



**JOINT POWERS SPECIAL MEETING
Independent School District #2154
Monday, June 8, 2020
5:45 PM
Spectrum Health Building
1405 Progress Parkway
Virginia, MN 55792**

AGENDA:

1. Call the Meeting to Order.
2. Pledge of Allegiance.
3. Roll Call.
4. NEW BUSINESS
 1. Consider the revised license agreement between the City of Eveleth and the Joint Powers Board.
5. ADJOURNMENT

LICENSE AGREEMENT

This License Agreement ("**Agreement**") is made as of June, 2020 ("**Effective Date**"), by and between the **CITY OF EVELETH**, a Minnesota municipal corporation ("**City of Eveleth**") and the **JOINT POWERS BOARD OF INDEPENDENT SCHOOL DISTRICT NO. 706, VIRGINIA SCHOOLS, AND INDEPENDENT SCHOOL DISTRICT NO. 2154, EVELETH-GILBERT PUBLIC SCHOOLS** (the "**District**").

RECITALS

A. City of Eveleth and District are parties to a Purchase Agreement ("**Purchase Agreement**") dated April 14, 2020 pursuant to which City of Eveleth has agreed to sell and the District has agreed to purchase the land in St. Louis County, Minnesota legally described on **Exhibit A** to this Agreement (the "**Property**").

B. District is purchasing the Property for the purpose of constructing an elementary school and related improvements (the "**Project**") on the Property.

C. Although the closing on the sale of the Property by City of Eveleth to District has not occurred, District wishes to obtain City of Eveleth's permission to enter onto the Property for the purpose of commencing the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged, City of Eveleth and District agree as follows:

1. Incorporation of Recitals.

All of the above recitals are incorporated and made part of this Agreement.

2. Effective Date.

After execution by all of the Parties, this Agreement will take effect as of the Effective Date.

3. License.

Subject to and as provided in this Agreement, City of Eveleth grants a license (the "**License**") to District to enter onto the Property to conduct construction activities ("**Work**") relating to the Project. Work may include but is not necessarily limited to, entering onto the Property, site work, surveying and other engineering

activities, storage of equipment and materials relating to the Work, and vertical and horizontal construction.

4. Duration.

Unless extended by City of Eveleth in writing, the License will expire on July 31, 2020.

The License may be terminated by City of Eveleth at any time if District exceeds the scope of the License or in any other way violates or fails to meet the terms and requirements of this Agreement.

5. Payment and Performance Bonds.

~~Before entering the Property, District shall~~ require each contractor (each a "Contractor") with a contract provide or contracts with District or with District's construction manager cause its general contractor, Kraus Anderson Construction Company ("Construction Manager"), General Contractor to provide work, materials, or equipment to complete the Project in an amount of \$175,000 or more in the aggregate to provide BEFORE THE CONTRACTOR ENTERS THE PROPERTY and ~~shall thereafter maintain or cause General Contractor~~ to maintain (1) a performance bond to the District and City of Eveleth and a (2) a payment bond for the use and benefit of all persons furnishing labor and materials engaged under, or to perform the contract, conditioned for the payment, as they become due, of all just claims for the labor and materials, both in compliance with Minn. Stat. Section 574.26. City of Eveleth shall be named as a co-obligee.

6. Construction Contract.

~~Before entering the Property, District shall provide to City of Eveleth a fully executed contract with each General Contractor~~ BEFORE THE CONTRACTOR ENTERS THE PROPERTY to provide any work, materials, ~~or~~ equipment to complete the Project.

7. Insurance.

Before ~~District, Construction Manager, or any Contractor enters~~ entering the Property, District shall provide ~~or cause General Contractor to provide~~ and shall thereafter maintain ~~or cause its general contractor to maintain~~, the following insurance:

Comprehensive commercial general liability insurance covering the legal liability of the District, Construction Manager, and ~~any~~ General Contractor against claims for bodily injury, property damage, personal injury, contractual liability, independent contractors, and products-completed operations liability occurring on, in or about the Property in at least the amount of \$3,000,000.00 for each occurrence. The deductible may not exceed \$10,000. The commercial general liability insurance policy shall name City of Eveleth as an insured, provide coverage on an "occurrence" rather than a "claims made" basis, and shall include an additional insured endorsement naming City of Eveleth and a severability of interest provision.

8. Indemnification.

District shall pay and shall indemnify, defend and hold City of Eveleth harmless from any claim, loss, damage, or expense, including, without limitation, attorney's fees and costs (including those incurred to enforce this Agreement or on appeal), any diminution in the value of the Property, and any repair, restoration, or remediation costs arising out of or in any way related to (i) any breach by District of any covenant of this Agreement, (ii) any activity of District, the District's officers, employees, and agents, Construction Manager, and any Contractor, General Contractor, and any other contractor or material or equipment supplier (each a "Sub-Contractor"), on the Property, (iii) any claim for a mechanic's or other lien with respect to the Project or District's activities on the Property (notwithstanding the validity of the claim), and (iv) any injury, death, or property damage caused to any extent by District, District's officers, employees, and agents, Construction Manager, General Contractor or any Sub-Contractor or resulting to any extent from any act or failure to act of District, District's officers, employees, or agents, Construction Manager, General Contractor or any Sub-Contractor on the Property. District's obligation in this Section shall survive the expiration or the earlier termination of the License or this Agreement. District waives any immunity or limitation on its governmental liability.

9. Environmental Matters.

District shall not release, deposit, or permit the release, or deposit of any toxic or hazardous substances on the Property. As used in this Agreement the term toxic or hazardous substances shall be interpreted broadly and shall mean and include any element, substance, compound or material which is regulated by any federal, state or local law, rule, ordinance, directive or decision because of its ignitability, corrosiveness, toxicity, volatility, radioactivity or carcinogenic or other ill health effect or effect on the natural environment.

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10. Restoration.

If District does not purchase the Property, then at City of Eveleth's election, District shall (i) restore the Property to its state before any Work, (ii) remove any equipment or materials stored on the Property, (iii) assign its contracts and construction plans relating to the Work to City of Eveleth, and/or (iv) secure the construction site and otherwise leave the Work. This Section shall survive the expiration or the earlier termination of the License or this Agreement.

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11. District's Efforts Are for District's Benefit Only.

District acknowledges that all actions taken or to be taken and all expenses or payments made or to be made and all obligations entered into or incurred or to be entered into or incurred by or on behalf of or at the direction or request of District relating to this Agreement, the Project, the Work, or District's use, possible use or intended use of the Property are, have been and shall be solely for District's benefit and not for the benefit of or with the intention of benefitting City of Eveleth. This includes, without limitation, actions, expenses, payments, and obligations relating to (i) District's efforts to seek any governmental, quasi-governmental or other approval or entitlement, including, without limitation, any building permit ("**Approval**"), (ii) the preparation of any drawings, plans, specifications, surveys or architectural or engineering renderings (collectively, "**Plans**"), (iii) any third party report, study, survey, or analysis, including, without limitation, any survey, environmental investigation or report, soil report or traffic report (collectively, "**Reports**"), (iv) the Work, or (v) any claims, damages, costs, expenses, liabilities, and losses incidental to or arising out of relating thereto. District is not entitled to any compensation or reimbursement of any kind or nature from City of Eveleth for actions taken or to be taken or any expenses or payments made or to be made or any obligations entered into or incurred or to be entered into or incurred by or on behalf of or at the direction or request of District relating to this Agreement, any Approval, any Report, and Plans, or the Work. This includes, without limitation, compensation for any services relating to any Approval, Plans, Reports, or Work, any compensation for any improvement of or to the Property, and any increase in value of the Property or any other property of City of Eveleth arising out of any improvement or Approval, Plans, Reports, or Work on any basis whatsoever including, without limitation, on the basis of any claim based upon agency, partnership, joint venture or enterprise, unjust enrichment, quantum meruit or other quasi-contract theory, whether or not a Closing occurs pursuant to the Purchase Agreement or this Agreement is terminated or cancelled. This Agreement does not provide for and this transaction does not contemplate that any services will be rendered by District, or by District's agents, contractors or employees to or for the benefit of City of Eveleth. District shall pay and shall indemnify, defend (with counsel reasonably satisfactory to City of Eveleth), and hold City of Eveleth harmless for, from and against any claims, damages, costs, liabilities, losses, mechanic's, materialmen's or other liens, arising out of or in any way related to any claim by any third party for compensation for services relating to this Agreement or arising out of any Approval, Plans, Reports, or Work on any basis whatsoever including, without limitation, on the basis of any claim based upon agency, partnership, joint venture or enterprise, unjust enrichment, quantum meruit or other quasi-contract theory,

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except to the extent, if at all, that such services or improvements are expressly contracted for by City of Eveleth in writing and for City of Eveleth's sole benefit. District's obligation in this Section shall survive the expiration or the earlier termination of the License or this Agreement.

12. Miscellaneous

a. Complete Agreement

This Agreement constitutes the complete agreement between the Parties with respect to the License.

b. Governing Law

This Agreement will be governed by, interpreted, and enforced in accordance with the laws of the State of Minnesota and the Parties consent to the exclusive jurisdiction of and venue with the Minnesota State Courts sited in St. Louis County, Minnesota.

c. Headings

All headings used in this Agreement are inserted only for convenience and ease of reference, and they are not to be considered in the construction or interpretation of any provision of this Agreement.

d. Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable. This Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect.

e. Amendments

All amendments to this Agreement will be in writing and signed by all of the Parties.

f. Binding Effect

This Agreement shall be binding upon the Parties.

g. Counterparts.

This Agreement may be signed in counterparts which together shall form one original and electronically transmitted versions of this Agreement shall be deemed originals for all purposes.

IN WITNESS WHEREOF, District and City of Eveleth have executed this License Agreement as of the date and year first above written:

CITY OF EVELETH

By: _____
Robert Vlasisavljevich
Its Mayor

By: _____
Jackie Monahan-Junek
Its City Administrator

JOINT POWERS BOARD OF
INDEPENDENT SCHOOL DISTRICT NO.
706, VIRGINIA SCHOOLS, AND
INDEPENDENT SCHOOL DISTRICT NO.
2154, EVELETH-GILBERT PUBLIC
SCHOOLS

By: _____
Name: _____
Title: _____

EXHIBIT A
DESCRIPTION OF THE PROPERTY

PARCEL I

That part of the NE1/4 of the SE1/4 of Section 29 Township 58 North Range 17 West of the Fourth Principal Meridian, lying South of the following described line: Beginning at the NE corner and assigning a bearing of North 89 degrees 25 minutes 28 seconds West to the North line of said NE1/4 of the SE1/4; thence South 62 degrees 18 minutes 51 seconds West 556.26 feet to the East right of way of Progress Parkway according to Easement Document No 995938 which is an existing road; thence S'y along said right of way 363.54 feet along a non-tangential curve, the center of circle for which bears South 66 degrees 18 minutes 59 seconds West, said curve is concave to the West, with a radius of 475.00 feet, and a central angle of 43 degrees 51 minutes 06 seconds, thence continue S'y along said right of way along a reverse curve 151.83 feet, said curve is concave to the East with a radius of 1,260.00 feet and a central angle of 06 degrees 54 minutes 16 seconds, thence North 76 degrees 55 minutes 29 seconds West 274.26 feet; thence South 26 degrees 14 minutes 25 seconds West 331.59 feet; thence North 48 degrees 57 minutes 19 seconds West 252.52 feet; thence North 28 degrees 08 minutes 47 seconds East 211.72 feet; thence South 88 degrees 46 minutes 52 seconds West 158.89 feet; thence North 43 degrees 19 minutes 07 seconds West 135.90 feet to the West line of said NE1/4 of the SE1/4; thence North 43 degrees 19 minutes 07 seconds West 355.29 feet to the South right of said Progress Parkway; thence SW'y along said right of way 127.46 feet along a non-tangential curve the center of circle for which bears South 45 degrees 56 minutes 10 seconds East, said curve is concave to the SE, with a radius of 760.00 feet and a central angle of 09 degrees 36 minutes 35 seconds; thence continue along said right of way South 34 degrees 27 minutes 20 seconds West tangent to said curve for a distance of 85.96 feet; thence SW'y 343.10 feet along a tangential curve concave to the NW with a radius of 440.00 feet and a central angle of 44 degrees 40 minutes 40 seconds and there terminating on the East line of the West 600 feet of said NW1/4 of the SE1/4.

PARCEL II

SE1/4 of SE1/4 Section 29 Township 58 Range 17 West, EXCEPT the South 725.00 feet thereof.

LICENSE AGREEMENT

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Comprehensive commercial general liability insurance covering the legal liability of the District, Construction Manager, and any Contractor against claims for bodily injury, property damage, personal injury, contractual liability, independent contractors, and products-completed operations liability occurring on, in or about the Property in at least the amount of \$3,000,000.00 for each occurrence. The deductible may not exceed \$10,000. The commercial general liability insurance policy shall name City of Eveleth as an insured, provide coverage on an “occurrence” rather than a “claims made” basis, and shall include an additional insured endorsement naming City of Eveleth and a severability of interest provision.

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9. Environmental Matters.

District shall not release, deposit, or permit the release, or deposit of any toxic or hazardous substances on the Property. As used in this Agreement the term toxic or hazardous substances shall be interpreted broadly and shall mean and include any element, substance, compound or material which is regulated by any federal, state or local law, rule, ordinance, directive or decision because of its ignitability, corrosiveness, toxicity, volatility, radioactivity or carcinogenic or other ill health effect or effect on the natural environment.

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harmless for, from and against any claims, damages, costs, liabilities, losses, mechanic's, materialmen's or other liens, arising out of or in any way related to any claim by any third party for compensation for services relating to this Agreement or arising out of any Approval, Plans, Reports, or Work on any basis whatsoever including, without limitation, on the basis of any claim based upon agency, partnership, joint venture or enterprise, unjust enrichment, quantum meruit or other quasi-contract theory, except to the extent, if at all, that such services or improvements are expressly contracted for by City of Eveleth in writing and for City of Eveleth's sole benefit. District's obligation in this Section shall survive the expiration or the earlier termination of the License or this Agreement.

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e. Amendments

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f. Binding Effect

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g. Counterparts.

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IN WITNESS WHEREOF, District and City of Eveleth have executed this License Agreement as of the date and year first above written:

CITY OF EVELETH

By: _____
Robert Vlasisavljevich
Its Mayor

By: _____
Jackie Monahan-Junek
Its City Administrator

JOINT POWERS BOARD OF
INDEPENDENT SCHOOL DISTRICT NO.
706, VIRGINIA SCHOOLS, AND
INDEPENDENT SCHOOL DISTRICT NO.
2154, EVELETH-GILBERT PUBLIC
SCHOOLS

By: _____
Name: _____
Title: _____

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DESCRIPTION OF THE PROPERTY

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PARCEL II

SE1/4 of SE1/4 Section 29 Township 58 Range 17 West, EXCEPT the South 725.00 feet thereof.