or required by law. In the event a parent or eligible student requests disclosure of Protected Student Data to a third party, Requesting Entity and its representatives shall direct the requesting parent or eligible student to the appropriate building principal, who will process each request to disclose Protected Student Data in accordance with applicable District policies and procedures.
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7. **Term.** This agreement shall be valid from the date duly approved by both Parties through June 30, 2026. On July 1, 2026, this agreement shall terminate and the District will terminate the ability of the individuals described in Paragraph 4(a) to access Protected Student Data.
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9. **Amendment/Modification.** This Agreement may be amended or modified only by a writing executed by the Parties. No custom or practice of the Parties at variance with the terms hereof will have any effect.
10. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties relative to the subject matter hereof. The parties have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date first written above.

DATE: 3.13.25

By: 
Director of Assessment / Evaluation / Performance

DATE: 03/13/2025

By: Jill A. Pinkney Pastrana

Title: Dean, College of Education and Human Service Professions, UMD

Phone: 218-726-6537

DATE: _____

By: _____
School Board Chair, Duluth School District 709

519 INTERVIEWS OF STUDENTS BY OUTSIDE AGENCIES

I. PURPOSE

There are occasions in which persons other than school district officials and employees find it necessary to speak with a student during the school day. Student safety and disruption of the educational program is of concern to the school district. The purpose of this policy is to establish the procedures for access to students by authorized individuals during the school day.

II. GENERAL STATEMENT OF POLICY

- A. Generally, students may not be interviewed during the school day by persons other than a student's parents, school district officials, employees and/or agents, except as otherwise provided by law and/or this policy.
- B. Requests from law enforcement officers and those other than a student's parents, school district officials, employees and/or agents to interview students shall be made through the principal's office. Upon receiving a request, it shall be the responsibility of the principal and/or assistant principal to determine whether the request will be granted. Prior to granting a request, the principal and/or assistant principal shall attempt to contact the student's parents to inform them of the request, except where otherwise prohibited by law.

III. INTERVIEWS CONDUCTED UNDER THE MALTREATMENT OF MINORS ACT

- A. In the case of an investigation pursuant to the Reporting of Maltreatment of Minors Act, Minnesota Statutes Chapter 260E, a local welfare agency, the agency responsible for investigating the report, and a local law enforcement agency may interview, without parental consent, an alleged victim and any minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school and during school hours. School district officials will work with the local welfare agency, the agency responsible for investigating the report, or law enforcement agency to select a place appropriate for the interview. When it is possible and the report alleges substantial child endangerment or sexual abuse, the interview may take place outside the presence of the alleged offender and may take place prior to any interviews of the alleged offender.
- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school district property. Where the interviews are conducted by the local welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the

interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal and/or assistant principal and without proper warrant.

Legal References: Minn. Stat. § 13.32 (Educational Data)
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

Cross References: MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

First Reading: 02.11.25
Second Reading:

Adopted: _____

Revised: _____

MSBA/MASA Model Policy 519
Orig. 1995
Rev. 2024

519 INTERVIEWS OF STUDENTS BY OUTSIDE AGENCIES

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[NOTE: This change is found in Minnesota Statutes, section 260E.22.]

- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
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MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

First Reading: 02.11.25

Adopted: _____

Revised: _____

MSBA/MASA Model Policy 519
Orig. 1995
Rev. 2024

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[NOTE: This change is found in Minnesota Statutes, section 260E.22.]

- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school district property. Where the interviews are conducted by the local

welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal and without proper warrant.

Legal References: Minn. Stat. § 13.32 (Educational Data)
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

Cross References: MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

722 PUBLIC DATA AND DATA SUBJECT REQUESTS

I. PURPOSE

The school district recognizes its responsibility relative to the collection, maintenance, and dissemination of public data as provided in state statutes.

II. GENERAL STATEMENT OF POLICY

The school district will comply with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13 (MGDPA), and Minnesota Rules parts 1205.0100-1205.2000 in responding to requests for public data.

III. DEFINITIONS

A. Confidential Data on Individuals

Data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data.

B. Data on Individuals

All government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

C. Data Practices Compliance Officer

The data practices compliance official is the designated employee of the school district to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems. The responsible authority may be the data practices compliance official.

D. Government Data

All data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

E. Individual

"Individual" means a natural person. In the case of a minor or an incapacitated person as defined in Minnesota Statutes section 524.5-102, subdivision 6, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

F. Inspection

"Inspection" means the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the school district, unless printing a copy is the only method to provide for inspection of the data. For data stored in electronic form and made available in electronic form on a remote access basis to the public by the school district, typically through an online portal or the government entity's website, inspection includes remote access to the data by the public and the

ability to print copies of or download the data on the public's own computer equipment.

G. Not Public Data

Any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

H. Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

I. Private Data on Individuals

Data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data.

J. Protected Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

K. Public Data

All government data collected, created, received, maintained, or disseminated by the school district, unless classified by statute, temporary classification pursuant to statute, or federal law, as nonpublic or protected nonpublic; or, with respect to data on individuals, as private or confidential.

L. Public Data Not on Individuals

Data accessible to the public pursuant to Minnesota Statutes section 13.03.

M. Public Data on Individuals

Data accessible to the public in accordance with the provisions of section 13.03.

N. Responsible Authority

The individual designated by the school board as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law. Until an individual is designated by the school board, the responsible authority is the superintendent.

O. Summary Data

Statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable. Unless classified pursuant to Minnesota Statutes section 13.06, another statute, or federal law, summary data is public.

IV. REQUESTS FOR PUBLIC DATA

A. All requests for public data must be made in writing using the data practices form and directed to the responsible authority.

1. A request for public data must include the following information:

- a. Date the request is made;
 - b. A clear description of the data requested;
 - c. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
 - d. Method to contact the requestor (such as phone number, address, or email address).
 2. Unless specifically authorized by statute, the school district may not require persons to identify themselves, state a reason for, or justify a request to gain access to public government data. A person may be asked to provide certain identifying or clarifying information for the sole purpose of facilitating access to the data.
 3. The identity of the requestor is public, if provided, but cannot be required by the government entity.
 4. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- B. The responsible authority will respond to a data request at reasonable times and places as follows:
1. The responsible authority will notify the requestor in writing as follows:
 - a. The requested data does not exist; or
 - b. The requested data does exist but either all or a portion of the data is not accessible to the requestor; or
 - (1) If the responsible authority determines that the requested data is classified so that access to the requestor is denied, the responsible authority will inform the requestor of the determination in writing, as soon thereafter as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based.
 - (2) Upon the request of a requestor who is denied access to data, the responsible authority shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.
 - c. The requested data does exist and provide arrangements for inspection of the data, identify when the data will be available for pick-up, or indicate that the data will be sent by mail. If the requestor does not appear at the time and place established for inspection of the data or the data is not picked up within ten (10) business days after the requestor is notified, the school district will conclude that the data is no longer wanted and will consider the request closed.
 2. The school district's response time may be affected by the size and complexity of the particular request, including necessary redactions of the data, and also

by the number of requests made within a particular period of time.

3. The school district will provide an explanation of technical terminology, abbreviations, or acronyms contained in the responsive data on request.
4. The school district is not required by the MGDPA to create or collect new data in response to a data request, or to provide responsive data in a specific form or arrangement if the school district does not keep the data in that form or arrangement.
5. The school district is not required to respond to questions that are not about a particular data request or requests for data in general.

V. REQUEST FOR SUMMARY DATA

- A. All requests for the preparation of summary data must be made in writing using the data practices form and directed to the responsible authority.
 1. A request for the preparation of summary data must include the following information:
 - a. Date the request is made;
 - b. A clear description of the data requested;
 - c. Identify the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
 - d. Method to contact requestor (phone number, address, or email address).
- B. The responsible authority will respond within ten (10) business days of the receipt of a request to prepare summary data and inform the requestor of the following:
 1. The estimated costs of preparing the summary data, if any; and
 2. The summary data requested; or
 3. A written statement describing a time schedule for preparing the requested summary data, including reasons for any time delays; or
 4. A written statement describing the reasons why the responsible authority has determined that the requestor's access would compromise the private or confidential data.
- C. The school district may require the requestor to pre-pay all or a portion of the cost of creating the summary data before the school district begins to prepare the summary data.

VI. DATA BY AN INDIVIDUAL DATA SUBJECT

- A. Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.

- B. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by the school district for any purposes other than those stated to the individual at the time of collection in accordance with Minnesota Statutes section 13.04, except as provided in Minnesota Statutes section 13.05, subdivision 4.
- C. Upon request to the responsible authority or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data.
- D. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created.
- E. The responsible authority or designee shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.
- F. The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.
- G. An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.
- H. The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by Minnesota Statutes chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.
- I. Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by a government entity without regard to the requirements of Minnesota Statutes section 138.17.
- J. After completing, correcting, or destroying successfully challenged data, the school district may retain a copy of the commissioner of administration's order issued under Minnesota Statutes chapter 14 or, if no order were issued, a summary of the dispute between the parties that does not contain any particulars of the successfully challenged data.

VII. REQUESTS FOR DATA BY AN INDIVIDUAL SUBJECT OF THE DATA

- A. All requests for individual subject data must be made in writing directed to the responsible authority.

- B. A request for individual subject data must include the following information:
 - 1. Statement that one is making a request as a data subject for data about the individual or about a student for whom the individual is the parent or guardian;
 - 2. Date the request is made;
 - 3. A clear description of the data requested;
 - 4. Proof that the individual is the data subject or the data subject's parent or guardian;
 - 5. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
 - 6. Method to contact the requestor (such as phone number, address, or email address).
- C. The identity of the requestor of private data is private.
- D. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- E. Policy 515 (Protection and Privacy of Pupil Records) addresses requests of students or their parents for educational records and data.

VIII. COSTS

- A. Public Data
 - 1. The school district will charge for copies provided as follows:
 - a. 100 or fewer pages of black and white, letter or legal sized paper copies will be charged at 25 cents for a one-sided copy or 50 cents for a two-sided copy.
 - b. More than 100 pages or copies of other materials are charged based upon the actual cost of searching for and retrieving the data and making the copies or electronically sending the data, unless the cost is specifically set by statute or rule.
 - (1) The actual cost of making copies includes employee time, the cost of the materials onto which the data is copied (paper, CD, DVD, etc.), and mailing costs (if any).
 - (2) Also, if the school district does not have the capacity to make the copies, e.g., photographs, the actual cost paid by the school district to an outside vendor will be charged.
 - 2. All charges must be paid for [in cash, check, or online service] in advance of receiving the copies.

B. Summary Data

1. Any costs incurred in the preparation of summary data shall be paid by the requestor prior to preparing or supplying the summary data.
2. The school district may assess costs associated with the preparation of summary data as follows:
 - a. The cost of materials, including paper, the cost of the labor required to prepare the copies, any schedule of standard copying charges established by the school district, any special costs necessary to produce such copies from a machine-based record-keeping system, including computers and microfilm systems;
 - b. The school district may consider the reasonable value of the summary data prepared and, where appropriate, reduce the costs assessed to the requestor.

C. Data Belonging to an Individual Subject

1. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.

The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies. Based on the factors set forth in Minnesota Rule 1205.0300, subpart 4, the school district determines that a reasonable fee would be the charges set forth in section VIII.A of this policy that apply to requests for data by the public.

2. The school district may not charge a fee to search for or to retrieve educational records of a child with a disability by the child's parent or guardian or by the child upon the child reaching the age of majority.

IX. Annual Review and Posting

- A. The responsible authority shall prepare a written data access policy and a written policy for the rights of data subjects (including specific procedures the school district uses for access by the data subject to public or private data on individuals). The responsible authority shall update the policies no later than August 1 of each year, and at any other time as necessary to reflect changes in personnel, procedures, or other circumstances that impact the public's ability to access data.
- B. Copies of the policies shall be easily available to the public by distributing free copies to the public or by posting the policies in a conspicuous place within the school district that is easily accessible to the public or by posting them on the school district's website.

Data Practices Contacts

Responsible Authority:

Superintendent
709 Portia Johnson Dr.
Duluth, MN 55811
data.request@isd709.org

Data Practices Compliance Official:

Executive Director of Business Services and Finance
709 Portia Johnson Dr.
Duluth, MN 55811
data.request@isd709.org

Data Practices Designee(s):

Business Services Coordinator
709 Portia Johnson Dr.
Duluth, MN 55811
data.request@isd709.org

Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 13.01 (Government Data)
Minn. Stat. § 13.02 (Definitions)
Minn. Stat. § 13.025 (Government Entity Obligation)
Minn. Stat. § 13.03 (Access to Government Data)
Minn. Stat. § 13.04 (Rights of Subjects to Data)
Minn. Stat. § 13.05 (Duties of Responsible Authority)
Minn. Stat. § 13.32 (Educational Data)
Minn. Rules Part 1205.0300 (Access to Public Data)
Minn. Rules Part 1205.0400 (Access to Private Data)

Cross References:

MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

New Policy
Replacing: Policy 108
First Reading: 09-18-2018
Adopted: 10-16-2018
Reviewed: 10-15-2019
Reviewed: 07-21-2020
First Reading: 11-15-2022
Second Reading: 12-20-2022
Reviewed: 01-23-2024
Reviewed:

722 PUBLIC DATA AND DATA SUBJECT REQUESTS

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Data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

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Data accessible to the public pursuant to Minnesota Statutes section 13.03.

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O. Summary Data

Statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable. Unless classified pursuant to Minnesota Statutes section 13.06, another statute, or federal law, summary data is public.

IV. REQUESTS FOR PUBLIC DATA

A. All requests for public data must be made in writing using the data practices form and directed to the responsible authority.

1. A request for public data must include the following information:

- a. Date the request is made;
 - b. A clear description of the data requested;
 - c. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
 - d. Method to contact the requestor (such as phone number, address, or email address).
 2. Unless specifically authorized by statute, the school district may not require persons to identify themselves, state a reason for, or justify a request to gain access to public government data. A person may be asked to provide certain identifying or clarifying information for the sole purpose of facilitating access to the data.
 3. The identity of the requestor is public, if provided, but cannot be required by the government entity.
 4. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- B. The responsible authority will respond to a data request at reasonable times and places as follows:
1. The responsible authority will notify the requestor in writing as follows:
 - a. The requested data does not exist; or
 - b. The requested data does exist but either all or a portion of the data is not accessible to the requestor; or
 - (1) If the responsible authority determines that the requested data is classified so that access to the requestor is denied, the responsible authority will inform the requestor of the determination in writing, as soon thereafter as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based.
 - (2) Upon the request of a requestor who is denied access to data, the responsible authority shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.
 - c. The requested data does exist and provide arrangements for inspection of the data, identify when the data will be available for pick-up, or indicate that the data will be sent by mail. If the requestor does not appear at the time and place established for inspection of the data or the data is not picked up within ten (10) business days after the requestor is notified, the school district will conclude that the data is no longer wanted and will consider the request closed.
 2. The school district's response time may be affected by the size and complexity of the particular request, including necessary redactions of the data, and also

by the number of requests made within a particular period of time.

3. The school district will provide an explanation of technical terminology, abbreviations, or acronyms contained in the responsive data on request.
4. The school district is not required by the MGDPA to create or collect new data in response to a data request, or to provide responsive data in a specific form or arrangement if the school district does not keep the data in that form or arrangement.
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 - d. Method to contact requestor (phone number, address, or email address).
- B. The responsible authority will respond within ten (10) business days of the receipt of a request to prepare summary data and inform the requestor of the following:
 1. The estimated costs of preparing the summary data, if any; and
 2. The summary data requested; or
 3. A written statement describing a time schedule for preparing the requested summary data, including reasons for any time delays; or
 4. A written statement describing the reasons why the responsible authority has determined that the requestor's access would compromise the private or confidential data.
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- B. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by the school district for any purposes other than those stated to the individual at the time of collection in accordance with Minnesota Statutes section 13.04, except as provided in Minnesota Statutes section 13.05, subdivision 4.
- C. Upon request to the responsible authority or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data.
- D. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created.
- E. The responsible authority or designee shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.
- F. The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.
- G. An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.
- H. The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by Minnesota Statutes chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.
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 - 4. Proof that the individual is the data subject or the data subject's parent or guardian;
 - 5. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
 - 6. Method to contact the requestor (such as phone number, address, or email address).
- C. The identity of the requestor of private data is private.
- D. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- E. Policy 515 (Protection and Privacy of Pupil Records) addresses requests of students or their parents for educational records and data.

VIII. COSTS

- A. Public Data
 - 1. The school district will charge for copies provided as follows:
 - a. 100 or fewer pages of black and white, letter or legal sized paper copies will be charged at 25 cents for a one-sided copy or 50 cents for a two-sided copy.
 - b. More than 100 pages or copies of other materials are charged based upon the actual cost of searching for and retrieving the data and making the copies or electronically sending the data, unless the cost is specifically set by statute or rule.
 - (1) The actual cost of making copies includes employee time, the cost of the materials onto which the data is copied (paper, CD, DVD, etc.), and mailing costs (if any).
 - (2) Also, if the school district does not have the capacity to make the copies, e.g., photographs, the actual cost paid by the school district to an outside vendor will be charged.
 - 2. All charges must be paid for [in cash, check, or online service] in advance of receiving the copies.

B. Summary Data

1. Any costs incurred in the preparation of summary data shall be paid by the requestor prior to preparing or supplying the summary data.
2. The school district may assess costs associated with the preparation of summary data as follows:
 - a. The cost of materials, including paper, the cost of the labor required to prepare the copies, any schedule of standard copying charges established by the school district, any special costs necessary to produce such copies from a machine-based record-keeping system, including computers and microfilm systems;
 - b. The school district may consider the reasonable value of the summary data prepared and, where appropriate, reduce the costs assessed to the requestor.

C. Data Belonging to an Individual Subject

1. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.

The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies. Based on the factors set forth in Minnesota Rule 1205.0300, subpart 4, the school district determines that a reasonable fee would be the charges set forth in section VIII.A of this policy that apply to requests for data by the public.

2. The school district may not charge a fee to search for or to retrieve educational records of a child with a disability by the child's parent or guardian or by the child upon the child reaching the age of majority.

IX. Annual Review and Posting

- A. The responsible authority shall prepare a written data access policy and a written policy for the rights of data subjects (including specific procedures the school district uses for access by the data subject to public or private data on individuals). The responsible authority shall update the policies no later than August 1 of each year, and at any other time as necessary to reflect changes in personnel, procedures, or other circumstances that impact the public's ability to access data.
- B. Copies of the policies shall be easily available to the public by distributing free copies to the public or by posting the policies in a conspicuous place within the school district that is easily accessible to the public or by posting them on the school district's website.

Data Practices Contacts

Responsible Authority:

Superintendent
709 Portia Johnson Dr.
Duluth, MN 55811
data.request@isd709.org

Data Practices Compliance Official:

Executive Director of Business Services and Finance
709 Portia Johnson Dr.
Duluth, MN 55811
data.request@isd709.org

Data Practices Designee(s):

Business Services Coordinator
709 Portia Johnson Dr.
Duluth, MN 55811
data.request@isd709.org

Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 13.01 (Government Data)
Minn. Stat. § 13.02 (Definitions)
Minn. Stat. § 13.025 (Government Entity Obligation)
Minn. Stat. § 13.03 (Access to Government Data)
Minn. Stat. § 13.04 (Rights of Subjects to Data)
Minn. Stat. § 13.05 (Duties of Responsible Authority)
Minn. Stat. § 13.32 (Educational Data)
Minn. Rules Part 1205.0300 (Access to Public Data)
Minn. Rules Part 1205.0400 (Access to Private Data)

Cross References:

MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

New Policy
Replacing: Policy 108
First Reading: 09-18-2018
Adopted: 10-16-2018
Reviewed: 10-15-2019
Reviewed: 07-21-2020
First Reading: 11-15-2022
Second Reading: 12-20-2022
Reviewed: 01-23-2024
Reviewed:

DULUTH PUBLIC SCHOOLS - DATA REQUEST FORM



Date of Request: _____

Description of requested data (please be specific, include date spans):

Requested method to access data:

Inspection Only: _____ Copies Only: * _____ Both Inspection and Copies: * _____

* **Note:** There will be a cost charged to provide copies of public data

Contact Information (optional) **

Name: _____

Phone Number: _____

Email address: _____

Address: _____

**** Note:** You do not have to provide any contact information. However, if you want Duluth Public Schools to mail/email copies of data to you, some type of contact information must be provided. Duluth Public Schools would also need contact information from you if it is necessary to clarify your request. We will not work on such a request until clarified.

Duluth Public Schools will respond to your request as soon as possible.

Written requests for data can be returned several ways:

Email: data.request@isd709.org
Fax: 218-336-8773
Mail: ISD 709 – Attn: Business Services
709 Portia Johnson Drive
Duluth, MN 55811
In Person: See mail address above