

# Memorandum

**To:** Bill Hanson

**From:** Kerry M. Leider



**Date:** February 20, 2014

**Re:** Loading Dock Entrance Demolition and Reconstruction at Lincoln Park Middle School

Attached are two (2) copies of the Agreement between Independent School District #709 and Kelleher Construction, Inc. to demolish and reconstruct the concrete loading dock entrance at Lincoln Park Middle School. This is an extension of their original agreement under Bid #1184, BP #2, WS #3 at no cost to the district for this work.

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

Attachments

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 14<sup>th</sup> day of February, 2014, by and between Independent School District #709, a public corporation, hereinafter called District, and Kelleher Construction, Inc., an independent contractor, hereinafter called Contractor.

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

The terms and conditions of this Agreement are as follows:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of January 24, 2014, and shall remain in effect until work is completed, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.
2. **Performance.** PROVIDE ALL LABOR, MATERIAL, EQUIPMENT, AND SERVICES NECESSARY TO DEMO AND RECONSTRUCT THE CONCRETE LOADING DOCK ENTRANCE AT LINCOLN PARK MIDDLE SCHOOL AS INDICATED BELOW AND AS PER ATTACHED DRAWINGS AND SPECIFICATIONS. All general terms and conditions of Kelleher Construction, Inc. Bid #1184, Bid Package #2 –West Middle School (WS #3) – Concrete, are incorporated by reference, except notwithstanding terms specifically contained within this Agreement.
3. **Contract Documents.** It is understood that this Contract consists of the following:
  1. Printed Memoranda of Agreement and Title Sheet;
  2. Contractor's Quote;
  3. Attached Drawings and Specifications
  4. Contractor's Insurance Policy;
  5. Insurance Requirements; and
  6. Any other documents identified by the District.
4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$0.00. This sum is agreed by Kraus-Anderson Construction Company, LHB Engineers and Architects, Kelleher Construction, Inc. and the District as part of a dispute resolution relating to unacceptable loading dock conditions that are affecting its use and function.
5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:
  - a. No payment will be made by the District to the Contractor;
6. **Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs, or to seek other damages.

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

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

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail care of Kerry M. Leider, ISD 709, Duluth Public Schools, 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802. All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail sent to: Kelleher Construction, Inc. at 11531 Rupp Drive, Burnsville, MN 55337

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota without regard to conflict of laws considerations.

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

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

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

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

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

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

20. **Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract. The District shall be listed as the certificate holder and shall be named an additional insured under said policy and proof of this insurance shall be provided to the District. This insurance shall be in at least the amount of \$1,500,000.

21. **Bonding.** None are required for this Agreement.

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

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

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

<u>District Employee</u>	<u>Position</u>
Kerry M. Leider	Property and Risk Manager

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

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;

- c. if the work should be performed in a different manner and whether other work should be performed;
- d. if the District should be advised of any other facts or opinions regarding that work.

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

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

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

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

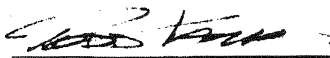
**AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT**, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

INDEPENDENT SCHOOL DISTRICT NO. 709



William C. Hanson  
Director of Business Services

Kelleher Construction, Inc.



Signature

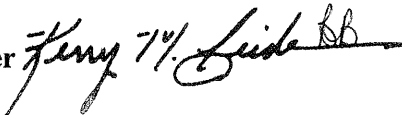
Todd Kamrud  
Printed Name

Senior Project Manager  
Title

# Memorandum

**To:** Bill Hanson

**From:** Kerry M. Leider



**Date:** February 3, 2014

**Re:** Christ Lutheran Church Field Use Agreement for Piedmont School

Attached please find two (2) copies of the Field Use Agreement between Independent School District #709 and Christ Lutheran Church for the shared use of the Church's field near Piedmont Elementary School for various school supervised activities from 10:00 a.m. until 1:30 p.m. each school day. This Agreement will be in effect from February 1, 2014 until terminated by either party upon 30 days written notice. In exchange for use of the field, the District will furnish and install "No Parking" signs on the north side of Ensign Street and will take action with the City of Duluth to install a sidewalk on the east side of Church Place to access the field

After review and if you concur, please sign both copies of the Agreement and return them to the Facilities Management office for distribution.

Attachments

## FIELD USE AGREEMENT

THIS AGREEMENT made as of the 15th day of January, 2014, by and between Christ Lutheran Church, Minnesota, a non-profit corporation, CHURCH, and Independent School District No. 709, a public corporation under the laws of the State of Minnesota, DISTRICT;

WITNESSETH, that in consideration of the rent reserved herein and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Church hereby agrees, and District hereby accepts and takes, without any obligation on the part of the Church to make any improvements, the use of the church's field for various school supervised activities.
2. Students will be escorted to and from the field by school authorized personnel. Student access to the field will be along Church Place via the grass median between the road surface and the paved parking lot surface only. Students will not be escorted through Church parking lot.
3. The ISD 709 will furnish and install "No Parking" signs on the North side of Ensign Street between Church Place and our East driveway, (it is understood that this will happen after ground thaw spring 2014).
4. ISD 709 will take action with the City of Duluth to install a sidewalk on the East side of Church Place to access the field; and this agreement will be considered void without some formal communication from the City of Duluth confirming that application regarding the sidewalk has been received by March 1, 2014, with construction to be complete by September 2014.
5. The term of the Agreement shall be from February, 2014 until terminated by either party upon 30 days written notice.
6. Church warrants that it has good title to the above described premises and has the right to enter into this joint use agreement, and that so long as District is not in default under this Agreement, the District will be entitled to quiet and peaceful enjoyment of the field during the hours of 10:00 a.m. and 1:30 pm each school day and shall not be disturbed or interfered with by any person claiming by, through or under the Church except where the Church has communicated its need for use of the field to the School Principal at least 24 hours in advance of such planned use.
7. Upon the termination of this Agreement through forfeiture or through lapse of time or any other means, District shall surrender its use of the above described premises to Church in as good a condition as received, reasonable wear and tear excepted.
8. District shall name the Church as additional insured upon its policy of liability insurance, and to the extent of such insurance and to the limits therein provided, or to the limits set forth in Minnesota Statute §466.04, whichever limits are greater, agrees to indemnify and save Church harmless from any claims, demands, actions or causes of action arising out of District's use and occupancy of said premises.

**Field Use Agreement Between  
Christ Lutheran Church and Independent School District No. 709**

9. The use of said field shall be for the shared use of the Church and District from 10:00 a.m. until 1:30 p.m. on weekdays during the school year. At other dates and times, the Church's other permitted users shall be entitled to use of said premises. The District is required to request permission from the Church for any use of the field other than times listed above.

10. The use of said field shall be designated for the exclusive use of the Church on occasion during the period of 7:00 a.m. until 5:30 p.m. on weekdays during the term of this Agreement for the purposes of conducting funerals or other special events by the Church with the Church endeavoring to provide at least 24 hour advance notice to the District (Piedmont School Principal) to allow the District to communicate with its users there will be no field use allowed on such dates.

11. The District agrees it will provide labor to monitor, pick up and dispose of refuse left on the field by the District's users during the period from 10:00 a.m. until 1:30 p.m. on weekdays during the term of this Agreement. Annually prior to the beginning of the school year in September the school principal and church leadership will review the condition of the field to document its condition and to discuss any other management coordination necessary. The District agree any extensive damage to field surface, beyond normal wear and tear, caused by the school's use or activities shall be repaired by the District at its sole expense.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CHURCH:

CHRIST LUTHERAN CHURCH

BY: Les Johnson

Les Johnson

Church Council President

DISTRICT:

INDEPENDENT SCHOOL DISTRICT NO. 709

BY: William C. Hanson

William C. Hanson

Director of Business Services

BY: Becky Evers-Gerdes

Becky Evers-Gerdes

Piedmont School Principal