



AIA Document A132™ – 2019

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the **Tenth (10th)** day of **May** in the year **Two Thousand, Twenty-Two (2022)**.

(In words, indicate day, month, and year.)

BETWEEN the Owner:

(Name, legal status, address, and other information)

**I.S.D. #2167 – Lakeview Public Schools
875 Barstad Road North
Cottonwood, MN 56229**

and the Contractor:

(Name, legal status, address, and other information)

**Midwest Glass, LLC
1333 Main Avenue South
Brookings, SD 57006**

for the following Project:

(Name, location, and detailed description)

**2022 Facility Upgrades – Lakeview Public Schools
Cottonwood, MN**

#2005

The Construction Manager:

(Name, legal status, address, and other information)

**R. A. Morton & Associates, LLC
3315 Roosevelt Road, Suite 100
St. Cloud, MN 56301**

The Architect:

(Name, legal status, address, and other information)

**Wendel
401 Second Avenue North, Suite 206
Minneapolis, MN 55401**

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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(Paragraph deleted)

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

Base Bid as follows: 8B Aluminum Doors and Windows (L&M)

ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

in accordance with construction schedule.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion of the Project or Portions Thereof

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:
(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

Init.

in accordance with the construction schedule and as owner takes occupancy.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete

§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:

(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date: **not later than fourteen (14) days from R. A. Morton's project schedule completion date**

§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:

Portion of Work	Date to be substantially complete
-----------------	-----------------------------------

§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

Stipulated Sum, in accordance with Section 4.2 below

Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)

§ 4.2 Stipulated Sum

§ 4.2.1 The Contract Sum shall be **Fifty-One Thousand, and 00/100 Dollars (\$ 51,000.00 Includes All Applicable Taxes)**, subject to additions and deductions as provided in the Contract Documents.

§ 4.2.2 Alternates

§ 4.2.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
See attached bid form and pre-award notes	

§ 4.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
see Specifications Manual		

§ 4.2.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
See Specifications Manual	

§ 4.2.4 Unit prices, if any:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
See attached bid form and pre-award notes		

(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
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(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the **(last)** of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the **last** day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the **forty-five (45)** days of the **end of the period covered**. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than **ninety (90)** days after the Construction Manager receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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§ 5.1.4.3 In accordance with AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.4.3.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.4.3.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and
- .5 Retainage withheld pursuant to Section 5.1.7.

(Paragraphs deleted)

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:

(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)

§ 5.2 Final Payment

§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum

§ 5.2.1.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.

§ 5.2.1.2 The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

upon submittal and acceptance of all required project closeout documentation per specifications.

(Paragraphs deleted)

§ 5.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A232–2019.
- Litigation in a court of competent jurisdiction.
- Other: *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.1.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

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§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

(Paragraphs deleted)

§ 7.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A232™–2019.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A232™–2019.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's

interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 8.8 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .2 AIA Document A132™–2019, Exhibit A, Insurance and Bonds Exhibit
- .3 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

Number	Title	Date
See Index of Drawings	Lakeview Public Schools 2022 Upgrades	November 12, 2021

.6 Specifications

Section	Title	Date	Pages
See Project Manual	Lakeview Pubic Schools 2022 Facility Upgrades Volume 1 – Division 0 – 14	November 12, 2021	
	Lakeview Pubic Schools 2022 Facility Upgrades Volume 2 – Division 21 – 33	November 12, 2021	

.7 Addenda, if any:

Number	Date	Pages
1	November 30, 2021	9 – 8 ½ x 11 Pages 11 – Plan Pages
2	December 6, 2021	3 – 8 ½ x 11 Pages 1 – Plan Page

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[] AIA Document A132™–2019, Exhibit B, Determination of the Cost of the Work

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[] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

[] The Sustainability Plan:

Title	Date	Pages
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[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Proposal #21-18 Rev. 1 dated April 26, 2022 and general pre-award notes dated April 27, 2022 are attached and incorporated as an integral part of this contract.

This Agreement is entered into as of the day and year first written above.

I.S.D. #2167 – Lakeview Public Schools



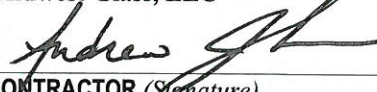
OWNER (Signature)

Chris Fenske, Superintendent
(Printed name and title)

8/23/22

(Date)

Midwest Glass, LLC



CONTRACTOR (Signature)

ANDREW JOHNSON - MANAGING MEMBER
(Printed name and title)

(Date)

**Lakeview 2022 Facility Upgrades
Pre-Award Meeting Notes
Base Bid Section 8B Aluminum Doors & Windows
Date: April 27, 2022**

The following pre-award meeting notes document and confirm requirements as identified in the project plans, specifications and addendums. These notes are per conversation between Eric Youmans of Midwest Glass, LLC and Brad Bednar of R. A. Morton & Associates, LLC and are incorporated as part of the contract.

1. Bid Amount:

Confirmed contractor's bid amount includes all applicable taxes.

Base Bid	\$51,000.00
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- 2. Addenda:** Contractor acknowledges receipt and review of addenda 1 and 2.
- 3. Bonding:** Contractor's bid includes providing a 100% performance and payment bond.
- 4. Insurance:** Contractor to provide a certificate of insurance that meets the project requirements as identified in the project specification manual.
- 5. Responsible Contractor Requirements:** Contractor has submitted Responsible Contractor Verification form. Contractor is also responsible to provide verification forms for any of their subcontractors whose work is \$50,000.00 or more.
- 6. Contract Documents:** Contractor shall furnish both signed contract agreements, certificate of insurance, W-9 form, payment and performance bonds, listing of suppliers and subcontractors and schedule of values within ten (10) days of receipt of contract and/or upon notification of acceptance of this bid. **Failure to adhere to this project requirement may result in the rejection of the Contractor's bid and forfeiture of the bid bond.**
- 7. Schedule:** Contractor has reviewed the project schedule and their bid reflects the required staffing to meet the established project timeline. Contractor must coordinate their work with other trades and adhere to the established schedule and working hours. R. A. Morton reserves the right to change the schedule as may be required for the best interest of the project.
- 8. Shop Drawings and/or Submittals:** Contractor agreed to provide submittals to R. A. Morton within 2 week(s) after receiving the contract. Provide submittals electronically as PDF's as stated in the specification. Contractor must review, stamp and sign submittals prior to forwarding. Include a detailed transmittal listing specification sections and subsections of the products. Do not submit products that do not have prior approval.

This contractor is responsible for their field verifications. Confirmed material lead time(s) after approved submittals are as follows: 8-10 weeks

- 9. Safety:** Contractor and their subcontractors to provide a written safety manual that meets the requirements of the "AWAIR Act" and "Right to Know" and identifies the firm's safety officer. The prime contractor is responsible for their employees' and subcontractor's safety, OSHA compliance and any fines for being out of compliance.
- 10. Subcontractors:** Contractor confirmed they will not have subcontractors working on this project. All contractor's subcontractors must also provide insurance certificate and safety manuals and meet all specified project requirements.
- 11. Personnel Management:** Contractor is responsible for supervising their crews including subcontractors at all times. The contractor's foreman must be qualified for the type of project and must remain the foreman for the duration of the project. In the event of a change in foreman, R. A. Morton must be notified in advance.
- 12. Material Delivery/Responsibilities:** Material delivery to the job site requires a 48-hour minimum notice. Responsibilities include receiving, unloading, inventorying, storing, securing and protecting their materials and materials supplied by others that this contractor is installing.
- 13. Construction Meetings:** Contractor must attend all meetings while working on site and when notified in advance. Failure to attend a required meeting does not relieve the contractor of coordination and work discussed regarding their scope of work. Contractor is responsible for updating their staff and subcontractors of all formal communication from the offices of the Construction Manager and Architect.
- 14. Clean Up:** The Contractor is responsible for clean up on a weekly basis or more if necessary. The Construction Manager will provide dumpsters for normal construction waste. Failure to adhere to this requirement may subject the Contractor to a deduct change order.
- 15. Payment Procedures:** Requests for payments are due no later than the last day of each month. Payment schedule is within 45 days from cutoff date. Pay requests are required to be on the specified AIA forms (G732 and G703).
- 16. Items specific to this bid package are:**
 - A. Quote includes Storefronts W1 and W2? Yes**
 - B. Includes all demo required? Yes**
 - C. Includes note 121 for an aluminum closure panel in room 151? Yes**

Proposal #21-18 Rev. 1

Midwest Glass, LLC
1333 Main Ave. S.
Brookings, South Dakota 57006
(605) 692-7251 Fax (605) 697-6875

Attention:	Brad Bednar	Fax:		Date:	4/26/2022
Submitted to:	RAMorton Construction Managers	Email:	bradb@ramorton.com		
Street:		Job Name:	Lakeview Public School		
City, State & Zip:		Job Location:	Cottonwood, MN		

Scope

This proposal encompasses the following spec. sections:

084113 - Aluminum-Framed Entrances and Storefronts

5 aluminum entrance doors / 1 aluminum sliding window / new screens and resealing on 48 existing windows

088000 - Glazing

Specified glazing into new entrance doors, new wood doors and new hollow metal frames

Hardware for aluminum doors supplied by 087100, installed by Midwest Glass

Our price for this scope of work, is;

\$51,000.00

(includes all applicable taxes)

Price includes performance and payment bond

Exclusions:

- Final cleaning
- Modifications to interior trim work
- Modifications to rough openings
- Modifications to finished floor

Thank You for considering Midwest Glass for your needs.

Payment to be made as follows:

Upon receipt of materials + Upon progress of project + Upon completion of project

All material is guaranteed to be as specified. All work to be completed according to

standard practices. Any alteration or deviation from above specifications

involving extra costs will be executed upon written orders only, and become a charge order

above the written estimate. All agreements contingent upon strikes, accidents,

or delays beyond our control. Owner carries fire, tornado, and necessary

insurance. Workers covered by Workman's Compensation Insurance.

Authorized Signature

Eric Youmans

Project Manager / Estimator

Note: This proposal may be withdrawn by the

issuer if not accepted within:

30 Days

Acceptance of Proposal

The above prices, specifications and conditions

are satisfactory and hereby accepted. Issuer

is authorized to do the work as specified. Payment

will be made as outlined above

Signature: _____

Date of Acceptance: _____

Not Accepted as Terms of Contract

Presters Eureka, RA Morton
8/19/22

CA
Lakeview
Schools

Midwest Glass, Incorporated's Terms & Conditions

All Proposals for any project from Midwest Glass, LLC (individually or collectively "MWG") and all Purchase Orders issued to and accepted by MWG shall be subject to the following Terms and Conditions ("T&C"):

1. **PRIORITY OF T&C's:** These T & C's shall supersede any contrary or conflicting provisions in any Purchase Orders or in any documents of contract forms used or relied on by MWG to create any Proposals or in any contract or agreements resulting from any such Proposals or Purchase Orders.
2. **CHANGES:** Once accepted, any changes to a Proposal or any contract related thereto, or to any Purchase Orders including, but not limited to, changes relating to scope, time, materials, equipment, labor, payment terms and price shall be in writing and signed by all necessary parties prior to the changes being effective.
3. **BILLINGS & PAYMENTS:**
 - a.) For Accepted Purchase Orders: Payment for all Purchase Orders shall be due in full upon delivery to or pick up by the buyer or buyer's designee of the goods purchased. Risk of loss shall pass upon delivery to or pick up by buyer or buyer's designee, as the case may be.
 - b.) For Accepted Proposals: Unless the Proposal states otherwise, MWG shall issue monthly progress billings to the Contracting Party on or before the 25th of each month for stored materials (whether stored on or off-site); expense of off-site storage, if applicable; materials installed, and for labor furnished. Contracting Party shall pay 100% (less any retainage, limited as described below) of the progress billing to MWG within 30 days after the date of such progress billing. The Contracting Party is obligated to pay MWG in timely fashion regardless of whether or not the Contracting Party has been paid for the work or materials covered by the progress billing. No accepted Proposal or any contract resulting therefore shall be deemed to be a 'pay if paid' or 'pay when paid' situation by the Contracting Party. No more than 10 percent retention of any interim progress billing may be withheld. Whenever possible or required, the Contracting Party shall reduce or eliminate retainage. Within 30 days of MWG's completion of its work and issuing its final progress billing, the Contracting Party shall make final payment and payment of any and all retainage. In the event progress payments are not issued within 30 days of the Contracting Party receiving MWG's progress billing, MWG has the right to stop work and/or issue Intent to File Lien on the property involved in the project and/or any funds related to the project. Nothing in its Proposal shall serve to void MWG right to file a lawful lien or claim on its behalf in the event that any payment is not made. Completion of the project will not be considered extended so as to prevent the timely final payment of MWG.
 - c.) All sums not paid when due, under either a.) or b.) above, shall bear interest at the rate of 1 ½% per month or the maximum legal rate permitted by law, whichever is less; and all costs of collection, including a reasonable attorneys' fees and expert witness' fees, shall be paid by Contracting Party, whether or not suit is filed.
4. **INSURANCE:** MWG's insurance coverage applies only to damages or injuries caused only by employees of MWG. MWG will not be responsible for Liquidated Damages, Waivers of Subrogation, or Primary and Non-Contributory Clauses on behalf of the Contracting Party or any parties not directly employed by MWG. MWG and MWG's insurance carriers will not be held liable or financially responsible for events, damages, injuries, etc. not caused directly by MWG employees or their direct work. Contracting Party shall, if the Owner does not, purchase and maintain all risk insurance upon the full value of the entire work and/or materials delivered to the jobsite which shall include the interest of MWG. Neither MWG nor its insurance carriers will be responsible for past or future mold, mildew, odor, disease or pollution-related problems.
5. **SCHEDULE:** Work will be performed during MWG's regular working hours. All work performed outside of such hours shall be charged at rates or amounts agreed upon in writing by the parties at the time overtime is authorized. MWG shall be given a reasonable time in which to make delivery of materials and/or labor to commence and complete their work on the project. Changes in project schedule deadlines, project schedule accelerations, project delays or conditions due to the actions or inactions of the Contracting Party, Architect, Engineer or others, delays in transportation, shortages of raw materials, civil disorders, labor difficulties such as strikes and lockouts, vendor allocations, fires, floods, accidents, and acts of God and matters constituting Force Majeure will not be grounds to make back charges or claims against MWG. MWG shall be entitled to equitable adjustment in the contract time and amount for additional costs due to project delays agreed to accelerations or other items listed in this Section 5.
6. **SITE CONDITIONS:** The Contracting Party will indicate prior to bid if temporary on site suitable storage space, hoisting, temporary electrical, restrooms and water are not available at no charge to MWG so that MWG may include those items within its Proposal, otherwise, the Contracting Party shall provide those on the project site without cost to MWG. Contracting Party is to prepare all work areas so as to be acceptable for MWG's to install work. MWG will not be called upon to start work until sufficient areas are ready for continuous efficient and productive work by MWG. MWG is not financially responsible for enclosing the project against weather during the project's construction for any reason and regardless of the delivery and installation of products furnished by MWG. Trash and miscellaneous materials brought to site by MWG will be disposed of by MWG and MWG will perform an adequate 'broom sweep' cleaning of the immediate areas where its work is performed. MWG will not clean any glass or metal nor will it be held responsible for incremental costs of site cleaning by its personnel nor by others nor for final cleaning of the project.
7. **CLAIMS:** The Contracting Party shall notify MWG in writing of intent to back charge or intent to make claim as soon as there may be an issue discovered with the work. MWG will be allowed reasonable notice of the specific deficiency and reasonable time to correct any such deficiency before the Contracting Party incurs any cost in regard thereto. The Contracting Party shall make no demand for liquidated damages against MWG for delays or actual damages for delays. No back charges or claims by the Contracting Party against MWG shall be valid except by mutual agreement in writing by MWG and the Contracting Party. Glass breakage is not considered a defect and does not apply to MWG's warranty. If MWG handles and/or reinstalls Owner's existing glass, any damage to the Owner's glass is at the Owner's risk of breakage and at the Owner's expense. MWG will not incur the expense of replacing broken or damaged glass caused directly or indirectly by anyone other than its own employees. MWG will not be responsible for special, incidental, or consequential damages. MWG shall not be responsible for damage to its work by other parties or for improper use of equipment by others.
8. **BACKGROUND CHECKS:** Any criminal background checks or drug tests required by any Contracting Party for MWG on-site employees shall be at the expense of the Contracting Party and be subject to the provisions of 3. c.) hereof.
9. **WARRANTIES:** Manufacturers' standard warranties as they apply to materials furnished by MWG for the project shall be passed through to the Contracting Party and to the project Owner. All MWG's workmanship is guaranteed against defects for a period of one year from the date of installation, excluding normal wear and tear and misuse. This warranty applies in lieu of all other warranties, express or implied, including any warranties of merchantability or fitness for a particular purpose. The exclusive remedy shall be that MWG will replace or repair any part of its work which is found to be defective.
10. **AGREEMENT TO T&C's:** Contracting Party shall be deemed to agree to these Terms & Conditions upon Contracting Party's acceptance of MWG's Proposal or upon acceptance of a Purchase Order by MWG. MWG reserves the right to correct any clerical errors in its Proposal prior to acceptance. If not accepted within thirty (30) days of the date shown on MWG's Proposal, its Proposal may be revised or withdrawn in its sole discretion shall expire and be of no force or effect.

Sincerely,

MIDWEST GLASS, LLC

RESPONSIBLE CONTRACTOR VERIFICATION

Re: Lakeview Public Schools – ISD #2167 – 2022 Facility Upgrades

The undersigned owner/officer of Midwest Glass ("Contractor") hereby certifies that it complies with each of the minimum criteria in Minn. Stat. § 16C.285, subd. 3, as of the time of the submission of its bid for the above-referenced project ("Project").

The first-tier subcontractors that Contractor intends to retain for work on the Project have not yet been determined. Contractor will obtain and submit signed verifications from each of its subsequently retained subcontractors, confirming compliance with Minn. Stat. § 16C.285, subd. 3, within 14 days of retaining the subcontractors.

Dated: 5-2-22

Midwest Glass

Contractor

By: Andrew [Signature]

Its: OWNER

Owner/Officer

Subscribed and sworn to before me

This 2nd day of May, 2022

Karen Knutson

Notary Public

TIME OF COMPLETION:

If awarded this Contract, the undersigned agrees to commence work within seven days of receipt of Notice to proceed. All work, including subsequent contract, will start in accordance with the requirements of the construction schedule to be prepared by the Construction Manager.

PROOF OF COMPETENCY:

Undersigned agrees to furnish evidence satisfactory to Owner of sufficient means and expertise to assure completion of Contract in a satisfactory manner, and to furnish such evidence within five (5) days of receipt of written request.

