

Regular Business Meeting
Tuesday, October 12, 2021 5:30 PM

Board Assembly Room
1250 West Broadway Avenue
Minneapolis, Minnesota 55411

Agenda

- 1) Call to Order and Roll Call
- 2) Presentation of Flags from the Federally Recognized Tribes within Minnesota
- 3) Adoption of the Agenda
- 4) Acceptance of Minutes
 - a. September 14, 2021, Minutes
- 5) Public Comments
- 6) Reports and Recommendations from the Superintendent of Schools
 - a. Transportation Update
 - b. School Calendar Development Parameters
- 7) Policy Committee Report
- 8) Action Items by the Board of Education
 - a. Approval of the Consent Agenda
 1. Personnel Items
 - a. Approval of List A personnel matters (2021-10-ER-A)
 - b. Approval of List B personnel matters (2021-10-ER-B)
 2. Contracts
 - a. Amendment to contract 2021-13251 with Amerigas Propane PL
 - b. Amendment to contract SRM-4400001027 with English Learning Center
 - c. Amendment to contract 2021-13315 with Great Lake Transportation
 - d. Contract with Homeland Health Specialist Inc (2021-13329)
 - e. Amendment to contract 2021-SRM-4400001037 with Learning In Style
 - f. Amendment to contract 2021-13257 with Maertens-Brenny Construction Co
 - g. Contract with Minnehaha Transportation (2021-13324)
 - h. Amendment to contract SRM-4400000655 with RICOH
 - i. Amendment to contract 2021-SRM 4400001026 with Riverside Plaza Tenants Association
 - j. Amendment to contract 2021-SRM 4400001028 with Somali Success School
 - k. Amendment to contract 2021-SRM-4400001024 with Summit Academy
 - l. Contract with Veritiv Operating Company (2021-13110)
 - m. Contract with Wide Area Transportation Services Inc (WATSI) (2021-13316)
 - n. Amendment to contract 2021-13310 with Wold Architects and Engineers
 3. Agreements
 - a. Lease Agreement with Minneapolis Fabric
 - b. Resolution Relating to the State Credit Enhancement Program
 - c. Resolution Relating to General Obligation Long-Term Facilities Maintenance Bonds
 - d. Revision of Policy 3270 (Sales And Leases Of Real Property)
 - e. Adoption of Policy 8114 (Board Election Districts)

- f. Revision of Policies 4200 (Personnel Data) and 5690 (Student Data)
- 9) New Business
 - a. Authorizing a Regular COVID-19 Testing Requirement for Participation in High School Athletics
 - b. Summary of 2020-2021 Superintendent Evaluation
 - c. Authorization to begin negotiations for a Superintendent contract extension
- 10) Reports from Board of Education Directors
- 11) Adjournment

Minneapolis Public Schools – Board of Education
Special School District No. 1
Regular Business Meeting
September 14, 2021

I. CALL TO ORDER

Call to Order of the Board of Education. Pursuant to due notice mailed to each member of the Board of Education not less than three days prior to the time of such meeting, the Board members met in a regular meeting at the John B. Davis Educational Services Center September 14, 2021, commencing at 5:31 pm. Chair Ellison called the meeting to order.

I. ROLL CALL

Present: Directors: Siad Ali (remotely), Jenny Arneson, Kimberly Caprini, Adriana Cerrillo, Sharon El-Amin, Kim Ellison, Nelson Inz, Ira Jourdain, Josh Pauly, Student Representative Ghebremeskal, Superintendent Ed Graff – 11

II. APPROVAL OF THE AGENDA

MOTION: Director Arneson moved, seconded by Director Caprini that the Board of Education, Special School District No. 1, approve the Agenda for September 14, 2021. Motion to approve the agenda was put to a vote and carried unanimously.

III. ACCEPTANCE OF MINUTES

MOTION: Director Pauly moved, seconded by Director Caprini that the Board of Education, Special School District No. 1, approve the Minutes for August 10, 2021. Motion to approve the Minutes was put to a vote and carried out unanimously.

IV. PUBLIC COMMENTS

Pre-recorded Public Comments were played

V. REPORTS AND RECOMMENDATIONS FROM THE SUPERINTENDENT OF SCHOOLS

- American Rescue Plan (ARP)/Elementary and Secondary School Emergency Relief (ESSER) III Federal Grant

VI. ADVISORY COMMITTEE ON SCHOOL NAMES RECOMMENDATIONS REPORT

- MPS Facility Names Recommendations Report

VII. POLICY COMMITTEE REPORTS

- a. Adoption of Policy 8114 (Board Election Districts)
- b. Revision of Policy 3270 (Sales and Leases of Real Property)

VIII. ACTION ITEMS BY THE BOARD OF EDUCATION

a. Approval of Consent Agenda

These action items represent those that do not involve major policy decisions, budget decisions, taxing decisions, bond awards or items related to the

Superintendent's contract of evaluation. Business items on this agenda are previously authorized or budgeted expenditures.

1. *Personnel Items*
 - a) *Personnel List A*
 - b) *Personnel List B*
2. *Contracts Requiring Board of Education Approval*
 - a. *Contract with Apple, Inc (2021-4400001108)*
 - b. *Contract with College Nannies & Tutors (2021-4400001124)*
 - c. *Amendment to contract 2021-4400001114 with DeepWell Data Services, LLC*
 - d. *Contract with David Hoy (2021-4400001125)*
 - e. *Contract with Double Line Inc. (2021-4400001100)*
 - f. *Contract with Groves Academy (2021-4400001134)*
 - g. *Contract with Indrotec (2021-13282)*
 - h. *Amendment to contract 2021-13274 with LHB, Inc*
 - i. *Contract with Karin's Services, LLC (2021-13288)*
 - j. *Contract with Minnesota Alliance with Youth (2021-4400001107)*
 - k. *Amendment to contract 2021-13246 with MLA Architects*
 - l. *Contract with Spectrum Research, Evaluation & Development (2021-4400001101)*
 - m. *Contract with T-Mobile USA Inc. (2021-4400001092)*
 - n. *Contract with TextHelp (2021-4400001129)*
 - o. *Contract with the University of Minnesota (2021-4400001095)*
3. *Resolutions*
 - a. *Authorizing Minnesota State High School League (MSHSL) membership and cooperative school sponsorship actions*
4. *Agreements*
 - a. *Lease agreement with Hennepin County for NorthPoint Clinic (2021-0045)*
 - b. *License agreement with Twin Cities Adaptive Cycling (2021-0046)*

MOTION: Director Caprini moved, seconded by Director Arneson, that the Board of Education, Special School District No. 1, approve the consent agenda and adopt the recommendations as presented by the Superintendent. The motion to approve the consent agenda was put to a vote and carried out unanimously.

b. PROPERTY TAX LEVY PRE-CERTIFICATION

RESOLUTION TO APPROVE THE CERTIFICATION OF PROPOSED PROPERTY TAX LEVIES 2021 PAYABLE 2022

WHEREAS, Minnesota Statutes, section 275.065, subdivision 1(b), requires each district to certify its proposed levy to the county auditor on or before September 30th of each year; and

WHEREAS, final levy certification will be determined at the December 14th Board meeting that will include public comments on the levy starting at 6:00 p.m.; and

WHEREAS, the Senior Financial Officer recommends that the maximum preliminary levy certification be approved by the Board and communicated to the County and to the Minnesota Department of Education.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Directors of Special School District No. 1 approves the preliminary 2021 payable 2022 property tax levy at the maximum amount defined on the Levy Limitation and Certification Report.

MOTION: Director Caprini moved, seconded by Director Jourdain, that the Board of Education, Special School District No. 1, approve the Property Tax Levy Pre-Certification. The motion to approve the pre-certification was put to a vote and carried out unanimously.

c. **ACCEPTING THE AMERICAN RESCUE PLAN (ARP)/ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF (ESSER) III FEDERAL GRANT AND AUTHORIZING APPLICATION SUBMISSION**

WHEREAS, the District's budget is as follows:

AND WHEREAS, there is a planned use of Q Comp designated fund balance of \$672,036, a planned use of Extended Learning designated fund balance of \$914,432 in the General Operating Fund, a planned use of Community Service Fund designated fund balance of \$2,067,736, and a planned use of Capital Projects Fund designated fund balance of \$41,390,000.

NOW, THEREFORE BE IT HEREBY RESOLVED, the Board of Directors of Special School District No. 1 approves the above mentioned revenue and expenditure budget for the fiscal year 2021-2022.

MOTION: Director Caprini moved, seconded by Director Arneson, that the Board of Education, Special School District No. 1, approve the fiscal year 2021-2022 district budget. The motion to approve the budget was put to a vote and carried out unanimously.

d. **Authorizing a COVID-19 Vaccination Requirement for Employees and Certain Contractors, Partners and Volunteers**

WHEREAS The Centers for Disease Control and Prevention ("CDC") and the Minnesota Department of Health ("MDH") have determined that the COVID-19 pandemic is currently ongoing and may remain ongoing for an unknown amount of time; and

WHEREAS the CDC has recommended both vaccination and regular testing as effective ways to stop the spread of the virus; and

WHEREAS the Superintendent has reviewed current CDC, MDE, and MDH requirements and guidance for each; and

WHEREAS based upon the consideration of these factors, the Superintendent has recommended to the Board that all employees, and those contractors, volunteers and partners with direct student contact, be vaccinated against COVID-19 or submit to regular testing.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Special School District No. 1, hereby directs and grants necessary authorization to the Superintendent to implement the following work rule no later than October 15:

1. Require that all employees, and those contractors, volunteers and partners with direct student contact, provide confirmation of COVID-19 vaccination and;

2. Allow an exemption to the vaccination requirement to those submitting to regular COVID-19 testing

FURTHER, BE IT RESOLVED that the Superintendent shall provide the Board with regular updates on progress of this directive and any recommendations for further action necessary to support its successful implementation.

FINALLY, BE IT RESOLVED that this directive shall remain in place until rescinded, replaced, or made obsolete by other local, state, or federal law or regulation.

MOTION: Director Ellison moved, seconded by Director Caprini, that the Board of Education, Special School District No. 1, approve the COVID-19 Vaccination Requirement for Employees and Certain Contractors, Partners and Volunteer.

AMENDMENT: Jourdain moved, seconded by Director Inz, to amend the resolution to include all students who are eligible to get the vaccine. The amendment was put to a vote and failed to pass.

Director	Y	N
Ali		X
Arneson		X
Caprini		X
Cerrillo		X
El-Amin		X
Ellison		X
Inz		X
Jourdain	X	
Pauly		X

VOTE: The original motion to approve the vaccine requirement was put to a vote and carried out unanimously.

IX. NEW BUSINESS

Legislative Agenda: Position on the Proposed Amendment to the Education Clause of the Minnesota Constitution (Discussion Item)

X. REPORTS FROM BOARD OF EDUCATION DIRECTORS

Remarks given by Caprini, Jourdain, Pauly, Arneson, El-Amin, Cerrillo, and Ellison

XI. ADJOURNMENT

MOTION: Director Arneson moved, seconded by Director Jourdain that the Board of Education, Special School District No. 1, adjourn the meeting at 9:23 p.m. The motion to adjourn was put to a vote and carried out unanimously.

Minneapolis Public Schools

List A: All Employees: Tuesday, October 12, 2021

Hiring - Licensed

Angel Aguilar Guerrero	ABE Hourly	Teacher, Adult Basic Ed (Hourly)	9/27/2021
Stacy Aldrich	Bethune	Teacher, Music	8/15/2021
Kate Allen	Justice Page School	Teacher, Social Worker	8/15/2021
Ahmi Alvarez	Cityview	Teacher, Special Education	8/15/2021
Danielle Barr	MPS Deaf/Hard of Hearing	Teacher, Special Education	9/13/2021
Mattana Bohne	Research, Evaluation, Assessment & Acct	Teacher, District Program Facilitator	8/15/2021
Renee Brasuhn	Whittier Community School	Teacher, Social Worker	9/17/2021
Colleen Brennan	Anthony	Teacher, Social Worker	8/30/2021
Matthew Briggs	Franklin Middle	Teacher, Theatre/Dance	9/27/2021
Dawndra Broge	Teaching & Learning	Teacher, TOSA General	8/11/2021
Arthur Buckner	North (ISA)	Teacher, Music	8/31/2021
Justin Burde	Anne Sullivan	Teacher, Music	9/27/2021
Michelle Buresch	Andersen United	Teacher, Special Education	9/13/2021
Jill Chlosta	Hale Elementary	Teacher, Elementary	8/15/2021
Jessica Degennaro	Edison High	Teacher, Math	8/15/2021
Patricia Dejarlais	Folwell Performing Arts	Teacher, TOSA Instructional Specialist	8/15/2021
Laura Desouza	Cityview	Teacher, Social Worker	8/15/2021
Elizabeth Draves	Bryn Mawr Primary	Teacher, Building Reserve	9/7/2021
Rachel Eichman	Occupational, Physical Therapists	Teacher, Occupational Therapist	9/27/2021
Carol Engelhart	Health Services	Teacher, School Nurse	8/15/2021
Britta Fitzer	Northrop Elementary	Teacher, Music	9/8/2021

Minneapolis Public Schools

List A: All Employees: Tuesday, October 12, 2021

Hiring - Licensed

Katherine Fox	Anne Sullivan	Teacher, Social Worker	9/27/2021
Ashley Gillingham	Teaching & Learning	Teacher, TOSA General	7/1/2021
Kathleen Gorrilla	Lucy Craft Laney at Cleveland Park	Teacher, Elementary	9/9/2021
Molly Groothuis	Lucy Craft Laney at Cleveland Park	Teacher, Elementary	10/4/2021
Elizabeth Harris	Jefferson Elementary	Teacher, Elementary	9/29/2021
Travis Hayes	Jenny Lind	Teacher, Social Worker	9/27/2021
Kenneth Howson	Andersen United	Teacher, Building Reserve	9/13/2021
Ross Hyde	Barton Open	Teacher, Physical Education	8/15/2021
Felicia Ifonlaja	Lucy Craft Laney at Cleveland Park	Teacher, Building Reserve	9/20/2021
Joseph Isle	Justice Page School	Teacher, Social Studies	8/15/2021
Madeline Johnson	Cityview	Teacher, Building Reserve	8/15/2021
Amanda Jonsgaard	Northeast Middle School	Teacher, English Second Language	8/15/2021
Lanica Klein	Lake Nokomis Keewaydin	Teacher, Library Media Specialist	8/15/2021
Abou Konte	Cityview	Teacher, B/B (French) Elementary	9/1/2021
Heather Lamanno Lough	Marcy Open School	Teacher, Art	9/29/2021
Khou Lee	ABE Hourly	Teacher, Adult Basic Ed (Hourly)	9/15/2021
Zhuo Li	Henry High	Teacher, World Languages (Chinese)	9/1/2021
Denisse Linares Barron	Emerson Spanish Immersion	Teacher, Social Worker	9/20/2021
Brett Lubinski	Southwest High	Teacher, Special Education	9/13/2021
Mckenzie Kaye Lundquist	Folwell Performing Arts	Teacher, Building Reserve	9/13/2021
Mara Martinson	Adult Basic Education	Teacher, Adult Basic Ed	8/23/2021

Minneapolis Public Schools

List A: All Employees: Tuesday, October 12, 2021

Hiring - Licensed

Shannon Mcguire	Northeast Middle School	Teacher, Theatre/Dance	8/15/2021
Melissa Murphy	Field	Teacher, Elementary	8/15/2021
Wesley Nemenz	South High	Teacher, English Second Language	9/10/2021
Caitlin Percy	Olson Middle School	Teacher, Science	9/1/2021
Emily Petersen	North (ISA)	Teacher, Math	9/27/2021
William Quaney	Northeast Middle School	Teacher, English	8/15/2021
Kimberli Roberts	Pratt Elementary	Teacher, High Five	8/15/2021
Jamis Rodriguez	MPS Metro HA	Teacher, Special Education	9/20/2021
Luiz Rosa Sagrado	Henry High	Teacher, Social Worker	8/15/2021
Marie Scholtz	Windom Elementary	Teacher, Music	8/15/2021
Caylin Stansberry	Jefferson Elementary	Teacher, Building Reserve	9/27/2021
Alison Stueber	Roosevelt High	Teacher, Special Education	8/15/2021
Bradley Thies	Anwatin IB World School & Spanish Dual	Teacher, English	10/4/2021
Traci Tweedy	Roosevelt High	Teacher, Special Education	8/15/2021
Antonio Tyson	Online Learning	Teacher, Counselor	9/21/2021
Amy Van Steenwyk	Adult Basic Education	Teacher, Adult Basic Ed	9/27/2021
Allison Weitzel	South High	Teacher, Special Education	9/27/2021
Suhare Zaban	Whittier Community School	Teacher, Elementary	8/15/2021

Hiring - Non Licensed

Samiro Abdi	Pillsbury Math/Science/Technology	Special Education Assistant	9/7/2021
Mohamud Abdulahi	South High	Special Education Assistant	9/8/2021

Minneapolis Public Schools

List A: All Employees: Tuesday, October 12, 2021

Hiring - Non Licensed

Dorothy Abellard	FAIR Senior	School Secretary	9/8/2021
Diana Aguilar Ahumada	Richard Green Central	Associate Educator	8/17/2021
Stephanie Allen	Pratt Elementary	Family & Community Liaison (ESP)	9/28/2021
Shienoval Applewhite	South High	Security Monitor	9/8/2021
Annie Arnold	Jefferson Elementary	Associate Educator	8/23/2021
Mia Austin	GEAR Up	Site Coordinator, GEAR UP	9/7/2021
Ayub Awnuh	Youth & Adult Enrichment	Coordinator, Youth & Adult Programs	9/8/2021
Honorina Barrera	Emerson Spanish Immersion	Special Education Assistant	9/7/2021
Kate Bechtle	Board Office	Director, Compliance	10/5/2021
Donnie Belcher	Marketing & Communications	Director, Communications	9/14/2021
Felix Beyendorff	Edison High	Special Education Assistant	10/1/2021
Billie Boyd	Anishinabe Academy	Associate Educator	9/8/2021
Timothy Brandon	Transportation	School Bus Driver In Training	9/20/2021
Ashley Brown	Transportation	School Bus Driver In Training	9/7/2021
Kimberly Brown	Jenny Lind	Associate Educator	8/31/2021
Elizabeth Carey	Northeast Middle School	Special Education Assistant	9/15/2021
Jairo Coronel Morillo	Sheridan	Associate Educator	8/23/2021
Tyrize Cox	Engagement & External Relations	Executive Director, Engage. & Ext. Rel.	9/29/2021
Kalilah Davis	Minneapolis Kids	Child Care Assistant	9/14/2021
Lavance Dixon Jr	Lucy Craft Laney at Cleveland Park	Associate Educator	9/14/2021
Mahdi Egal	Multilingual	School Success Program Assistant	9/27/2021

Minneapolis Public Schools

List A: All Employees: Tuesday, October 12, 2021

Hiring - Non Licensed

Jennifer Emmes	Minneapolis Kids	Office Specialist	9/28/2021
Loretta Fletcher Lawrence	Armatage	Health Services Assistant	9/14/2021
Katie Grogg	Burroughs	School Secretary	9/8/2021
Ashley Guertin	Talent Acquisition	Human Resources Information Analyst	9/28/2021
Lucia Guillen	Multilingual	School Success Program Assistant	9/7/2021
Olivia Hanzak	Pillsbury Math/Science/Technology	Special Education Assistant	9/8/2021
Glenna Hovey	Transportation	School Bus Driver In Training	9/27/2021
Zeinab Hurreh	Family Resource Center	Family & Community Liaison (ESP)	7/7/2020
Brett Hutcheson	Webster Elementary	Special Education Assistant	9/7/2021
Darneisha Jones	South High	Special Education Assistant	9/1/2021
Kathryn Jones	Anishinabe Academy	Special Education Assistant	9/2/2021
Romesha Jones	Hmong International Academy	Special Education Assistant	10/5/2021
Olivia Kalthoff	River Bend	Special Education Assistant	9/14/2021
Tari Karbula	Non-Public Guidance & Counseling	Office Specialist	12/15/2020
Nicole Kutscher	Northrop Elementary	Special Education Assistant	9/10/2021
Christopher Leaf	Dowling Elementary	Special Education Assistant	7/1/2021
Tabitha Leske	Special Ed Due Process Clerical	Office Specialist, Due Process	9/8/2021
Shawntessa Loeza	Sheridan	Associate Educator	9/14/2021
Rebecca Macdonald	Justice Page School	School Secretary	9/7/2021
Cecilia Maher	Lyndale Elementary	Associate Educator	9/14/2021
Marissa Major	Washburn High	Special Education Assistant	9/22/2021

Minneapolis Public Schools

List A: All Employees: Tuesday, October 12, 2021

Hiring - Non Licensed

Alan Mariblanca	Whittier Community School	Associate Educator	9/7/2021
Aiyana Mchie	Anne Sullivan	Special Education Assistant	9/21/2021
Katie Mcmanus	Whittier Community School	Special Education Assistant	8/23/2021
Naomi Mechels	AVID Tutors	AVID Assistant	8/23/2021
John Michel	Transportation	School Bus Driver In Training	9/20/2021
Clifford Millien	Henry High	Security Monitor	9/8/2021
Tianna Mitchell	Northeast Middle School	Special Education Assistant	9/21/2021
Travis Mitchell	Henry High	Associate Educator	9/2/2021
Sharmarke Mohamud	Capital Projects, Const. & Maintenance	Project Coordinator, Operations	9/16/2021
Mercedes Monterrubio Curiel	CWS, Site Group 2	Food Service Assistant	9/30/2021
Betty Morales	Andersen United	Health Services Assistant	8/31/2021
Yvette Morales	Sheridan	Associate Educator	9/14/2021
Leonor Moya De Sanchez	Richard Green Central	Special Education Assistant	9/28/2021
Abdifatah Muuse	Folwell Performing Arts	Associate Educator	9/10/2021
Ashley Ontiveros	Early Childhood Education Program 1	Associate Educator	9/7/2021
Semaj Rankin	River Bend	Special Education Assistant	9/14/2021
Michelle Ratike	Edison High	Special Education Assistant	9/28/2021
Saleta Sallet-Cobb	Cityview	Associate Educator	8/23/2021
Yosha Scott	Olson Middle School	Associate Educator	9/21/2021
Margaret Simmons	Lake Nokomis Keewaydin	Special Education Assistant	9/7/2021
Brett Thaden	Kenny Elementary	Special Education Assistant	9/14/2021

Minneapolis Public Schools

List A: All Employees: Tuesday, October 12, 2021

Hiring - Non Licensed

Kearra Thompson	District Communications Center	District Communication Ctr Specialist	9/20/2021
Zachary Trotter	Seward Montessori School	Health Services Assistant	9/14/2021
Leonela Valerio Aviles	Sheridan	Special Education Assistant	9/7/2021
Jessica Vetter	Barton Open	Associate Educator	9/14/2021
Amina Webi	Lyndale Elementary	Special Education Assistant	9/21/2021
Brandy White	Pillsbury Math/Science/Technology	Special Education Assistant	9/7/2021
William Whitehead	Anne Sullivan	Special Education Assistant	9/13/2021
Keeshawria Young	Minneapolis Kids	Child Care Assistant	9/8/2021

Discharges

Licensed

Teacher 10-12-2021 2021-10-ER-4670

Non-Licensed

Special Education Assistant 09-22-2021 2021-10-ER-4458

Security Monitor 09-17-2021 2021-10-ER-4476

Probationary Separations

Licensed

Teacher 10-28-2021 2021-10-ER-4469

Social Worker 11-08-2021 2021-10-ER-4693

Licensed, Staff Reduction

Non-Licensed

School Secretary 10-11-2021 2021-10-ER-4697

Non-Licensed, Staff Reduction

Layoffs

Licensed

Non-Licensed

Administrative Contract Non-Renewals

FIRST AMENDMENT TO CONTRACT MAS-13180 BETWEEN: SPECIAL SCHOOL DISTRICT NO. 1 AND AMERIGAS PROPANE PL

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and Amerigas Propane PL, dated September 1, 2021 (“Contract”) is made and entered into by and between Special School District No. 1 (“District”) and Amerigas Propane PL (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No. 1, a special a school district created and existing under Minnesota law (“District”) and Amerigas Propane PL (“Contractor”) entered into a contract titled Propane Fuel for district vehicles for a period 9/1/2021 through 6/30/2022 (“Contract”), and

WHEREAS, the Parties now desire to amend the contract;

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1 of the Contract shall be amended to add \$135,000

Except as herein amended, the terms, conditions and provisions of the Contract shall apply to and govern the provisions of this Amendment.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

By: _____

Name: _____

Title: _____

Date: _____

Amerigas Propane PL

By: _____

Name: _____

Title: _____

Date: _____

**AMENDMENT#1 TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND
English Learning Center**

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and English Learning Center dated 10/12/2021 (“Contract”) is made and entered into by and between Special School District No.1 (“District”) and English Learning Center (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law (“District”) and English Learning Center (“Contractor”) entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2021 through 6/30/2023 (“Contract”), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001027

1. *Original contract amount:* \$95,000
2. *Accumulative contract amount:* \$225,247

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section: 3.1 Total Obligation

Description: District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$225,247 in FY22. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

SPECIAL SCHOOL DISTRICT NO. 1

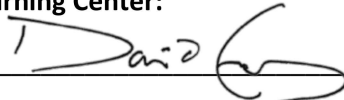
Signature: _____

Name:

Title:

Date: _____

English Learning Center:

Signature:  _____

Name: David Fey

Title: Executive Director, Our Saviour's Community Services

Date: Oct. 4, 2021

**FIRST AMENDMENT MAS-13315 TO CONTRACT MAS-13085 BETWEEN:
SPECIAL SCHOOL DISTRICT NO. 1 AND GREAT LAKE TRANSPORTATION**

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and Great Lake Transportation, dated October 1, 2021 (“Contract”) is made and entered into by and between Special School District No. 1 (“District”) and Great Lake Transportation (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No. 1, a special a school district created and existing under Minnesota law (“District”) and Great Lake Transportation (“Contractor”) entered into a contract titled TITLE OF ORIGINAL CONTRACT for a period between EFFECTIVE DATE OF AMENDED CONTRACT through EXPIRATION DATE OF AMENDED CONTRACT (“Contract”), and

WHEREAS, the Parties now desire to amend the contract;

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section 3.1 of the Contract shall be amended to add: \$1,500,000_____

Except as herein amended, the terms, conditions and provisions of the Contract shall apply to and govern the provisions of this Amendment.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

By: _____

Name: _____

Title: _____

Date: _____

Great Lake Transportation

By: _____

Name: _____

Title: _____

Date: _____

CONTRACT FOR SERVICES

(\$25,000+)

This Contract is entered into between Special School District No. 1, "District", a special school district created and existing under the laws of Minnesota, and Homeland Health Specialist Inc, "Contractor" (collectively "parties") to provide To provide COVID-19 testing supplies and software to manage weekly testing compliance for MPS staff to Minneapolis Public Schools to D-Ops-Operational and Security Services.

1 *TERM OF CONTRACT*

1.1 This Contract is effective on 10/15/2021 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 06/30/2022, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District's Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor's OWN RISK and as a volunteer.

2 *SCOPE OF WORK*

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as Exhibit A ("Scope of Work"). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 *CONSIDERATION AND TERMS OF PAYMENT*

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation.*

District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses, shall not exceed \$5,000,000.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 *Frequency of Invoicing and Terms of Payment.*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable Exhibit B. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 *Fund Availability; Federal Funds Contingency.*

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRATOR

10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except

as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in

providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within ten (10) days of the completion, termination of this Contract, or upon request of the District, whichever occurs first; Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Or, Contractor, upon the request of the

District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

19.2 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1
D-Ops-Operational and Security Services
Attn: Sounitda (on behalf of COO) Saymongkhon
1250 W Broadway
Minneapolis, MN 55411
Email: sounitda.saymongkhon@mpls.k12.mn.us
Fax:

Homeland Health Specialist Inc

Attn: _____

Address: _____

Email: _____

Fax: _____

22 ACKNOWLEDGMENT

22.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

22.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

23 NON-WAIVER

23.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

24 ASSIGNMENT

24.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment,

shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

25 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

25.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

26 WARRANTY

26.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

27 SEVERABILITY

27.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

28 SURVIVABILITY

28.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

By: _____

Name: Jennifer (on behalf of BOE) Lindquist (on behalf of BOE)
(Printed)

Title: _____

Date: _____

Homeland Health Specialist Inc

By: _____

Name: _____
(Printed)

Title: _____

Date: _____

EXHIBIT A: SCOPE OF WORK

Description of Services and Service Delivery

To provide COVID-19 testing supplies and software to manage weekly testing compliance for MPS staff to Minneapolis Public Schools

Service Outcome

Homeland Health Specialists will provide the district with materials, training, and testing supplies for weekly testing at all MPS schools and administrative buildings primarily for staff who have not confirmed their vaccination status or are not vaccinated. The vendor will also provide the software or app for MPS staff to check out a test and log their test results. This software or app will provide MPS with data and generate reports for tracking and non-compliance. The type of tests and those receiving tests may vary of the life of the program and the vendor must be able to be flexible and provide multiple types of testing and laboratory solutions. Testing supplies available and ready at all schools and administrative buildings as needed. Data accuracy for tracking and non-compliance for weekly testing.

Method of Evaluation

Leadership evaluation

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

The payment terms are as follows:

If there are no exhibits:

This Exhibit and page have been intentionally left blank.

**AMENDMENT #1 TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND
Learning In Style**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Learning In Style dated 10/12/2021 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Learning In Style ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and Learning In Style ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2021 through 6/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001037

1. *Original contract amount:* \$95,000
2. *Accumulative contract amount:* \$155,171

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section: 3.1 Total Obligation

Description: District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$155,171 in FY22. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name:

Title:

Date: _____

Learning In Style:

Signature: Martha Nemesi

Name: Martha Nemesi

Title: Director, Learning In Style

Date: 10/07/2021



Capital Planning, Construction & Maintenance Department

Construction Contract Change Order Cover Sheet

Project Information

Contractor	Maertens-Brenny Construction	Date	8/5/2021
Project Name	Olson M.S. Safe & Welcoming Entrance	Project No.	20OLSO001
Contract Approval Date:	4/13/2021	OP Number	21-2120

Summary

Original Contract Amount	\$ 711,500.00	Date of Substantial Completion	8/15/2021
Board Authorized Amount	\$ 711,500.00		

Summary of Previous Change Orders

Change Order #1	\$ 3,992.02	PR-1 Added plantings per City Mpls Plan Review
Change Order #2	\$ 2,909.68	Footings & Foundation revisions
Change Order #3	\$ 1,100.24	Added HVAC Air Grilles & Revised Carpet
Change Order #4	\$ -	
Change Order #5	\$ -	
Change Order #6	\$ -	
Change Order #7	\$ -	
Change Order #8	\$ -	
Change Order #9	\$ -	
Change Order #10	\$ -	

TOTAL OF PREVIOUS CHANGE ORDERS \$ 8,001.94


AMOUNT OF THIS CHANGE ORDER #	4	\$ 74,902.89
--------------------------------------	----------	---------------------

TOTAL CHANGE ORDERS TO DATE \$ 82,904.83

REVISED CONTRACT AMOUNT \$ 794,404.83

REVISED DATE OF SUBSTANTIAL COMPLETION 8/15/2021

DATE OF BOARD ACTION 4/13/2021

Reviewed By:  Date: 8/5/2021
Project Manager

Reviewed By: _____ Date: _____
Manager of Planning & Construction

Approved By: _____ Date: _____
COO



Document G701™ – 2017

Change Order

PROJECT: *(Name and address)*
Olson Middle School FY20 Safe & Welcoming Entry
1607 51st Avenue North
Minneapolis, MN 55430

CONTRACT INFORMATION:
Contract For: General Construction
Date: March 18, 2021

CHANGE ORDER INFORMATION:
Change Order Number: 004
Date: July 29, 2021

OWNER: *(Name and address)*
Minneapolis Public Schools
Special School District No. 1
1250 West Broadway Avenue
Minneapolis, MN 55411

ARCHITECT: *(Name and address)*
RoehrSchmitt Architecture, LLC
1229 Tyler Street NE, Suite 275
Minneapolis, MN 55413

CONTRACTOR: *(Name and address)*
Maertens-Brenny Construction Company
8251 Main Street NE
Minneapolis, MN 55432

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Per PR004 and supporting documents, remodel existing Restroom-115 to ADA-compliant layout with new fixtures, finishes, partitions, plumbing, electrical, etc. as indicated in drawings for the amount of \$68,984.82 (as quoted in PR004 pricing).

Per PR005 and supporting documents, provide NFPA 285-compliant assemblies at wall areas indicated in drawings for the amount of \$383.67 (as quoted in PR005 pricing).

Per PR006 and supporting documents, provide revised configuration of W4 and knee-wall to meet ADA requirements as indicated in drawings for the amount of \$800.10 (as quoted in PR006 pricing).

Per PR007 and supporting documents, demolish existing ceiling and light fixture in Alcove 107 and provide ACT drop-ceiling and LED light fixture replacement as indicated in drawings for the amount of \$2,099.76 (as quoted in PR007 pricing).

Per PR008 and supporting documents, provide furred-out wall over existing block wall as indicated in drawings for the amount of \$3,188.73 (as quoted in PR008 pricing).

Per PR009 and supporting documents, provide no work previously indicated at cabinetry in Room 116 for the amount of - \$554.19 (as quoted in PR009 pricing).

The original Contract Sum was	\$	<u>711,500.00</u>
The net change by previously authorized Change Orders	\$	<u>8,001.94</u>
The Contract Sum prior to this Change Order was	\$	<u>719,501.94</u>
The Contract Sum will be increased by this Change Order in the amount of	\$	<u>74,902.89</u>
The new Contract Sum including this Change Order will be	\$	<u>794,404.83</u>

The Contract Time will be increased by forty-seven (47) days.
The new date of Substantial Completion will be 2021-10-01

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

RoehrSchmitt Architecture, LLC

Maertens-Brenny Construction Company

Minneapolis Public Schools
Special School District No. 1

ARCHITECT *(Firm name)*

CONTRACTOR *(Firm name)*

OWNER *(Firm name)*



SIGNATURE

Christopher Schmitt, AIA, President
PRINTED NAME AND TITLE


07/29/2021
DATE



SIGNATURE

John Hoffman, President
PRINTED NAME AND TITLE

8/4/21
DATE



SIGNATURE

Karen A DeVet, Senior Operating Officer
PRINTED NAME AND TITLE

DATE

Proposal Request #004

MAERTENS-BRENNY CONSTRUCTION CO.
8251 MAIN STREET NE
MINNEAPOLIS, MN 55432

MPS - Olson Middle School - Safe & Welcoming Entrance

M-B JOB #	3053
MPS Pub. #	21-2120

Restroom Construction PR #004

DATE 20-Jul-21

DESCRIPTION OF WORK	LABOR				MATERIAL			SUBCONTRACT COST
	QUANTITY	UNIT	\$/UNIT	COST	QTY	UNIT	\$/UNIT	
Subcontractor Quotes								
Bredemus Hardware								
Temp Door, Door, Frame, and Hardware					1	ls	\$1,365.00	\$ 1,365.00
SA Jordan								\$ 5,162.13
GWB, Insulation, Blocking, and Access Panel								
Henricksen								\$ 11,108.58
Ceramic Tile Floors and Walls								
Universal Painting and Drywall								\$ 326.00
Painting of Ceiling and new hallway wall								
Sun Mechanical								\$ 19,300.76
Plumbing								
Sentra-Sota Sheet Metal								\$ 714.12
Ductwork Modifications								
Gunnar Electric								\$ 8,759.00
Electrical								\$ 1,000.00
Room 116 light relocation allowance - not in electrical price								
Cleaner (TBD)								\$ 250.00
Clean Restroom Upon Completion (no backup)								
City of Minneapolis								\$ 1,100.00
Building Permit Fees								
M-B work								
Temporary Protection								
install and remove protection equipment and materials	4	Hours	\$85.97	\$ 343.90	1	ls	\$100.00	\$ 100.00
Demolition								
Above Floor Demolition for walls, ceilings, and accessories	24	Hours	\$85.97	\$ 2,063.38	1	ls	\$250.00	\$ 250.00
Demo tools for masonry and wall separation								
Concrete Floor Demolition for Plumbing (6 x 8)	16	Hours	\$85.97	\$ 1,375.58	1	ls	\$250.00	\$ 250.00
Concrete Floor Saw and blades					1	ls	\$150.00	\$ 150.00
Jackhammer					1	ls	\$150.00	\$ 150.00
Concrete Work (6 x 8)								
Prep and pour concrete floor	16	Hours	\$100.07	\$ 1,601.04				
concrete accessories Vapor Barrier and Dowels					48	sf	\$2.00	\$ 96.00
concrete material (small load and IceLogic)					1	CY	\$400.00	\$ 400.00
Masonry Work								
Repair Block jamps at connection to GWB walls	12	Hours	\$94.32	\$ 1,131.86				
block and mortar material					3	connec.	\$25.00	\$ 75.00
Doors and Hardware								
Installation of Temporary door and hardware	3	Hours	\$92.13	\$ 276.38				
Remove temp door and hdwr and install final door and hdwr	5	Hours	\$92.13	\$ 460.64				
Ceiling Tile Work								
labor for edge angle and tile cutting	8	Hours	\$92.13	\$ 737.02				
new edge angle					24	lf	\$0.75	\$ 18.00
grid					20	lf	\$1.00	\$ 20.00
Misc Accessories								
Install TPH, Mirror, Grab Bars, SD, PTD	8	Hours	\$92.13	\$ 737.02	1	LS	\$265.00	\$ 265.00
Bartley Sales - supply of mirror and grab bars					1	LS	\$30.00	\$ 30.00
fasteners and bits for installation into tile								
General Conditions								
Dumpster for full restroom scope					1	ea	\$350.00	\$ 350.00
Supervision for Sub Work during schedule extension	40	Hours	\$96.73	\$ 3,869.04				
Labor								
Superintendent		Hours	\$96.73	\$ -				
Carpenter		Hours	\$92.13	\$ -				
Finisher		Hours	\$100.07	\$ -				
Mason		Hours	\$94.32	\$ -				
Laborer		Hours	\$85.97	\$ -				
Tax								8.025%
BASE SUBTOTALS FOR LABOR MATERIAL AND SUBS				\$ 12,595.84			\$3,639.36	\$ 47,720.59

OVERHEAD & PROFIT ON LABOR	10%	1,259.58	TOTAL SUBCONTRACT	\$ 47,720.59
OVERHEAD & PROFIT ON MATERIAL	10%	363.94		\$2,386.03
SUBTOTAL		67,965.34		
BOND	1.5%	1,019.48		
GRAND TOTAL		68,984.82		

REMARKS OR NOTES

**Schedule extension will be required. New end date to be provided upon acceptance and confirmation of lead times.

Room 116 currently has light adjacent to wall to be demolished. Arh shows light to be relocated, but no work is shown for this light in electrical write-up, allowance is included for scope. New 2 x 2 fixture may be required.

Toilet paper holder, soad dispenser, and Paper Towel Dispenser to be provided to MBCC for installation

Authorization to proceed with the work described above

Justin Higgins
PROJECT MANAGER

Authorization signature and date



PR004 (Extra #2)

BREDEMUS HARDWARE CO., INC.

1285 SYLVAN STREET, ST PAUL, MN 55117 - (651) 489 6250 - FAX (651) 489 5502

E-Mail Address: tom@bredemus.com

Project: 21-57 Olson MS

Contractor: Maertens Brenny

ATTN: Justin Higgins

Date: 7/8/2021

Opening 116

- 1 EA 3070 Flush Wood Door**
- 1 EA Welded HM Frame - 5-3/4" MSA**
- 1 EA Hardware Group 3**
- 1 EA 3070 Temp Door**

The above combined for the sum of \$1,365.00

Includes Tax - Material Only



7373 – 120TH STREET NORTH
WHITE BEAR LAKE, MN 55110
PHONE/FAX: 651-305-0256
Small Business Enterprise (SBE)
WOMEN OWNED (W)



CHANGE ORDER PROPOSAL

#2021-234-003

DATE: 7/7/2021
TO: MAERTENS BRENNY ATTN: JUSTIN HIGGINS
PROJECT: OLSON MS FY20 SAFE AND WELCOMING ENTRANCE
REFERENCE: PR 004 (ADDED RESTROOM WORK)

DESCRIPTION: THIS EXTRA COST IS FOR THE ADDED RESTROOM WORK SHOWN IN PR 004. IT INCLUDES NEW WALLS, CEILING, BACKING, INSULATION, ACCESS PANEL AND PATCH & REPAIR AS SHOWN ON THE PLANS FOR RESTROOM 115.

BASE BID:	LABOR:	\$3,510.00
	MATERIAL:	\$1,652.13
	TOTAL:	\$5,162.13

PLEASE PROVIDE S.A. JORDAN CONSTRUCTION WITH WRITTEN AND SIGNED APPROVAL IF YOU WISH TO PROCEED WITH THIS WORK.

Please call if you have any questions.

Andrew Jordan
Project Manager/CEO
Cell: 612-432-7119
andrew@sajordanconstruction.com

Bids may be withdrawn if not accepted within 30 days.



1101 West River Parkway, Minneapolis, MN 55415

Floorcovering Proposal

Project Name: MPS Olson Middle School, PR #4
Quoted to: Maertens Brenny
Justin Higgins
info@maertensbrenny.com

Marty Hackenmueller
Office (612) 877-3340
Mobile (763) 286-7532

Proposal Date: May 19, 2021
Plan Date: March 15, 2021
Per PR #4

Union Labor Figured

Item	Quantity	UOM	Unit Price	Ext Price
Ceramic Floor & Walls Within ADA Restroom <i>*includes specified Katelo tile & cove base (2-3 week lead time)</i> <i>*includes all setting materials</i> <i>*includes union labor w/ 10 hour shifts</i>	1.00	lot	\$11,108.58	\$11,108.58

Product & Union Labor Sub Total

\$11,108.58

Total Proposed*

\$11,108.58

Client Signature _____ **Date** _____

Prices quoted herein are firm for a maximum of 30 days from the date of this quote unless otherwise noted.

Universal Painting & Drywall, Inc.
5301 East River Road, Suite #103
Fridley, MN 55421



Office: #763-315-0095
Fax: #763-315-8970
www.universalptg.com

Olson Middle School
1607 51st Street North
Minneapolis, MN 55430

Date: July 9, 2021

Universal Painting & Drywall, Inc. proposes to furnish all labor, material, and equipment necessary to perform the following scope on the above-mentioned project:

Sections: 099100 Painting, PR #4 Restroom Remodel, Limited to and Including:
Paint additional new gypsum walls and ceiling at remodeled restroom #115.

For The Sum of: **\$326.00**

Universal Painting and Drywall Inc is a CERT SBE

Price assumes all work to be done during standard business hours.

For questions or clarifications, please call Robert Leach at 763-315-8970 or e-mail robertleach@universalptg.com. Thank you for the opportunity to bid this project.

This offer expires thirty days from above date.

Signed: _____ Date: _____

Title: _____

Robert Leach

Robert Leach Estimator
Universal Painting & Drywall, Inc.



Justin Higgins <jhiggins@maertensbrenny.com>

Minneapolis Public School - Olson Middle School - PR #4 Accessory Pricing

Ashley Kuechle <ashley@bartleysales.com>
To: Justin Higgins <jhiggins@maertensbrenny.com>

Wed, Jul 7, 2021 at 3:07 PM

It's calling out Tempered class.

I assume you want a 18"W x 24"H Mirror. Mirror is custom, so will be about a 4-5 week lead time.

Pricing for (1) 18"w x 24"h Mirror & (1) set of Grab Bars (42", 36" & 18")

Total delivered: \$ 265.00 + tax (8.025) \$ 286.27

Please confirm you wish to proceed.

Thanks!

[Quoted text hidden]

Sentra-Sota Sheet Metal Inc.

Summary Report

Job Name: Olson Middle School PR-4 Exhaust Grille
 Zone Name: Zone (B: Olsen Middle School PR-4 Exhaust Duct and Grille)

7/6/2021

<u>Rectangular</u>		<u>Weight</u>		<u>Lbs. / Hr.</u>	<u>Fab</u>	<u>Install</u>	<u>Labor</u>	<u>Fab</u>	<u>Install</u>
Runs of Ductwork	1	Rect. Total Lbs.	18.40	Duct	54.30	28.83	Total Labor	0.61	1.19
Feet of Ductwork	4.92	Duct Lbs.	12.11	Fittings	16.13	8.21	Duct *	0.22	0.42
Standard Lengths	1	Non-Std Lbs.	0.00	<u>Ratio</u>			Fittings	0.39	0.77
Non-Std Lengths	0	Rect. Fitt. Lbs.	6.29	Fitting	2.00		<i>*Assembly Included 0.000</i>		
Rectangular Fittings	2	Duct Percentage	65.82%	Duct	1		<i>Assembly = Seam Assembly + Joint Attach + Rod Attach + Angle Attach + Seam Seal Labor</i>		
Feet of Fittings	2.00								

<u>Spiral</u>		<u>Weight</u>		<u>Lbs. / Hr.</u>	<u>Fab</u>	<u>Install</u>	<u>Labor</u>	<u>Fab</u>	<u>Install</u>
Runs of Spiral Pipe	0	Spiral Total Lbs.	0.00	Pipe	0.00	0.00	Total Labor	0.00	0.00
Feet of Spiral Pipe	0.00	Spiral Fitt. Lbs.	0.00	Fittings	0.00	0.00	Straight Pipe	0.00	0.00
Standard Lengths	0	Spiral Pipe Lbs.	0.00	<u>Ratio</u>			Fittings	0.00	0.00
Non-Std Lengths	0	Spiral Percentage	0.00%	Fitting	0.00		LongSeam	0.00	0.00
Spiral Fittings	0	L.S. Pipe Lbs.	0.00	Pipe	1				
Feet of L.S. Pipe	0.00								
Feet of Fittings	0.00								

<u>Oval</u>		<u>Weight</u>		<u>Lbs. / Hr.</u>	<u>Fab</u>	<u>Install</u>	<u>Labor</u>	<u>Fab</u>	<u>Install</u>
Runs of Pipe	0	Oval Total Lbs.	0.00	Pipe	0.00	0.00	Total Labor	0.00	0.00
Feet of Pipe	0.00	Oval Fitt. Lbs.	0.00	Fittings	0.00	0.00	Straight Pipe	0.00	0.00
Standard Lengths	0	Pipe Lbs.	0.00	<u>Ratio</u>			Fittings	0.00	0.00
Non-Std Lengths	0	Oval Percentage	0.00%	Fitting	0.00		LongSeam	0.00	0.00
Oval Fittings	0	L.S. Pipe Lbs.	0.00	Pipe	1				
Feet of L.S. Pipe	0.00								
Feet of Fittings	0.00								

<u>Accessories & Catalog</u>		<u>Weight</u>		<u>Labor</u>	<u>Fab</u>	<u>Install</u>
Accessories Count	1	Accessories Lbs.	0.00	Accessories	0.00	0.50
A01 Feet	0.00	A01 Lbs.	0.00	A01	0.00	0.00
A24 Feet	0.00	A24 Lbs.	0.00	A24	0.00	0.00
A35 Feet	0.00	A35 Lbs.	0.00	A35	0.00	0.00
Catalog Count	1	Catalog Lbs.	0.00	Catalog	0.00	1.00

Component Totals *(included in above totals)*

<u>Insulation</u>	<u>SqFt</u>	<u>Labor</u>	<u>Component</u>	<u>Labor</u>	<u>Component</u>	<u>Labor</u>
Wrap	27.11	0.20	Hangers	0.11	Seam Sealants	0.00
Liner	0.00	0.00	Angles	0.00	Seams	0.04
			Rods	0.00	Joints	0.00
			Vanes	0.00	Joint Sealants	0.03

Job Summary	<u>Labor Breakdown</u>		<u>P.P.H.</u>	<u>Pounds</u>
	Fab	0.61	30.02	18.40
	Install	2.69	6.85	<u>Item Cnt.</u>
Other	0.08		5	

** Discounts and Markups are not included.*

johnn@sentra-sota.com

From: johnn@sentra-sota.com
Sent: Tuesday, July 6, 2021 4:15 PM
To: johnn@sentra-sota.com
Subject: FW: MPS - OMS - PR #004 - New Restroom
Attachments: Olson Middle School Welcoming Entrance PR004.pdf

From: Larry Dreier <Larryd@tmsj.com>
Sent: Tuesday, July 6, 2021 4:11 PM
To: johnn@sentra-sota.com
Subject: Re: MPS - OMS - PR #004 - New Restroom

1-Model 60D 8x6 alum return with damper.
NET PRICE FREIGHT ALLOWED.....\$88.00

See attached

Larry Dreier
TMS Johnson
Cell 763-218-4074
Direct 763-233-7024
Office 763-544-5442

johnn@sentra-sota.com

From: DON HENDERSON <dhenderson0789@comcast.net>
Sent: Wednesday, July 7, 2021 8:00 AM
To: johnn@sentra-sota.com
Subject: Re: FW: MPS - OMS - PR #004 - New Restroom

John: Our cost for PR #004 is ADD \$85.00. Please call if any questions. Thanks

Don Henderson
EH&S Coordinator
Test & Balance Associates, Inc.
HVAC Consultants
Phone: 763-657-0159
Cell: 612-272-5651
Fax: 763-657-0587
<http://www.testnbalance.com>



On 07/06/2021 3:55 PM johnn@sentra-sota.com wrote:

Dan, they are adding a little change at Olson Middle School. One Exhaust Fan. Will this change your pricing? They would like me to turn in my pricing by tomorrow. Thank you, john.

John Notch

Estimator/Project Manager

Sentra-Sota Sheet Metal Inc.

PO Box 400

3075 3rd Street South

Waite Park, MN 56387

DATE: 07/06/2021

SUN MECHANICAL, INC.

PRICE BREAKDOWN FORMAT FOR CHANGES.

JOB NAME: MAERTENS BRENNY CONSTRUCTION
OLSON MIDDLE SCHOOL - MPLS

DESCRIPTION: PR 4 - DEMOL OLD REST ROOM -
PROVIDE PLUMBING FOR NEW REST
ROOM, AND STANDPIPE FOR A/C COND
NO ACCESS DOORS OR CUT/PATCH!

			AMOUNTS
MATERIALS			\$5,197.00
TAX			\$415.76
LABOR (HRS)			
	91	AT \$113	\$10,283.00
DELIVERIES			\$50.00
INSULATION			\$1,300.00
PERMITS			\$300.00
PARKING			\$0.00
PLBR TRUCK COSTS			\$0.00
TOOLS			\$0.00
SUBTOTAL			\$17,545.76
OH&P %			\$1,755.00
			\$0.00
SUBS:			
SHEET METAL			\$0.00
CONTROLS			\$0.00
CUT/PATCH			\$0.00
SCAFFOLD SUB			\$0.00
EXCAVATOR			\$0.00
S/U			
FIRE PROTECTION			
REFRIGERATION			
CRANE			
WELDING			
SUB M/U			\$0.00
BOND			\$0.00
TOTAL			\$19,300.76

CLARKSYSTEM TAKEOFF SHEETS

DATE: 07/06/2021
 JOB NAME: OLSON MIDDLE SCHOOL - MPLS
 SYSTEM: PR 4 - DEMOL OLD REST ROOM -
 COMMENTS: PROVIDE PLUMBING FOR NEW REST ROOM, AND STANDPIPE FOR A/C COND

ITEM #	QTY	MAT'L @	MAT'L EXT	LABOR @	LABOR EXT
DEMOLITION - BLADES - CAPS	1	\$50.00	\$50.00		0.00
U.G. PLUMBING - CI - XH CPLGS	1	\$1,085.00	\$1,085.00		0.00
W&V PIPING - CI - STD CPLGS	1	\$812.00	\$812.00		0.00
WATER & CONDENSATE PIPING	1	\$900.00	\$900.00		0.00
FIXTURES & DRAIN & O.F.WASTI & TRAP PRIMER ASS'BLY	1	\$1,675.00	\$1,675.00		0.00
CAULKING & FINAL	1	\$50.00	\$50.00		0.00
FREEZER FOR BALL VALVES	1	\$250.00	\$250.00		0.00
WC CARRIER & FCO	1	\$375.00	\$375.00		0.00
			\$0.00		0.00
PLUMBER LABOR	1		\$0.00	91.00	91.00
TWO MEN - 45.5 HR			\$0.00		0.00
		TOTAL	\$5,197.00		91.00
				HRS AT \$113	\$10,283.00



July 20, 2021

Re: Mpls: Olson Middle School PR-E-4

Justin, The following is the cost associated with PR-E-4.

<u>LABOR 49.4 HRS. x \$115 =</u>	\$5,674.00
<u>MATERIAL & Tax</u>	\$2,289.00
<u>SUB TOTAL NO MARK UP</u>	\$7,963.00
<u>OVERHEAD & PROFIT @10%</u>	\$796.00
<u>TOTAL</u>	\$8,759.00

Exclude:

- Unforeseen conditions
- Anything outside of above scope

Patrick J. Brey

Gunnar Electric Inc.

(952) 937-9262 ex. 108 office

(612)-483-6884 cell

pbrey@gunnarelectric.com

www.gunnarelectric.com

NOTE OUR NEW ADDRESS-

14850 Martin Drive

Eden Prairie, MN. 55344

Twin Cities Office-14850 Martin Drive. Eden Prairie, MN. 55347

Southern MN Office-2801 9th Ave. SW. Austin MN. 55912

952.937.9262 -952.937.1034 fax - www.gunnarelectric.com

DBE-SBE-WBE-WBENC-WOSB

Expiration Date: 07/19/21

Quotation

TO:
 GUNNAR ELECTRIC INC
 Attn: PAT BREY (CELL)
 14850 MARTIN DR
 EDEN PRAIRIE, MN 55344-2012

Project Info:
 Project: Olson Middle School - PR-4
 Job #: 12894
 Bid Date: 07/14/21
 Bid Time: 02:00 PM CDT
 Quoter: Kate Magnusson

Type	Quantity	Vendor	Description	Unit or Lot#	Unit Price	Ext Price
	1	ACUITY B	LOT ADDER FOR PR-4 *** PLUS FREIGHT ***	PR-4	650.000	650.00
nPD	1	ACUITY B	NPP16 D EFP POWER PACK	PR-4		
	1	ACUITY B	NWSX LV WH WALL SENSOR; TO BE FIELD PROGRAMMED	PR-4		
	1	ACUITY B	FMVTSL 24IN MVOLT 30K 90CRI BN	PR-4		
	1	ACUITY B	LDN4 40/20 LO4AR LD MVOLT GZ10 ELSD	PR-4		

From:
 DAKOTA SUPPLY GROUP - STP
 Phone 651-224-5781
 475 W MINNEHAHA AVE
 SAINT PAUL, MN 55103
 Printed By: Kate Magnusson

Total	650.00
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Notes

Estimate Report

Estimate: Olsen Middle school security and ADA

7/20/2021 10:31:27 AM

Estimated by: Pat Brey

File: Olsen Middle school security and ADA.bhs

Page 1

Worksheet Location: PR-E4(Sheet 5)

DB #	Ph. Description	Quantity	Mat. Cost U	Tot. Mat.	Lab. Hrs. U	Tot. Hrs.
	0 DEMO					
F	0 DEMO RM 115	1.00	25.00 E	25.00	2.00 E	2.00
F	0 DEMO OFFICE 116	1.00	25.00 E	25.00	12.00 E	12.00
F	0 DEMO HALL 110	1.00	10.00 E	10.00	2.00 E	2.00
	0 INSTALL LIGHTING AND POWER					
	0 RM 115					
F	0 VANITY LIGHT	1.00	3.00 E	3.00	1.00 E	1.00
A 239	0 EM-1/2 EMT 3/12 STR	20.00	1.87 E	37.42	0.04 E	0.86
A 661	0 OT-4 SQ W/2G 3/4 TRIM	1.00	11.63 E	11.63	0.31 E	0.31
F	0 CAN LIGHT	1.00	3.00 E	3.00	1.00 E	1.00
A 239	0 EM-1/2 EMT 3/12 STR	20.00	1.87 E	37.42	0.04 E	0.86
A 2025	0 OT-JBOX	1.00	6.26 E	6.26	0.15 E	0.15
I 8562	1 WH-3/8-2-14-6FT SNAP CON	1.00	9.62 E	9.62	0.06 E	0.06
A 2065	0 UP-PHONE/DATA STUB-UP	1.00	26.85 E	26.85	0.59 E	0.59
F	0 LOW VOLTAGE SWITCH	1.00	3.00 E	3.00	0.50 E	0.50
F	0 POWER PACK	1.00	3.00 E	3.00	0.50 E	0.50
A 2025	0 OT-JBOX	1.00	6.26 E	6.26	0.15 E	0.15
F	0 EQUIPMENT CONNECTIONS	1.00	25.00 E	25.00	2.00 E	2.00
	0 RM 116					
A 661	0 OT-4 SQ W/2G 3/4 TRIM	3.00	11.63 E	34.90	0.31 E	0.93
A 239	0 EM-1/2 EMT 3/12 STR	60.00	1.87 E	112.25	0.04 E	2.59
I 12005	6 DE-S.P. SWITCH W/PLATE	2.00	2.65 E	5.30	0.15 E	0.30
F	0 TIMER SWITCH	1.00	25.00 E	25.00	1.00 E	1.00
	0 RM115					
A 239	0 EM-1/2 EMT 3/12 STR	130.00	1.87 E	243.22	0.04 E	5.62
A 661	0 OT-4 SQ W/2G 3/4 TRIM	3.00	11.63 E	34.90	0.31 E	0.93
I 12009	6 DE-DUPLEX RECEPT W/PLATE	1.00	25.00 E	25.00	0.15 E	0.15
I 6828	7 PCB-20A 1P GFI PL-I BKR.	1.00	98.79 E	98.79	0.20 E	0.20
	0 OFFICE 112 AND 116					
A 239	0 EM-1/2 EMT 3/12 STR	140.00	1.87 E	261.93	0.04 E	6.05
I 6886	7 PCB-20A 1P BOLT-ON BKR.	1.00	36.83 E	36.83	0.20 E	0.20
I 8688	28 WM-700 RACEWAY	40.00	1.40 E	56.00	7.00 C	2.80
I 8744	28 WM-2347 DEVICE BOX	3.00	5.20 E	15.60	20.00 C	0.60
I 8188	3 WC-THHN-STRA #12	160.00	269.73 M	43.16	4.00 M	0.64
I 12009	6 DE-DUPLEX RECEPT W/PLATE	2.00	2.50 E	5.00	0.15 E	0.30
I 12011	6 DE-GFI RECEPT W/PLATE	1.00	13.00 E	13.00	0.15 E	0.15
Q	0 LIGHTING QUOTE	0.00	0.00	650.00	0.00	1.00

Regular Worksheet Page

Page Multiplier = 1

Material Multiplier = 1

Labor Multiplier = 1

Phase = 0 : Phase Multiplier = 1

Page is Active.

Raw Material Total = \$1,893.33

Raw Labor Hours = 47.44 Hours

Proposal Request #005

MAERTENS-BRENNY CONSTRUCTION CO.
8251 MAIN STREET NE
MINNEAPOLIS, MN 55432

MPS - Olson Middle School - Safe & Welcoming Entrance

M-B JOB #	3053
MPS Pub. #	21-2120

NFPA-285 Compliant Exterior Wall Assembly	PR #005								
---	---------	--	--	--	--	--	--	--	--

DATE	8-Jul-21
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DESCRIPTION OF WORK	LABOR				MATERIAL				SUBCONTRACT
	QUANTITY	UNIT	\$/UNIT	COST	QTY	UNIT	\$/UNIT	COST	COST
Subcontractor Quotes									
Diverse Constructiton									
Add Mineral wool insulation to exterior wall assembly									\$ 360.00
SA Jordan									
Substitute exterior wall sheathing type - No Change									\$ -
M-B work									
No MBCC Work									
Labor									
Superintendent		Hours	\$96.73	\$ -					
Carpenter		Hours	\$92.13	\$ -					
Finisher		Hours	\$100.07	\$ -					
Mason		Hours	\$94.32	\$ -					
Laborer		Hours	\$85.97	\$ -					
Tax									
								8.025%	
BASE SUBTOTALS FOR LABOR MATERIAL AND SUBS				\$ -				\$0.00	\$ 360.00

OVERHEAD & PROFIT ON LABOR	10%	0.00
OVERHEAD & PROFIT ON MATERIAL	10%	0.00
SUBTOTAL		378.00
BOND	1.5%	5.67
GRAND TOTAL		383.67

TOTAL SUBCONTRACT	\$	360.00
	5%	\$18.00

REMARKS OR NOTES

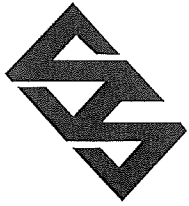
Mineral wool insulation is a long lead time item currently with 6+ month lead times and minimum order quantities of pallet size only. Due to size of impacted area being minimal, this job will be sourced with attic stock from Diverse Construction's other project. If material is not present at time of need, substitute product will be submitted.

See attached for product data, acceptance of proposal and prodcut both need to be received for proposal to be added to formal change order.

Justin Higgins
PROJECT MANAGER

Authorization to proceed with the work described above

Authorization signature and date



**SPECIALTY
SYSTEMS**
Innovative Exterior Specialists

Proposal Request for Change Order

<p>To: <u>Maertens-Brenny Construction Company</u> <u>8251 Main Street NE, Suite 105</u> <u>Minneapolis, MN 55432</u></p> <p>Attn: <u>Justin Higgins</u></p> <p>Phone: <u>(612) 363-0402</u></p> <p>Fax: <u>(763) 786-6973</u></p>	<p>Project Name: <u>Olson Middle School</u></p> <p>Our Project #: <u>21-014</u></p> <p>Our CO #: <u>1</u></p> <p>Customer CO#: _____</p> <p>Date: <u>07/07/21</u></p> <p>Issued By: <u>Bill Reynolds</u></p>
--	--

We hereby agree to incorporate changes into the scope of our original contract as follows:

Description of Change:

PR-005

Furnish and install Thermafiber RainBarrier 45 mineral wool insulation in lieu of specified insulation.

ADD Amount of Change Order: \$ 360.00

All prices include sales tax.

This change order must be duly authorized and returned to this office prior to commencement of any additional work, unless otherwise noted. This change order becomes a part of and is in conformance with the Original Contract.

Accepted: (Authorized Signature)
Maertens-Brenny Construction Company
By: _____
Date: _____

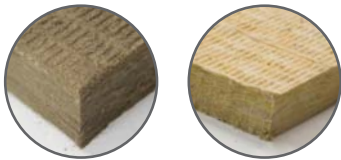
Approved: (Authorized Signature)
Specialty Systems, Inc.
By: _____
Date: _____


Note: Please execute and return both copies. One fully executed copy will be returned for your file.

cc: Bill, Barb, Jeff, Originator

Continuous Insulation (ci) RainBarrier® 45

- + Non-combustible, non-deteriorating, & inorganic
- + Repels and efficiently drains water
- + Highly UV Resistant
- + Conserves energy, reduces Greenhouse gas and carbon emissions
- + Fire resistant to temperatures above 2000° F (1,093° C)
- + More economical than foam products
- + Controls noise and sound
- + Available in dark and regular colored fibers.





LEED® Green Building Credits

Energy & Atmosphere	Materials & Resources	Indoor Environmental Quality	Innovation in Design
1	2.1, 2.2 3.1, 3.2 4.1, 4.2 5.1, 5.2	3.1, 3.2 9	1

Contributes to 33 LEED credits across 4 categories.

Up to 90% Recycled Content



Thermafiber®
THE NAME IN MINERAL WOOL™



Thermafiber RainBarrier® 45 Insulation

Description:

Thermafiber RainBarrier/Continuous Insulation products are designed for exceptional performance in rain screen and cavity wall construction applications. RainBarrier 45 provides thermal insulation, fire protection, and acoustical control while efficiently draining water from a wall cavity system. RainBarrier products are non-combustible and compatible with common wall ties, adhesives, and air barrier systems.

Product Options:

- RainBarrier 45 is available in dark and regular colored fibers.
 - Recycled Content Options¹:
 - Special "Green" Fiber90%
 - Dark Fiber 84%
 - EPA Choice Fiber (US Government Buildings)..... Minimum 75%
 - Standard Fiber 70%
- ¹Recycled content options other than standard must be specified at time of order.

Installation:

Thermafiber recommends mechanical attachment of RainBarrier insulation products. See Thermafiber's RainBarrier Installation Guide at www.thermafiber.com/rainbarrier

Standard Sizes:

	Thickness*	Widths**	Lengths**
RainBarrier 45	1" - 7"	16", 24", 36"	48", 60"
*Thicknesses are available in ½" increments. **Custom sizes are available upon request.			

Technical Data:

Product Designation	Actual Density	Tested to ASTM C 518		Tested to ASTM E 84 Unfaced	
		"k" @ 75° [24°C] BTU.in/hr.sq. ft. °F	"R" value per inch of thickness***	Flame Spread	Smoke Developed
RainBarrier 45	4.5 pcf	0.24	4.2	0	0
***R = thickness divided by 'k'					

Acoustical Performance:

NRC Data	Coefficients at Frequencies Per ASTM 423							
	Thickness	125 Hz	250 Hz	500 Hz	1000 Hz	2000 Hz	4000 Hz	NRC
RainBarrier 45	1-½"	0.22	0.44	0.96	1.06	1.05	1.05	0.90
	2"	0.30	0.69	1.08	1.01	1.00	1.03	0.95
	3"	0.70	1.07	1.24	1.13	1.07	1.08	1.15
	4"	1.03	1.25	1.20	1.05	1.05	1.08	1.15

Standards Compliance:

RainBarrier 45 meets the following:

- ASTM C 665** Non-corrosive
- ASTM C 795** Pass
- ASTM C 612** RainBarrier 45 Type IA, IB, IVA
- ASTM E 136** Rated Non-combustible per NFPA Standard 220
- ASTM E 96** Unfaced, 50 Perms as tested
- ASTM E 84** Flame Spread 0, Smoke Developed 0
- ASTM C 1104** Absorbs 0.03% by volume
- ASTM C 356** Linear Shrinkage <2% 1200° F (650° C)

Thermafiber Insolutions®:

Thermafiber offers industry leading technical and engineering assistance to architects, specifiers, and contractors. These services include CAD drawings, engineering judgments, LEED Credit Information, and product recommendations. Contact our technical services department at 1-888-834-2371 x-295, or email technicalservices@thermafiber.com.

For Further Information:

For additional information about these or other Thermafiber products contact us at 1-888-834-2371 or visit our website www.thermafiber.com.

Notice:

THERMAFIBER, Inc. shall not be liable for incidental and consequential damages, directly or indirectly sustained, nor for any loss caused by application of these goods not in accordance with current printed instructions or for other than the intended use. THERMAFIBER liability is expressly limited to replacement of defective goods. Any claim shall be deemed waived unless made in writing within thirty (30) days from date it was or reasonably should have been discovered.

Submittal Approvals:



Job Name	
Contractor	Date



Justin Higgins <jhiggins@maertensbrenny.com>

MPS - OMS - PR #005 - NFPA 285 Compliant Changes

Andrew Jordan <andrew@sajordanconstruction.com>
To: Justin Higgins <jhiggins@maertensbrenny.com>

Tue, Jul 6, 2021 at 1:46 PM

Hi Justin,

It appears that this will be no change on our end. It looks like they are changing the sheathing type at the exterior wall but the amount of sheathing is about a single sheet. Not worth the paperwork for the price difference. We will note the change accordingly.

Thank you,

Andrew Jordan
CEO/ Project Manager

SA Jordan Construction

Cell (612) 432-7119 | Fax (651)305-0256

[7373 120th Street North](#)

[White Bear Lake, MN 55110](#)



Woman Owned (W) & Small Business Enterprise (SBE)

[Quoted text hidden]

Proposal Request #006

MAERTENS-BRENNY CONSTRUCTION CO.
8251 MAIN STREET NE
MINNEAPOLIS, MN 55432

MPS - Olson Middle School - Safe & Welcoming Entrance

M-B JOB #	3053
MPS Pub. #	21-2120

W4 Layout Revision for ADA Requirements	PR #006								
---	---------	--	--	--	--	--	--	--	--

DATE	2-Jul-21
------	----------

DESCRIPTION OF WORK	LABOR				MATERIAL				SUBCONTRACT	
	QUANTITY	UNIT	\$/UNIT	COST	QTY	UNIT	\$/UNIT	COST	COST	
Subcontractor Quotes										
Capital City Glass										
Add Sidelight to Glazing System									\$ 762.00	
M-B work										
No MBCC Costs										
see below for clarification										
								8.025%		
Tax										
BASE SUBTOTALS FOR LABOR MATERIAL AND SUBS				\$ -				\$0.00	\$ 762.00	
OVERHEAD & PROFIT ON LABOR			10%	0.00					TOTAL SUBCONTRACT	\$ 762.00
OVERHEAD & PROFIT ON MATERIAL			10%	0.00					5%	\$38.10
SUBTOTAL					800.10					
BOND				1.5%	0.00					
GRAND TOTAL					800.10					

REMARKS OR NOTES

No Credit for Concrete and/or Cast Stone Supply and/or installation as formwork square footage and precast piece count did not change.

Justin Higgins
PROJECT MANAGER

Authorization to proceed with the work described above

Authorization signature and date



Change Order

Request #: 01

General Contractor: Maertens-Brenny Construction

To: Justin Higgins

Date: 7/2/2021

Job Name: Olson Middle School

TAX HAS BEEN INCLUDED IN THE BELOW PRICE

Please change the contracted amount with the below number

ADD	\$762 .00
------------	------------------

Description

PR 006 - W4 layout revised to meet ADA requirements. Sidelite to be full height, added vertical mullion.

By approving this CO, you agree to adding the following days for completion:

Proposal By: Chris Schloer

By signing below, you agree to the above change order request

Approval of Change Order

Signature: _____

Date: _____

CHANGE ORDER VALID FOR 30 DAYS

Proposal Request #007

MAERTENS-BRENNY CONSTRUCTION CO.
8251 MAIN STREET NE
MINNEAPOLIS, MN 55432

MPS - Olson Middle School - Safe & Welcoming Entrance

M-B JOB #	3053
MPS Pub. #	21-2120

Alcove 107 Ceiling Work	PR #007				
-------------------------	---------	--	--	--	--

DATE	20-Jul-21
------	-----------

DESCRIPTION OF WORK	LABOR				MATERIAL				SUBCONTRACT
	QUANTITY	UNIT	\$/UNIT	COST	QTY	UNIT	\$/UNIT	COST	COST
Subcontractor Quotes									
Gunnar Electric									
Demo Existing Light and Supply and Install New Light									\$ 792.00
M-B work									
Demolition									
Demo existing plaster ceiling and clean up	5	Hours	\$92.13	\$ 460.64					
dumpster costs					1	ls	\$10.00	\$ 10.00	
Ceiling Installation									
labor to install new ceiling in Alcove 107	6	Hours	\$92.13	\$ 552.76					
edge angle					24	lf	\$0.75	\$ 18.00	
grid					35	lf	\$1.00	\$ 35.00	
pads					20	sf	\$2.00	\$ 40.00	
Labor									
Superintendent		Hours	\$96.73	\$ -					
Carpenter		Hours	\$92.13	\$ -					
Finisher		Hours	\$100.07	\$ -					
Mason		Hours	\$94.32	\$ -					
Laborer		Hours	\$85.97	\$ -					
Tax									
								8.025%	
BASE SUBTOTALS FOR LABOR MATERIAL AND SUBS				\$ 1,013.40				\$111.27	\$ 792.00

OVERHEAD & PROFIT ON LABOR	10%	101.34
OVERHEAD & PROFIT ON MATERIAL	10%	11.13
SUBTOTAL		2,068.73
BOND	1.5%	31.03
GRAND TOTAL		2,099.76

TOTAL SUBCONTRACT	\$	792.00
	5%	\$39.60

REMARKS OR NOTES

Ceiling perimeter grid to be placed on existing door frame at restroom and office to match ceiling height of hallway. New tiles to match as close as possible to existing.

Justin Higgins

PROJECT MANAGER

Authorization to proceed with the work described above

Authorization signature and date



July 20, 2021

Re: Mpls: Olson Middle School PR-E-7

Justin, The following is the cost associated with PR-E-7.

<u>LABOR 5.8 HRS. x \$115 =</u>	\$662.00
<u>MATERIAL & Tax</u>	<u>\$222.00</u>
<u>SUB TOTAL NO MARK UP</u>	\$884.00
<u>OVERHEAD & PROFIT @10%</u>	<u>\$88.00</u>
<u>TOTAL</u>	\$972.00

Exclude:

- Unforeseen conditions
- Anything outside of above scope

Patrick J. Brey

Gunnar Electric Inc.

(952) 937-9262 ex. 108 office

(612)-483-6884 cell

pbrey@gunnarelectric.com

www.gunnarelectric.com

NOTE OUR NEW ADDRESS-

14850 Martin Drive

Eden Prairie, MN. 55344

Twin Cities Office-14850 Martin Drive. Eden Prairie, MN. 55347

Southern MN Office-2801 9th Ave. SW. Austin MN. 55912

952.937.9262 -952.937.1034 fax - www.gunnarelectric.com

DBE-SBE-WBE-WBENC-WOSB

Catalog Number
Notes
Type

FEATURES & SPECIFICATIONS

INTENDED USE — Designed for use in open area applications and electronic offices where optical control, visual comfort and light cut-off are important.

Attributes: Design optimized for use with T8 lamps and low-profile electronic ballasts.

Aluminum louvers utilize the latest developments in louver finishing for minimized louver iridescence.

CONSTRUCTION — Black reveal provides floating louver appearance, conceals optional air-supply slots.

Square corner end plates improve strength and durability.

Integral T-bar safety clips hold fixture to T-bar securely; no fasteners required.

Heavy-gauge hinges die-formed for maximum strength; spring action latches concealed in black reveal.

Housing formed from cold-rolled steel. Louver formed from anodized aluminum. No asbestos used in this product.

Finish: Five-stage iron-phosphate pretreatment ensures superior paint adhesion. Painted parts finished with high-gloss, baked white enamel.

ELECTRICAL — Electronic ballasts are sound rated A. Full light output, reduced energy. Less than 10% THD multi-volt operation (120-277).

Fixture conforms to UL1570 and is suitable for damp locations. AWM, TFN or THHN wire used throughout, rated for required temperatures.

LISTINGS — UL Listed (Standard).

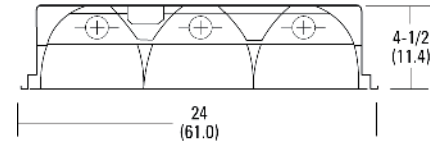
WARRANTY — 2-year limited warranty. Complete warranty terms located at:

www.acuitybrands.com/CustomerResources/Terms_and_conditions.aspx

NOTE: Actual performance may differ as a result of end-user environment and application.

Specifications subject to change without notice.

Parabolics



Specifications PT2U 2x2: 9-cell

Length: 24 (61.0)

Width: 24 (61.0)

Depth: 4-1/2 (11.4)

Weight: 15 lbs (6.8 kg)

Specifications PT3 2x4: 18-cell

Length: 48 (122.0)

Width: 24 (61.0)

Depth: 4-1/2 (11.4)

Weight: 32 lbs (14.5 kg)

All dimensions are inches (centimeters) unless otherwise indicated.

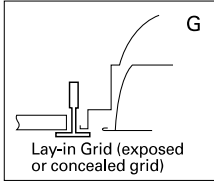
ORDERING INFORMATION

Catalog Number	UPC	Description	# of Lamps	# of Cells	Wattage	Voltage	Ballast type	# of Ballasts	Lamp type	Pre-wired	Lamp included	Pallet qty.
PT3 MV	745975079155	2x4 recessed, static	3	18	32	120-277	Electronic, instant start	1	N/A	N	N	20
PT3L MV	745975079421	2x4 recessed, static	3	18	32	120-277	Electronic, instant start	1	3500 K	N	Y	20
PT3LW MV	745975079360	2x4 recessed, static	3	18	32	120-277	Electronic, instant start	1	3500 K	Y	Y	20
PT3A MV	745975079513	2x4 recessed, air	3	18	32	120-277	Electronic, instant start	1	N/A	N	N	20
PT2U MV	745975079247	2x2 recessed, static	2	9	32-U lamp	120-277	Electronic, instant start	1	N/A	N	N	40
PT3L41 MV	745976877781	2x4 recessed, static	3	18	32	120-277	Electronic, instant start	1	4100 K	N	Y	20

Parabolics 2'x4' and 2'x2'

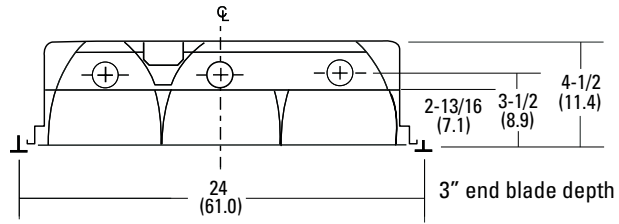
MOUNTING DATA

Ceiling Type	Appropriate Trim Type
Exposed grid tee	G
Concealed grid tee	G, ST



DIMENSIONS

All dimensions are inches (centimeters) unless otherwise indicated.



PHOTOMETRICS

Calculated using the zonal cavity method in accordance with IESNA LM41 procedures. Floor reflectances are 20%. Lamp configurations shown are typical. Full photometric data on these and other configurations available upon request.

TEST NO: LTL14671 CS

PT3 MV

LUMENS PER LAMP: 2850 LUM. EFF. - 75.1%

LAMPS PER LUMINAIRE: 3

RCR	Coefficients of Utilization								
	20%								
	80%			70%			50%		
pf	50%	30%	10%	50%	30%	10%	50%	30%	10%
0	89	89	89	87	87	87	83	83	83
1	80	78	75	79	76	74	76	74	72
2	71	67	63	70	66	63	67	64	61
3	64	58	54	62	57	53	60	56	53
4	57	51	46	56	50	46	54	49	45
5	51	45	40	50	44	40	49	44	40
6	46	40	35	45	39	35	44	39	35
7	42	36	31	41	35	31	40	35	31
8	38	32	28	38	32	28	37	31	28
9	35	29	25	34	29	25	34	28	25
10	32	26	23	32	26	23	31	26	22

Zonal Lumen Summary

Zone	Lumens	% Lamp	% Fixture
0° - 30°	1982.1	23.2	30.9
0° - 40°	3413.2	39.9	53.1
0° - 60°	5866.8	68.6	91.4
0° - 90°	6422.1	75.1	100.0
90° - 180°	0.0	0.0	0.0
0° - 180°	6422.1	75.1	100.0

Expiration Date: 07/25/21

Quotation

TO:
 GUNNAR ELECTRIC INC
 Attn: PAT BREY (CELL)
 14850 MARTIN DR
 EDEN PRAIRIE, MN 55344-2012

Project Info:
 Project: Gunnar: 2x2 Parabolic
 Job #: 13067
 Bid Date: 07/20/21
 Bid Time: 02:00 PM CDT
 Quoter: Kate Magnusson

Type	Quantity	Vendor	Description	Unit or Lot#	Unit Price	Ext Price
	1		PT2U MV *** PLUS FREIGHT ***			
	2	Stock	GE F32T8SP35/U6/ECO LMP FLUOR 32W T8 U6 28149! MED BIPIN BASE 6"/LEG RE 735 GE			

From:
 DAKOTA SUPPLY GROUP - STP
 Phone 651-224-5781
 475 W MINNEHAHA AVE
 SAINT PAUL, MN 55103
 Printed By: Kate Magnusson

Total	150.00
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Notes

Estimate Report

Estimate: Olsen Middle school security and ADA

7/20/2021 2:06:59 PM

Estimated by: Pat Brey

File: Olsen Middle school security and ADA.bhs

Page 1

Worksheet Location: PR-E7 (Sheet 6)

DB #	Ph. Description	Quantity	Mat. Cost	U	Tot. Mat.	Lab. Hrs.	U	Tot. Hrs.
F	0 demo light	1.00	6.00	E	6.00	2.00	E	2.00
A 2035	0 UP-TROFFER OPENING, MC	1.00	20.94	E	20.94	0.54	E	0.54
F	0 2x2 lay in fixture	1.00	3.00	E	3.00	1.00	E	1.00
F	0 tie into existing lighting controls	1.00	5.00	E	5.00	2.00	E	2.00
Q	0 light fixture quote	0.00	0.00		150.00	0.00		0.00

Regular Worksheet Page

Page Multiplier = 1

Material Multiplier = 1

Labor Multiplier = 1

Phase = 0 : Phase Multiplier = 1

Page is Active.

Raw Material Total = \$184.94

Raw Labor Hours = 5.54 Hours

Proposal Request #008

MAERTENS-BRENNY CONSTRUCTION CO.
8251 MAIN STREET NE
MINNEAPOLIS, MN 55432

MPS - Olson Middle School - Safe & Welcoming Entrance

M-B JOB #	3053
MPS Pub. #	21-2120

Fur out wall at Reception Countertop	PR #008				
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DATE	20-Jul-21
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DESCRIPTION OF WORK	LABOR				MATERIAL				SUBCONTRACT
	QUANTITY	UNIT	\$/UNIT	COST	QTY	UNIT	\$/UNIT	COST	COST
Subcontractor Quotes									
S. A. Jordan									\$ 1,843.07
Steel Studs, Drywall, and Finishing New Wall									
Gunnar Electric									\$ 579.00
Demo existing power line in box to source									
M-B work									
Demolition									
remove access panels, ceiling grid, and wallpaper	3	Hours	\$85.97	\$ 257.92					
Ceiling									
labor for edge angle and tile cutting	3	Hours	\$92.13	\$ 276.38					
new edge angle					12	lf	\$0.75	\$ 9.00	
Labor									
Superintendent		Hours	\$96.73	\$ -					
Carpenter		Hours	\$92.13	\$ -					
Finisher		Hours	\$100.07	\$ -					
Mason		Hours	\$94.32	\$ -					
Laborer		Hours	\$85.97	\$ -					
Tax								8.025%	
BASE SUBTOTALS FOR LABOR MATERIAL AND SUBS				\$ 534.30				\$9.72	\$ 2,422.07

OVERHEAD & PROFIT ON LABOR	10%	53.43	TOTAL SUBCONTRACT	\$ 2,422.07	
OVERHEAD & PROFIT ON MATERIAL	10%	0.97		5%	\$121.10
SUBTOTAL		3,141.60			
BOND	1.5%	47.12			
GRAND TOTAL		3,188.73			

REMARKS OR NOTES

One electrical wire in electrical box to be demolished and terminated to source.

Electrical boxes to remain in wall and not be removed to reduce risk to damage to other side of wall.

Only loose wall finishes removed. Existing adhered finished to remain and wall built over finishes

Ceiling to terminate into new wall.

Justin Higgins
PROJECT MANAGER

Authorization to proceed with the work described above

Authorization signature and date



7373 – 120TH STREET NORTH
WHITE BEAR LAKE, MN 55110
PHONE/FAX: 651-305-0256
Small Business Enterprise (SBE)
WOMEN OWNED (W)



CHANGE ORDER PROPOSAL

#2021-246-004

DATE: 7/19/2021
TO: MAERTENS BRENNY ATTN: JUSTIN HIGGINS
PROJECT: OLSON MS FY20 SAFE AND WELCOMING ENTRANCE
REFERENCE: PR 008

DESCRIPTION: THIS EXTRA COST IS FOR THE ADDED WORK SHOWN IN PR 008. IT INCLUDES FURRING OUT THE BACK WALL OF THE RECEPTION DESK AREA WITH 7/8" HAT CHANNEL AND 5/8" DRYWALL.

BASE BID:	LABOR:	\$1,440.00
	MATERIAL:	\$403.07
	TOTAL:	\$1,843.07

PLEASE PROVIDE S.A. JORDAN CONSTRUCTION WITH WRITTEN AND SIGNED APPROVAL IF YOU WISH TO PROCEED WITH THIS WORK.

Please call if you have any questions.

Andrew Jordan
Project Manager/CEO
Cell: 612-432-7119
andrew@sajordanconstruction.com

Bids may be withdrawn if not accepted within 30 days.



July 20, 2021

Re: Mpls: Olson Middle School PR-E-8

Justin, The following is the cost associated with PR-E-8.

<u>LABOR 4.2 HRS. x \$115 =</u>	\$478.00
<u>MATERIAL & Tax</u>	\$48.00
<u>SUB TOTAL NO MARK UP</u>	\$526.00
<u>OVERHEAD & PROFIT @10%</u>	\$53.00
<u>TOTAL</u>	\$579.00

Exclude:

- Unforeseen conditions
- Anything outside of above scope

Patrick J. Brey

Gunnar Electric Inc.

(952) 937-9262 ex. 108 office

(612)-483-6884 cell

pbrey@gunnarelectric.com

www.gunnarelectric.com

NOTE OUR NEW ADDRESS-

14850 Martin Drive

Eden Prairie, MN. 55344

Twin Cities Office-14850 Martin Drive. Eden Prairie, MN. 55347

Southern MN Office-2801 9th Ave. SW. Austin MN. 55912

952.937.9262 -952.937.1034 fax - www.gunnarelectric.com

DBE-SBE-WBE-WBENC-WOSB

Estimate Report

Estimate: Olsen Middle school security and ADA

7/20/2021 11:38:27 AM

Estimated by: Pat Brey

File: Olsen Middle school security and ADA.bhs

Page 1

Worksheet Location: PR-E8 (Sheet 7)

DB #	Ph. Description	Quantity	Mat. Cost	U	Tot. Mat.	Lab. Hrs.	U	Tot. Hrs.
F	0 demo existing box and wires	1.00	25.00	E	25.00	4.00	E	4.00

Regular Worksheet Page

Page Multiplier = 1

Material Multiplier = 1

Labor Multiplier = 1

Phase = 0 : Phase Multiplier = 1

Page is Active.

Raw Material Total = \$25.00

Raw Labor Hours = 4.00 Hours

Proposal Request #009

MAERTENS-BRENNY CONSTRUCTION CO.
8251 MAIN STREET NE
MINNEAPOLIS, MN 55432

MPS - Olson Middle School - Safe & Welcoming Entrance

M-B JOB #	3053
MPS Pub. #	21-2120

Upper Cabinets Remain at Nurses' Office	PR #009				
---	---------	--	--	--	--

DATE	20-Jul-21
------	-----------

DESCRIPTION OF WORK	LABOR				MATERIAL				SUBCONTRACT
	QUANTITY	UNIT	\$/UNIT	COST	QTY	UNIT	\$/UNIT	COST	COST
Subcontractor Quotes									
Ron's Cabinets									
Omit Supply and Installation of Above Cabinet Plam									\$ (546.00)
M-B work									
No Change									
Labor									
Superintendent		Hours	\$96.73	\$ -					
Carpenter		Hours	\$92.13	\$ -					
Finisher		Hours	\$100.07	\$ -					
Mason		Hours	\$94.32	\$ -					
Laborer		Hours	\$85.97	\$ -					
Tax									
								8.025%	
BASE SUBTOTALS FOR LABOR MATERIAL AND SUBS				\$ -				\$0.00	\$ (546.00)

OVERHEAD & PROFIT ON LABOR	0%	0.00	TOTAL SUBCONTRACT	\$ (546.00)
OVERHEAD & PROFIT ON MATERIAL	0%	0.00		
SUBTOTAL		-546.00		
BOND	1.5%	-8.19		
GRAND TOTAL		-554.19		

REMARKS OR NOTES

No Change in Cabinet Removal and Lowering as labor included in removal and reinstallation was used during attempt to lower and subsequent minor investigation demo and re-attachement of existing cabinets and fasteners in original locaitons.

Justin Higgins

PROJECT MANAGER

Authorization to proceed with the work described above

Authorization signature and date

RON'S CABINETS

380 Industrial Blvd East P.O. Box 515 Sauk Rapids, MN 56379

Phone
320 • 252 • 7667

Fax
320 • 257 • 0158

CHANGE REQUEST # 14523 - 1

TO: Maertens Brenny Const
8251 Main Street NE
Minneapolis, MN 55432 1849
ATTN: Justin Higgins

DATE: 7/20/21
JOB NAME: Olson M.S. Entrance
LOCATION: Minneapolis, MN 55430

DESCRIPTION AND PRICING OF PROPOSED WORK ADD OR (DEDUCT)

REFERENCE:		DOLLAR AMOUNT	SHOP HOURS
1	<u>PR009 - Omit Plam Soffit Above Cabinets</u>		
2	<u>DEDUCT - Omit Plam Soffit Above Cabinets</u>		
3	<u>Material:</u>	<u>-\$400.00</u>	
4	<u>Labor:</u>	<u>-\$146.00</u>	
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

THIS (CONTRACT) (SUM) WOULD BE (INCREASED) (DECREASED) (UNCHANGED)

BY THIS CHANGE REQUEST _____

(\$546.00)

RETURN THIS REQUEST TO RON'S CABINETS IMMEDIATELY. NONE OF THE ABOVE WORK WILL BE MANUFACTURED UNTIL THIS APPROVED CHANGE REQUEST OR AN OFFICIAL CHANGE ORDER HAS BEEN RETURNED TO RON'S CABINETS APPROVED.

IF AN OFFICIAL CHANGE ORDER CANNOT BE ISSUED BEFORE THE WORK IS REQUIRED, PLEASE INDICATE YOUR INTENT BY SIGNING BELOW.

SUBMITTED:

RON'S CABINETS,

BY: _____
Paul Nordin

APPROVAL DATE: _____

CONTRACTOR: _____

BY: _____

CONTRACT FOR SERVICES

(\$25,000+)

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Minnehaha Transportation, “Contractor” (collectively “parties”) to provide Provide Transportation service for MPS students 2021-2022 SY to D-Ops-Transportation.

1 *TERM OF CONTRACT*

1.1 This Contract is effective on 07/01/2021 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 06/30/2022, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s **OWN RISK** and as a volunteer.

2 SCOPE OF WORK

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as Exhibit A (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation.*

District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses, shall not exceed \$175,000.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 *Frequency of Invoicing and Terms of Payment.*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable Exhibit B. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 *Fund Availability; Federal Funds Contingency.*

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRATOR

10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except

as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

11 WORKER HEALTH, SAFETY AND TRAINING

11.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in

providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within ten (10) days of the completion, termination of this Contract, or upon request of the District, whichever occurs first; Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Or, Contractor, upon the request of the

District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

19.2 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1
D-Ops-Transportation
Attn: Lisa Beck
1250 W Broadway
Minneapolis, MN 55411
Email: lisa.beck@mpls.k12.mn.us
Fax:

Minnehaha Transportation

Attn: _____

Address: _____

Email: _____

Fax: _____

22 ACKNOWLEDGMENT

22.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

22.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

23 NON-WAIVER

23.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

24 ASSIGNMENT

24.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment,

shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

25 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

25.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

26 WARRANTY

26.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

27 SEVERABILITY

27.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

28 SURVIVABILITY

28.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

By: _____

Name: Karen DeVet
(Printed)

Title: _____

Date: _____

Minnehaha Transportation

By: _____

Name: _____
(Printed)

Title: _____

Date: _____

EXHIBIT A: SCOPE OF WORK

Description of Services and Service Delivery

Provide on time Transportation service for MPS students throughout the district to various schools.

Service Outcome

Efficient and on time delivery of students to school and home.

Method of Evaluation

Monthly meetings for evaluations, penalties apply if applicable. Vendor will also be held accountable by language agreed to in the Exhibit sections of the contract.

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

The payment terms are as follows:

If there are no exhibits:

This Exhibit and page have been intentionally left blank.

**AMENDMENT #1 TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND
Riverside Plaza Tenants Association**

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and Riverside Plaza Tenants Association dated 10/12/2021 (“Contract”) is made and entered into by and between Special School District No.1 (“District”) and Riverside Plaza Tenants Association (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law (“District”) and Riverside Plaza Tenants Association (“Contractor”) entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2021 through 6/30/2023 (“Contract”), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001026

1. *Original contract amount:* \$95,000
2. *Accumulative contract amount:* \$332,992

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section: 3.1 Total Obligation

Description: District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$332,992 in FY 22. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name:

Title:

Date: _____

Contractor: *Seyou Nurie*
Signature: _____

Name: Seyou Nurie

Title: Program Coordinator, Education

Date: 10/05/2021

**AMENDMENT #1 TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND
Somali Success School**

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and Somali Success School dated 10/12/2021 (“Contract”) is made and entered into by and between Special School District No.1 (“District”) and Somali Success School (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law (“District”) and Somali Success School (“Contractor”) entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2021 through 6/30/2023 (“Contract”), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001028

1. *Original contract amount:* \$95,000
2. *Accumulative contract amount:* \$582,335

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section: 3.1 Total Obligation

Description: District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$582,335 in FY 22. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

(The remainder of this page intentionally left blank.)

SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name:

Title:

Date: _____

Somali Success School:

Signature:  _____

Name: Amal Abdalla

Title: CEO, Somali Success School

Date: 10/04/2021

**AMENDMENT #1 TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND
Summit Academy OIC**

This Amendment ("Amendment") to the Contract between Special School District No. 1 and Summit Academy OIC dated 10/12/2021 ("Contract") is made and entered into by and between Special School District No.1 ("District") and Summit Academy OIC ("Contractor") (collectively "parties").

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law ("District") and Summit Academy OIC ("Contractor") entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2021 through 6/30/2023 ("Contract"), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400001024

1. *Original contract amount:* \$95,000
2. *Accumulative contract amount:* \$251,812

NOW THEREFORE IT IS HEREBY AGREED by the Parties to amend the Contract as follows:

Section: 3.1 Total Obligation

Description: District's total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$251,812 in FY22. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Except as herein amended, the terms, conditions and provisions of the contract shall apply to and govern the provisions of this Amendment.

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SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name:

Title:

Date: _____

Summit Academy OIC:

Signature: Marc L Carrier

Name: ~~Leroy West~~ MARC L CARRIER

Title: ~~CAO~~ CFO, Summit Academy OIC

Date: 10/4/21



MINNEAPOLIS
PUBLIC SCHOOLS

Urban Education. Global Citizens.

CONTRACT FOR GOODS – above \$50,000

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Veritiv Operating Company “Contractor” (collectively “parties”) to provide Food Packaging Materials & Cleaning supplies for Culinary and Wellness Services.

1 TERM OF CONTRACT

- 1.1 This Contract is effective on 8/3/2021. or the date of the last signature of the parties, whichever is later, and shall remain in effect until 6/30/2024., or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

2 SCOPE OF WORK

- 2.1 Contractor shall perform all of the services/delivery of goods set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.



MINNEAPOLIS
PUBLIC SCHOOLS
Urban Education. Global Citizens.

1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

www.mpls.k12.mn.us

MAS-

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3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation*

District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$1,100,000, annually. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 *Frequency of Invoicing and Terms of Payment*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with

respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

4 INSPECTION OF GOODS & REJECTION

4.1 Buyer is entitled to inspect the Goods upon delivery. If the Goods are unacceptable for any reason, Buyer must reject them at the time of delivery up to ten (10) business days from the date of delivery. If Buyer has not rejected the Goods within ten (10) business days from the date of delivery, Buyer shall have waived any right to reject that specific delivery of Goods.

4.2 In the event Buyer rejects the Goods, Buyer shall allow Seller a reasonable time to cure the deficiency. A reasonable time period shall be determined by industry standards for the Goods, as well as the Seller and Buyer.

5 RISK OF LOSS

5.1 Risk of loss will be on the Seller until the time when the Buyer accepts delivery. Seller shall maintain any and all necessary insurance in order to insure the Goods against loss at Seller's own expense.

6 TITLE

6.1 Title to the Goods will remain with the Seller until Buyer accepts delivery.

7 FORCE MAJEURE

7.1 Non-delivery or default of this Agreement due to labor disputes, transportation shortage, delay or shortage of materials to produce the Goods, fires, accidents, Acts of God, or any other causes outside of Seller's control shall be notified to Buyer immediately upon realization that it will not be able to deliver the Goods as promised. Either Party may terminate this Agreement upon such notice.

8 GENERAL TERMS AND CONDITIONS

8.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

9 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

9.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

10 DATA PRIVACY

10.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.



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11 USE OF DISTRICT NAME OR LOGO

- 11.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

12 INDEPENDENT CONTRACTOR

- 12.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.
- 12.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

13 WORKER HEALTH, SAFETY AND TRAINING

- 13.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

14 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

- 14.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

15 INSURANCE

- 15.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.
- 15.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.
- 15.3 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

16 INDEMNIFICATION

- 16.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

17 LIMITATION ON LIABILITY

- 17.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

18 CONFLICT OF INTEREST/CODE OF ETHICS

18.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

19 COMPLIANCE WITH LAWS AND DEBARMENT

19.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

20 TERMINATION

20.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

20.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

20.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District

is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

21 RETURN OF DATA

21.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

22 RECORDS MANAGEMENT AND MAINTENANCE

22.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

23 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1

Division: Culinary and Wellness Services

Attn: Josiah Nebo

1250 W Broadway

Minneapolis, MN 55411

Email: Josiah.nebo@mpls.k12.mn.us



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Phone: 612.668.0000

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CONTRACTOR

NAME: Veritiv Operation Company

Address: 9001 Wyoming Ave N., Brooklyn Park, MN 55445

Phone: 1-877-319-7333

Email: Janelle.schafernocker@veritivcorp.com; Brian.Horn@veritivcorp.com

ACKNOWLEDGMENT

23.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to backup withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

23.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

24 NON-WAIVER

24.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

25 ASSIGNMENT

25.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.



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26 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

26.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

27 WARRANTY

27.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

28 SEVERABILITY

28.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

29 SURVIVABILITY

29.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

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SPECIAL SCHOOL DISTRICT NO. 1

Signature: _____

Name: _____
(Printed)

Title: _____

Date: _____

CONTRACTOR NAME

Signature: 

Name: Nick Magdeus
(Printed)

Title: Regional Sales Lead

Date: 10/5/21



EXHIBIT A: SCOPE OF WORK

Deliverables:

Provide Paper Products for Food Distribution, including spoons, forks, knives, napkins, etc. Food Packaging Materials including film and containers for pre-packaging meals and cleaning supplies

Service Outcome:

Paper Products and Food Packaging Materials delivered in a timely manner

Method of Evaluation

Fulfillment rate and customer service satisfaction determine by the Culinary and Wellness Services

[The remainder of this page intentionally left blank.]

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

Net 30

[The remainder of this page intentionally left blank.]



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CONTRACT FOR SERVICES

(\$25,000+)

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Wide Area Transportation Services Inc (WATSI), “Contractor” (collectively “parties”) to provide Transport Type III and HHM students for the District for 2021-2022 school year to D-Ops-Transportation.

1 *TERM OF CONTRACT*

1.1 This Contract is effective on 10/12/2021 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 06/30/2022, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s **OWN RISK** and as a volunteer.

2 SCOPE OF WORK

2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as Exhibit A (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

3 CONSIDERATION AND TERMS OF PAYMENT

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

3.1 *Total Obligation.*

District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses, shall not exceed \$500,000.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

3.2 *Frequency of Invoicing and Terms of Payment.*

Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable Exhibit B. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

3.4 *Fund Availability; Federal Funds Contingency.*

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4 GENERAL TERMS AND CONDITIONS

4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

6 BACKGROUND CHECKS

6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.

6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

7 DATA PRIVACY

7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

8 OWNERSHIP OF MATERIAL

8.1 The Contractor expressly waives to the District any claim to copyright pertaining to all new materials, publications, and documents produced as a result of this Contract and agrees that the District shall have exclusive right to and responsibility for their distribution, publication, copyrighting (when applicable) and all other matters relating to dissemination of the materials. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without prior written consent of the District.

9 USE OF DISTRICT NAME OR LOGO

9.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

10 INDEPENDENT CONTRATOR

10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except

as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

10.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

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12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

12.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

13 INSURANCE

13.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.

13.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in

providing services to the District, but shall not name the District as an additional insured to the coverage.

13.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.

13.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract, and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

14 INDEMNIFICATION

14.1 Contractor agrees to release, defend, indemnify, and hold harmless District, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of District. Contractor shall not settle or compromise any claim in which the District has been named a party and for which Contractor must indemnify the District without a signed agreement approved by the District.

15 LIMITATION ON LIABILITY

15.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

16 CONFLICT OF INTEREST/CODE OF ETHICS

16.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

17 COMPLIANCE WITH LAWS AND DEBARMENT

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

18 TERMINATION

18.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

18.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

18.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

19 RETURN OF DATA

19.1 Within ten (10) days of the completion, termination of this Contract, or upon request of the District, whichever occurs first; Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Or, Contractor, upon the request of the

District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

19.2 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

20 RECORDS MANAGEMENT AND MAINTENANCE

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

21 NOTICES/ADMINISTRATION

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

Special School District No. 1
D-Ops-Transportation
Attn: Lisa Beck
1250 W Broadway
Minneapolis, MN 55411
Email: lisa.beck@mpls.k12.mn.us
Fax:

Wide Area Transportation Services Inc (WATSI)

Attn: _____

Address: _____

Email: _____

Fax: _____

22 ACKNOWLEDGMENT

22.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

22.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

23 NON-WAIVER

23.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

24 ASSIGNMENT

24.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment,

shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

25 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT

25.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

26 WARRANTY

26.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

27 SEVERABILITY

27.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

28 SURVIVABILITY

28.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

SPECIAL SCHOOL DISTRICT NO. 1

By: _____

Name: Karen DeVet
(Printed)

Title: _____

Date: _____

Wide Area Transportation Services Inc (WATSI)

By: _____

Name: _____
(Printed)

Title: _____

Date: _____

EXHIBIT A: SCOPE OF WORK

Description of Services and Service Delivery

Vendor will coordinate with MPS Transportation Staff to lay out routes for students to be picked up and transported to and from their homes and schools for FY22

Service Outcome

Students will be picked up in a timely manner and transported safely to their respective schools

Method of Evaluation

MPS Staff will receive weekly reports regarding on time delivery of students, and customer service.

EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

The payment terms are as follows:

If there are no exhibits:

This Exhibit and page have been intentionally left blank.

FY21 Andersen 5-Year Capital Plan Renovations

Contract Sum: \$350,363

Architect: Wold Architects and Engineers

Project Name and Number

21ANDE001

Andersen United Community School

1098 Andersen Lane

Minneapolis, MN 55407

Description

As part of the 5-year capital plan, MPS has the goal of transforming Andersen to a middle school which includes: capital renovations for science labs; upgraded kitchen, dining and performance spaces; restroom renovations; a technology space; daylighting improvements; finishes upgrades; and infrastructure investments to electrical, plumbing, and mechanical systems.

Contract Documents

AIA Document G801-2017

Exhibit F – Project Charter

Exhibit G – Project Design Milestones & Deliverables

AIA Document A201-2017



AIA[®] Document G801™ – 2017

Notice of Additional Services

PROJECT: *(name and address)*
21ANDE001 5 Year Capital Plan

AGREEMENT INFORMATION:
Date: January 2, 2021

NOTICE INFORMATION:
Notice Number: 002
Date: August 17, 2021

OWNER: *(name and address)*
Minneapolis Public Schools
Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

ARCHITECT: *(name and address)*
Wold Architects and Engineers
332 Minnesota Street
Suite W2000
St. Paul, MN 55101

Select as appropriate:

ADDITIONAL SERVICES THAT REQUIRE THE OWNER'S WRITTEN AUTHORIZATION TO PROCEED
(Refer to the Owner-Architect Agreement for a list of Additional Services that require the Owner's written authorization to proceed.)

The Architect hereby notifies the Owner of the need, and requests the Owner's authorization, to perform the following Additional Services:

(Describe the proposed Additional Services and explain the facts and circumstances giving rise to their need.)

Refer to EXH-F Project Charter

The following documents are typically included in all MPS design contracts, but were missed in the original feasibility study contract. They are included here:

EXH-G Project Design Milestones & Deliverables

AIA Document A201-2017 (for reference only)

Compensation Adjustment:

Refer to EXH-F Project Charter

Schedule Adjustment:

Refer to EXH-F Project Charter

ADDITIONAL SERVICES TO AVOID DELAY IN CONSTRUCTION
(Refer to the Owner-Architect Agreement for a list of Additional Services that the Architect may provide to avoid delay in Construction.)

The Architect hereby notifies the Owner of the need to perform the following Additional Services:

(Describe the Additional Services and explain the facts and circumstances giving rise to their need.)

Compensation Adjustment:

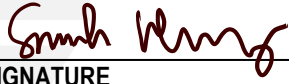
Schedule Adjustment:

Note: The Architect may have already begun to provide these services to avoid delay in the Construction Phase of the Project. If the Owner determines that all or parts of these services are not required and elects to discontinue these services, the Owner must promptly notify the Architect and compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

ISSUED BY THE ARCHITECT:

Wold Architects and Engineers

ARCHITECT *(Firm name)*



SIGNATURE

Sarah Bagley, Partner

PRINTED NAME AND TITLE

August 19, 2021

DATE

OWNER'S AUTHORIZATION, IF REQUIRED:

Minneapolis Public Schools

OWNER *(Firm name)*

SIGNATURE

PRINTED NAME AND TITLE

DATE



EXHIBIT F - Project Charter

Project Identification, Intent, and Scope

MPS Project Number: 21ANDE001
MPS Project Name: Andersen 5-Year Capital Plan Work
Kitchen, Daylighting, and LTFM

Building Context

Andersen School was constructed in 1975 with a total of 233,252 square feet. There have been no additions to this school. The school currently has a student population ranging from Pre- K through grade 6. Additional programs at this school facility include fitness, yoga, and family resource center. The additional community uses at this school facility include community education, community health (dentist), and community offices. The CDD has designated this school as a community middle school with a Spanish dual-language magnet.

Project Intent

As part of the 5-year capital plan, MPS has the goal of transforming Andersen to a middle school which includes: capital renovations for science labs; upgraded kitchen, dining and performance spaces; restroom renovations; a technology space; daylighting improvements; finishes upgrades; and infrastructure investments to electrical, plumbing, and mechanical systems.

Project Summary:

Project Delivery Method: Design-Bid-Build
Project Construction Budget: \$4,300,000

Project Scope

It is possible that project scope items, not included in the Project Scope below, will be known at the commencement of project design or become apparent during design to one or more of the multiple stakeholders who may be represented on the Project Steering Committee and Project Review Committee. Some of these additional scope items will be desirable on their own merits but may not be possible due to project construction budget. Therefore, discipline on the part of the Consultant will be expected to focus on Project Scope identified below, while also documenting and, if requested, reviewing such items for possible inclusion in this project scope in lieu of scope defined below, or in future District capital projects.

Accordingly, not all of the Building Context information contained herein will be applicable to project scope, but it is intended to inform the design process such that, at the conclusion of construction, the existing building is better positioned for current and future instructional activities; and additional capital investment that might be funded in future capital plans.

Additional design services are required to provide: partial kitchen work; daylighting improvements; replacement of five interior air-handling units and condensers; replacement of Kalwall windows and exterior doors as required; exterior and interior lighting upgrades; flooring, carpet, ceiling tiles, and gym floor upgrades; fixture and piping renewal and replacement of galvanized waste and vents. Funding will be released in January of 2022, for construction in Summer 2022.

Project Schedule

FY22 Scope	Suggested Completion Date
Science Labs Design Start	8/1/2021
Schematic Design Documents	9/1/2021
Design Development Documents – QA/QC	9/27/2021
75% Construction Documents – QA/QC	10/25/2021
Cost Estimate (Received)	11/4/2021
Bid Documents Issued	11/18/2021
Bid Opening Date	12/16/2021
BOE Construction Contract Approval	1/11/2022
Construction Start	6/13/2022
Construction Substantial Completion	8/5/2022
Warranty (one year)	8/5/2023

Project Staff

The following MPS staff will serve on the Project Steering Committee (PSC):

Jessica Pavelka	Project Manager
Karen DeVet	Senior Operations Officer
Curt Hartog	Executive Director, CPCM
Jibriil Yusuf	Manager, Design and Construction
David Richards	District Master Planner
Grant Lindberg	Manager, Plant Maintenance
Brian Zambreno	Associate Superintendent

Project Communications

Consultant and MPS Project Manager(s) will coordinate the development and implementation of project communications plan, including:

Communication
Meetings with Project Steering Committee (PSC)
Meetings with PSC and Project Review Committee (PRC)
Project web page updates
Project e-updates
Updates for elected representatives
Updates for MPS families and staff
Updates for neighborhood & community
Construction signage
BOE updates

Project Fee

The proposed fee for these services is \$330,563. See attached fee proposal.



To: Jessica Pavelka, Minneapolis Public Schools

From: Sal Bagley | SB

Date: July 26, 2021
Revised August 17, 2021

Comm. No: 9999

Subject: Special School District #1 – Minneapolis Public Schools
Andersen Middle School
Andersen FY22 Scope

Per the below scope outline, we propose the following fee structure for the additional scope at Andersen Middle School for FY22. We have included our prior scope(s) for clarity and continuity, understanding these are already approved.

FY 22 Scope Summary

Scope Item	Additional Description	Construction Budget
LTFM		\$ 2,440,000
Mechanical		
Systems	Replace 5 interior AHU and condensers	\$ 980,000
Building	Replace Kalwall windows and exterior doors (as	
Envelope	needed)	\$ 210,000
	Exterior and interior lighting replacement	
Electrical	(classrooms/entry)	\$ 210,000
Interior	Flooring, carpet replacement, ceiling, tiles, and gym	
Finishes	floors	\$ 760,000
	Fixture and piping renewal, replace galvanized waste	
Plumbing	and vents	\$ 280,000
Daylighting		\$ 910,000
Kitchen/Lunchroom		\$ 950,000
	Total	\$ 4,330,000
FY 22 Andersen Scope Construction Cost		\$ 4,300,000
50% of Contingency*		<u>\$ 107,500</u>
Sub-Total		\$ 4,407,500
		x 7.5 %
FY 22 Andersen Scope Fixed Fee		\$ 330,563

**assumes the project has a 5% construction contingency*

Wold Architects and Engineers
332 Minnesota Street, Suite W2000
Saint Paul, MN 55101
woldae.com | 651 227 7773

**PLANNERS
ARCHITECTS
ENGINEERS**



Previously approved scope/fees for reference:

Immediate Needs Construction Cost	\$ 236,000
50% of Contingency*	\$ <u>5,900</u>
Sub-Total	\$ 241,900
	x <u>7.5 %</u>
Immediate Needs Fixed Fee	\$ 18,143
<i>*assumes the project has a 5% construction contingency</i>	
FY21 Science Lab Reno. Construction Cost	\$ 2,360,655
50% of Contingency*	\$ <u>59,016</u>
Sub-Total	\$ 2,419,671
	x <u>7.5 %</u>
FY21 Science Lab Reno. Fixed Fee	\$ 181,967
<i>*assumes the project has a 5% construction contingency</i>	

Reimbursable expenses are billed separately from these fees, and would include such costs as mileage, printing, communications, etc. These are billed as they are accrued with no additional markup. We estimate approximately \$4,500 in reimbursables per \$1,000,000 of construction cost and, as such, propose billing actual reimbursables costs not to exceed \$1,089 for immediate needs, \$10,889 for the Science Lab renovations, and **\$19,800** for FY22 scope.

We are ready and available for design to commence immediately. We are open to discuss this if this does not match your needs or meet your expectations. Please give me a call with any questions!

cc: Curtis Hartog, SSD #1
 Christie Roach, SSD #1
 Robert Sehm, Wold
 Justin Wendt, Wold
 Patrick Triggs, Wold
 Matt Mooney, Wold

TD/Promo/SSD_1/crsp/aug21

Exhibit G – Project Design Milestones & Deliverables

Project Design Milestones

Architect Responsibilities		Owner Responsibilities
Fully Executed Contract	0%	
	1%	Project Steering Team Kickoff
	5%	QAQC #1 Existing Conditions
	10%	Project Stakeholder Team Kickoff
Three Design Options Delivered	15%	
City Planning Processes initiated	20%	Commissioning Provider Kickoff
Schematic Design Report Delivered	25%	
	35%	MEP Systems Decisions Made
Design Development Report Delivered	50%	All major scope items have final decisions
	75%	QAQC #3 Two Week Comprehensive Design Review
Construction Document Report Delivered	80%	
Procurement Begins	90%	
	95%	
Bid Period Ends	99%	
	100%	Fully Executed Construction Contract

Design Milestones

0% Complete – Fully executed architectural contract

Once the Design team has a fully executed contract, work may commence. The Architect is required to download a new copy of the Minneapolis Public Schools (MPS) Master Specifications at this time. Previous project specifications shall not be used as a template for new projects. All changes to MPS Master Specifications will be recorded with track changes, with additions and deletions clearly identified at each Design Report Phase. The Architect shall utilize the MPS Design Guidelines in the development of the Work. Deviations from design guidelines shall be documented and sent to the Owner for Approval. The Architect shall conform to the MPS Revit and Drafting Standards including MPS sheet numbering conventions and begin the Work with the MPS Revit template provided by the Owner.

1% Complete – Project Steering Team Kickoff Meeting

The Owner will schedule the first meeting of the Project Steering Team, a team that discusses project scope, schedule, and budget and makes recommendations to the Owner. This team needs to meet at the onset of the project to provide background and input for the design team. The meeting will be in person and will have an agenda prepared by the Owner's Project Manager that includes:

1. Welcome and Introductions
2. Team roles and responsibilities
3. Communication protocol and confidentiality agreement
4. Project Overview
5. Next Steps

The Architect is expected to provide a presentation, a clear ask of the group, and any available graphics that can describe the scope of work to the team. Graphics at this stage may include aerial photographs, photographs of the building and site, massing models if available, or rudimentary renderings if available. Any graphics that were included in the RFP may be used to describe the scope of work. The Owner will present the most recent list of maintenance requirements that should be incorporated into the project. Generally, the maintenance needed matches the project budget detail. However, on occasion, the maintenance required for the project may change to accommodate the most needed items.

5% Complete – Quality Assurance / Quality Control (QAQC) #1 – Existing Conditions Meeting

The Owner will coordinate a meeting on site at the school with the Architect and the Owner's QAQC team. The purpose of the meeting is to:

1. Introduce the design team to the QAQC team
2. Allow the QAQC team an opportunity to present important existing conditions to the Architect
3. Inform the Architect of any work that has been performed during pre-planning of the project and can be removed from scope.
4. Document all presented conditions for future reference whether they are included in the budget provided by the Owner at project kickoff or if they are outside the scope of the Work.
5. Identify known deficiencies in the building that are identified in the budget provided by the Owner at project kickoff.
6. Provide the Owner an opportunity to present deficiencies not identified in the budget that should be considered as part of the Work.

The Architect is expected to provide:

- Sign in sheet
- One person whose sole role at the meeting is to document the conversation and take photographs as needed

- Minutes that capture all presented conditions and general discussions during the meeting.
- If multiple component meetings are conducted (e.g. mechanical, electrical, plumbing) the Architect shall assign a person to each team to document the review.

10% Complete – Project Stakeholder Team Kickoff Meeting

The Owner will identify members of the Project Stakeholder team and schedule a meeting with the Architect. The Architect is expected to present preliminary information on the project that includes scope, schedule, and budget. The Architect shall provide graphics that are easy to interpret for a non-technical audience such as 3-D views, renderings, photographs, or video fly throughs.

15% Complete - Three Options Delivered

The Architect will deliver at least three options to illustrate proposed solutions that will be presented to the Steering Team. All three options must be within the budget provided by the Owner at project kickoff and address programmatic and maintenance goals of the Work. The goal of the meeting is to present options to the Steering Team and ask for recommendations to proceed with design. The Architect is responsible for providing:

- Images that depict the scope options in 3-D formats. Acceptable formats are:
 - Greyscale camera views from Revit
 - Video flythrough
 - Hand drawn perspectives
- Color-coded floor plan that clearly describes scope of work and any associated programmatic moves within the building.
- A table summary of preliminary costs broken into categories of maintenance and new items
- A meeting agenda
- A digital presentation as well as paper handouts
- Minutes

Estimates of expected costs at this stage shall be AACE International Class 4 levels. The cost estimate shall clearly show the expected accuracy range and provide sufficient detail and reference to determine the source and scope of the information. The estimate shall also identify potential risks to the project and estimated costs and mitigation strategies for further refinement.

20% Complete – City planning processes started

It is expected that projects with additions in excess of 2,500 sf or those that disturb more than one acre of land to take 10 to 12 weeks to complete the City of Minneapolis Planning Process. As soon as the Architect has:

- A survey, even in draft form
- A preliminary understand of how big and where any addition(s) will be
- Elevations or camera views from Revit
- Site plan, even in draft form

The Architect shall have an initial meeting with the Planning Department at the City of Minneapolis to discuss initial feedback related to site improvements and storm water conditions on the site. The architect shall invite the Owner’s Project Manager to the meeting. As soon as is practicable after the meeting, the Architect shall complete the online application to begin the PDR, LUA, CUP, and variance processes. The Architect shall develop meeting minutes for all meetings with the City. The meeting minutes shall be sent to all parties in attendance for verification of items discussed and to the Owner’s Project Manager.

20% Complete – Commissioning Agent kickoff

The Owner will hire a Commissioning Agent for most projects. The Commissioning Agent will be responsible for design review and input throughout the project. The Architect will incorporate the Commissioning Agent comments upon review and approval by the Owner's Project Manager.

25% Complete – Schematic Design (SD) Report, Cost Estimate 1, Constructability Review 1, EDA preliminary report

The Architect will deliver the Schematic Design (SD) report to the Owner for review. . The SD Report will be used to make final scope determinations, select mechanical options, and determine if the project is on budget and on schedule. The Owner will provide Bluebeam software to compile Owner comments to return to the Architect. The Architect will identify any non-standard equipment or processes in this report for Owner approval. SD report shall include:

- All drawings created for the project to date. This shall include a complete title page that indicates all potential drawings that will form the Construction Drawings. All drawings shall be bookmarked in Bluebeam by the Architect as defined in Article 5 of the AIA E203-2015 to facilitate Owner reviews.
- MEP narratives
- Cost Estimate #1 that contains cost information for up to three mechanical options and up to two architectural variations that meet program needs. The cost estimate shall be an AACE International Class 3 estimate. The estimate shall provide enough detail to determine the major cost drivers for the project and adequate to understand the scope of the project. The cost estimate shall detail the level of accuracy and provide a narrative on the contingency value used and why. Where appropriate the maintenance items that are not part of the improvement items shall be detailed in the cost estimate
- Constructability Review #1
- Preliminary EDA report (not all projects should participate in EDA)
- All meeting minutes to date
- Survey
- City Planning Documentation
- Revit file archived at delivery of SD report

SD report must be in 8 ½ x 11 format, in a binder, with tabs. It must also be delivered digitally as a PDF. Provide two paper copies to the Project Manager for review. The table of contents should read:

1. Project Background
 - a. Executive Summary
 - b. Project Goals
 - c. Program goals
 - d. Project Scope
 - e. Preliminary Project Schedule showing both design, bidding and construction schedules
2. Existing Conditions
 - a. Survey
 - b. Site Plan
 - c. Code Reviews
 - d. Revit Camera Views or renderings
3. Design Options
 - a. Architectural
 - b. Mechanical
 - c. Electrical

- d. Plumbing
- e. Food Service (if applicable), etc.
- f. Maintenance items identified in the 5% meeting.
4. Cost Estimate
 - a. Project Budget breakdown for consultant services
 - b. Cost Estimate. AACE International Class 3
 - c. Constructability Review. List all risks and any unknown complexities.
5. EDA report (if applicable)
6. Minutes

35% Complete – MEP decisions Made

The Owner is committed to making any major MEP decisions such as choosing system types at this stage in order to allow the Architect to progress with drawings, designs and specifications. Documentation of decisions shall be provided in meeting minutes.

50% Complete – Design Development (DD) report, Cost Estimate 2, Constructability Review 2, Final EDA report

The Owner is committed to making design decisions early in order to have a robust submittal at this phase for review. For the DD Report, the Architect shall provide:

- Enough detail completed in at least one portion of the building (or major component of the project), to produce detail sheets, an idea of design intent with mechanical systems, and architectural decisions that indicate a final configuration.
- Specification sections that represent all or nearly all sections to be included in construction documents
- All drawings needed for a Construction Document shall be identified and in order.
- All drawings shall be bookmarked in Bluebeam by the Architect as defined in Article 5 of the AIA E203-2015 to facilitate Owner reviews.

DD report shall contain:

- Two half size drawings sets, unbound, and two paper copies of the specification, unbound
- All drawing sheets that will be included in the final set, even if they are blank, developed to 65% complete.
- Diagrammatic layouts of building systems
- Draft specification that contains all divisions, even if they are blank
- Cost estimate #2 in organized by major CSI division for construction items and detailed non-construction items. The cost estimate shall be an AACE International Class 3 estimate that shows the accuracy range of each item and the total.
- Constructability review #2
- Final EDA report (if applicable)
- Update on City of Minneapolis planning progress (if applicable)
- Revit file archived at delivery of DD report and delivered to the Owner

DD report shall have letter sized pages that can be delivered in a binder. The DD report shall include drawings that are 11x17. The Architect shall deliver two printed copies and one electronic copy to the Owner.

50% Complete – All major scope items have final decisions

The Owner will make final decisions on all major scope items in order to allow the Architect to create detailed drawings for the next review. The deliverable from the Owner to the Architect will be written confirmation of scope decisions.

75% Complete – QAQC #3 – Two Week Comprehensive Design Review

The Architect will prepare complete and detailed drawing sets and complete specifications for review by the Owner. The 75% set of drawings shall have 75% of all the drawings completed (100%) and all drawings in the Construction drawing set identified in the index. Detail numbering and references shown in the 75% drawings cannot be changed. Specifications shall be provided such that all specifications are identified and 75% of the specifications are considered to be in final form. All changes to the MPS Master Specifications shall be clearly shown using track changes. New specifications that are not part of the MPS Master Specifications shall be identified. Specifications shall be provided in an MS Word format for review. Drawings shall be provided in a PDF format for review. Comments to specifications will be made using track changes. Comments to drawings will be made in Bluebeam. The Architect shall document all comments and either incorporate them into the documents or provide an issue resolution document that details the comment and resolution and reasons not to include the change in the Construction Document. The Owner will compile comments and return them to the Architect following a two week review period. Documentation shall include all elements required to accurately describe the work. The Architect shall maintain the 75% review set for reference. The Architect shall provide the Owner with a list of unresolved comments/changes at the 90% review stage. The Owner and Architect shall document any unresolved item not included in the final project set and place that in the file.

80% Complete – Construction Document (CD) report, Cost Estimate #3, Constructability Review #3

Construction Document (CD) report is the basis for a final quality control check by the Owner. At this stage the drawings shall be complete. Cost estimates at this stage shall be at the AACE International Class 2 level with documented levels of accuracy for each item. The estimate shall include any risks and contingencies, exceptions and sources. Expected accuracy for each item is -10% to +20% or better. An estimate simulation shall be completed showing the outcome of various scenarios inside of the accuracy range. The final cost estimate shall not contain any amount for design contingency. At a minimum, 5% of the budget shall be represented in add alternates. Deliverables will include:

- Two half size drawings sets, unbound, and two paper copies of the specification, unbound
- one printed binder of letter sized documentation
- Digital versions of all documentation. Drawings shall be in PDF and REVIT.
- All drawings shall be bookmarked in Bluebeam by the Architect as defined in Article 5 of the AIA E203-2015 to facilitate Owner reviews.
- Specifications shall be in MS Word format.
- Correspondence relevant to City of Minneapolis Planning processes or Plan Review processes
- All drawing sheets that will be included in the final set.
- Egress plan for construction zones while building is occupied
- Diagrammatic layouts of building systems
- Draft specification that contains all divisions
- No major changes in design intent or scope can occur between DD and CD report
- cost Estimate #3 organized by CSI division for construction items and detailed non-construction items at Class 2 level
- Constructability Review narrative

- Revit file archived at delivery of CD report

The Owner will require two weeks to review the documents to ensure completeness and accuracy. Architect shall incorporate Owner comments into the final construction documents prior to issuing the set for bid release.

90% Complete – Procurement Begins

100% Construction Documentation set is released for public bid. Architect will coordinate with Owner to set a date for the mandatory pre-bid meeting, publicize bid release, and produce a call for bids. Owner will approve all addenda issued during the procurement process and will have adequate time to review any major changes issued via addenda. The Architect is expected to attend the pre-bid meeting and provide responses to questions, issue addendums and document changes to designs, specifications and contract documents.

95% Complete

This is considered as the bid opening. All addenda have been issued and questions responded to. The bid opening shall be attended by the Architect. The Architect shall provide a review of the apparent low bid and a written recommendation of award to the Owner. If the apparent low bid exceeds the cost estimate provided by the Architect, a detailed review and analysis shall be conducted by the Architect to determine the areas that caused the over bid. The Architect shall also make a written recommendation to accept or deny the add alternates in the bid document.

100% Complete – Fully executed contract between Owner and General Contractor

The Architect shall submit to the Owner the Revit file containing the Construction drawings, the specifications in an MS Word format and any addenda issued in an MS Word format. The architect shall prepare the contract documents for award of the contract using Owner provided forms, issue the notice of award to the Contractor and collect the payment and performance bonds, insurance, letter of assent and other documents. Once executed by the Contractor, the Architect shall provide a complete set to the Owner for signature. Upon Board of Education approval of the contract, the Architect shall prepare a Notice to Proceed for the Contractor. The Architect shall provide the Notice to Proceed to the Owner for review. The Owner shall issue the Notice to Proceed to the Contractor.

Construction Phase

The Architect shall prepare all meeting agendas and produce meeting minutes for regular meetings throughout the construction phase. The Architect will notify the Owner of discussion topics prior to the scheduled meeting so the Owner may invite the appropriate MPS staff to participate in the meeting. Meeting minutes for all meetings shall be distributed within 5 working days of the meeting. All agendas and meeting minutes shall be provided to the Owner for review in an MS Word format. Changes will be documented using track changes.

Submittals

The Architect shall follow the Owner's process for submittals. Contractor shall send submittals to the Architect in accordance with the submittal schedule prepared by the Contractor. The Architect shall document submittal schedule variances and provide the information to the Contractor and the Owner each month. The Architect shall review all submittals and determine if the submittal meets the Contract Documents. Each submittal shall be labeled with a stamp or similar that identifies the reviewer of the submittal, date of review and action. Submittals shall be marked as:

- No exception taken

- Make Corrections Noted
- Revise and Resubmit
- Rejected
- No submittal is required

A copy of each submittal shall be provided to the Owner. The Architect shall be responsible for developing and maintaining a complete and accurate submittal log. The submittal log shall identify the submittal number, description, date received from contractor, date sent to reviewer, date returned from reviewer, action, date sent back to the Contractor and date when Owner was provided a copy. . If the Architect is unclear as to the requirements of the contract documents or should the Architect need input from the Owner, the Architect shall contact the Owner’s Project Manager. All substitution requests shall be sent to the Owner for review. The Owner requires a minimum of 1 week for all reviews. The Architect shall log and track all items sent to the Owner for review and monitor the review schedule.

Substantial Completion

The Architect shall review the punch list provided by the Contractor to verify the list is complete and accurate based on the Architect’s review. The Architect shall issue a preliminary final punch list of items to the Owner and schedule a punch list site review with the Owner. The punch list may be modified as a result of the Owner’s punch list site review. The Architect shall then issue a final punch list to the Owner and Contractor. If the Owner and Architect deem the project substantial complete in accordance with Contract Documents, the Architect shall prepare and deliver a Certificate of Substantial Completion to the Contractor and Owner establishing the date of substantial completion. The punch list provided at the time of Substantial Completion shall include the Architect’s estimate of costs to repair each of the items on the punch list. The estimate provided shall form the basis of the amount of retainage to be withheld for the punch list items in accordance with Minnesota Statute. Issuance of the Certificate of Substantial Completion shall include the final punch list and establish the date of substantial completion. The punch list shall include a complete list of all manuals, warranties, commissioning reports and other items required by the Contractor as part of the Contract Documents that was not previously provided to the Owner and accepted. If the project is not deemed substantially complete by the date established in the Contract Documents, the Architect will inform the Contractor of the liquidated damages provision in the Contract Document and apply liquidated damages to the next progress payment until the Certificate of Substantial Completion is issued.



AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

THE ARCHITECT:
(Name, legal status and address)

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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the Work.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.2

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.5.3 The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other form, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or other form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within thirty (30) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract

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Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1 and other obligations, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a

Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.2

The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 The Contractor

shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.

§ 3.2.1.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

§ 3.2.1.2 The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's

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warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.

§ 3.2.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

§ 3.2.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.7 The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's operations.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent

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and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

§ 3.4.5 The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

§ 3.4.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such
Substitutions.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

§ 3.5.3 Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its

responsibilities.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the Owner.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by the Owner and Architect.

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§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and updated daily to indicate field changes and selections made during construction, and in addition accepted and approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor, and delivered to the Architect for submittal to the Owner upon completion of the Work. The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

§ 3.11.1 No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been accepted by the Architect.

§ 3.12.8 The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued

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authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's acceptance thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys' fees.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

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§ 4.1.3 In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

§ 4.2.2.2 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

§ 4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect and the Contractor to comply with Owner requirements in regards to public communications and site signage.

§ 4.2.5 Based on the Architect's observations and valuations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will and the Owner may review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's or Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals by the Architect or the Owner is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's or the Owner's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's or the Owner's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's or Owner's acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under the requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract

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Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.2.1 The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference, in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the

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Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The

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Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not reasonably discoverable.

§ 6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

§ 6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 The amount of credit to be allowed by the contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after

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consultation with the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

§ 7.1.5 In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.
5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Change Orders shall be prepared on AIA Document G701.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others (at rates approved by the Owner);
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment up to and not exceeding \$25,000. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term “day” shall mean calendar day of 24 hours beginning at 12:00 midnight. Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor

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disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or (4) by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article 15.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. The schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Such applications shall not include requests for payment of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

§ 9.3.1.2 Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

§ 9.3.1.3 Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

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§ 9.3.4 In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If

approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty (30) days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be accomplished as provided in Article 7.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and when the Architect issues a certificate of Substantial Completion.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list.

Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

§ 9.8.6.1 The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

§ 9.8.6.2 Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

§ 9.8.7 The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties,

such as manufacturers' warranties or specific Subcontractor warranties, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 DAMAGES FOR DELAY

§ 9.11.1 The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

§ 9.11.2 If the Contractor is delayed by the Owner, Architect, or any agent or employee of any of the foregoing, the Contractor's sole and exclusive remedy for the delay shall be the right to a time extension for completion of the Contract and not damages. This paragraph does not preclude Contractor's recovery of damage for contractor-caused delays under other provisions of the Contract Documents.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor.

1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.
2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or

contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.

§ 10.3.2 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.

§ 10.3.4 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

§ 10.3.6 Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

§ 10.3.7 The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

§ 10.3.8 The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 MISCELLANEOUS GENERAL PROVISIONS

§ 10.5.1 In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

§ 10.5.2 The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

§ 10.5.3 Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

§ 10.5.4 The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

§ 10.5.5 The Contractor shall not sue any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

§ 10.5.6 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all reasonable costs and expenses thereby incurred.

§ 10.6 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, in EXH-C.3 Owner Insurance, or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.3.1 Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

§ 11.1.4 In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

§ 11.1.5 Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

§ 11.1.6 The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from

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an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

(Paragraph Deleted)

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6.1 Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

§ 11.6.2 In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

§ 11.6.3 The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

§ 11.6.4 The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

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§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 If, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect shall give such notice promptly after discovery of the condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial completion by the period of time between Substantial completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation from the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

§ 12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.6 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the contract documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give a minimum of two (2) working days' notice to the Architect of when and where tests and inspections are to be made so that the Architect may observe procedures. The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 NON-DISCRIMINATION

§ 13.5.1 All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.5.2 During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

§ 13.6 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the

representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

(Paragraph Deleted)

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the

condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.2 Initial Decision

§ 15.2.1 Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of
(Paragraph Deleted)

Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or

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requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.

§ 15.2.3 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

§ 15.2.4 If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.

§ 15.2.5 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to action at law. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.6 in the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraph Deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

Additions and Deletions Report for AIA® Document A201™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Minneapolis Public Schools Special School District #1
1250 West Broadway Avenue
Minneapolis, MN 55411

PAGE 2

EXH-A Project Charter

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EXH-C.3 Owner Insurance

PAGE 10

§ 1.1.1.1 Notwithstanding the foregoing, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts between the Contractor and Subcontractors or Suppliers who provide labor and/or materials for the

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§-Work.

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§ 1.1.2 The Contract

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The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. ~~The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~ Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017.

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the ~~indicated-intended~~ results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. ~~If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable.~~ In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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In the interest of brevity the Contract Documents frequently omit modifying words such as ~~"all" and "any,"~~ "all" and "any" and articles such as ~~"the" and "an,"~~ "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either ~~statement.~~statement.

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§ 1.4.2

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In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Owner/Contractor Agreement;
2. All Addenda to the Agreement with those of later date having precedence over those of earlier date;
3. The Supplementary Conditions;
4. The General Conditions of the Contract for Construction;
5. Specifications;
6. Drawings, with larger scale drawings having precedence over smaller scale drawings.

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In the case of inconsistency between Drawings and Specifications or within Contract Documents not clarified by Addenda, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner retains rights to the Instruments of Service pursuant to Article 7 of AIA Document B101-2017.

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§ 1.5.3 The Architect shall furnish to the Contractor a version of the Instruments of Service in electronic form for the sole purpose of the construction of the Project for which the Instruments of Service were created.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit, Exhibit or other form,~~ to establish the protocols for the development, use, transmission, and exchange of digital data.

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Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol ~~Form, Form or other form,~~ shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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§ 2.1.2 The Owner shall furnish to the Contractor, within ~~fifteen~~ thirty (30) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section ~~3.7.1, 3.7.1 and other obligations,~~ the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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§ 2.3.4 ~~The~~ If requested by the Contractor and reasonably required for the Project, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but~~ shall exercise proper precautions relating to the safe performance of the Work.

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§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~ Owner within ten (10) days following written request for payment delivered by the Owner to the Contractor. If the

Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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§ 3.1.2

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The Contractor shall hire a professional utilities locator to investigate and verify all private utility locations prior to excavation and cutting into of existing Work. The Contractor is responsible for locating, terminating, and reinstallation of all private utilities. Private site utilities may not be in the Drawings and Project Manual and as such, verification of private utilities is the sole responsibility of the Contractor. Costs associated with moving and repairing of unknown and undocumented utilities will be by appropriate Change Order. The Contractor shall comply with Gopher State One Call, or other public utility service locator to locate all public utilities prior to any work on site. This shall not relieve Contractor from obligations under 3.2.2.1.

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~~§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.~~The Contractor

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~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made Subparagraph 2.2.3 and shall immediately report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Document unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing or believing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction and shall bear responsibility for any additional costs, delays, and damages resulting from such failure to immediately report any such errors, inconsistencies, or omissions which the Contractor may discover.~~

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known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.§ 3.2.1.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect immediately in writing.

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~~§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.~~ **3.2.1.2** The Contractor shall carefully study and compare the Contract Documents with existing conditions at the job site and shall immediately report in writing to the Architect any error, inconsistency, or omission which the Contractor may

PAGE 15

~~§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the discover or any materials, systems, procedures, or methods of construction, either shown on the Drawings or specified, which the Contractor has reason to believe are incorrect, inadequate, obsolete, unsuitable for the purpose intended or which the Contractor has reason to believe would constitute or result in a violation of the Contractor's warranty under Paragraph 3.5 or applicable law. The Contractor shall not proceed with any work in such areas until written instructions are received from the Architect.~~

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~~Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor~~ **§ 3.2.2** The Contractor shall perform the Work in accordance with the Contract Documents and submittals accepted pursuant to Paragraph 3.12.

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~~shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~ **§ 3.2.3** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for interpretation or information where such information was available to the Contractor from a careful study and comparison of the Contract Documents, Field Conditions, Owner Provided Information, Contractor Prepared Coordination Drawings, or prior Project Correspondence or Documentation.

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§ 3.3.4 The Contractor shall at all times staff the Project adequately to allow the Project to be managed and completed in a timely and professional manner. The Contractor shall have competent supervision on the job during work hours and readily available at all times upon call.

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§ 3.3.5 The Contractor shall at all times make reasonable provisions to protect any work performed by any separate contractors, adjacent property, and the existing building (if any) from damage due to the Work or due to the weather.

...

§ 3.3.6 The Owner or its approved representative (heretofore referred to as Owner's Representative) shall have access to the Work site and all Work. No supervision or inspection by the Owner or the Owner's Representative, nor the authority to act nor any other actions taken by the Owner's Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

...

§ 3.3.7 The Contractor shall take appropriate precautions to ensure that the Work does not materially disrupt any ongoing operation by the Owner at the Project (if any) except to the extent any such disruption is a necessary result of performing a particular portion of the Work, in which case the contractor shall provide the Owner with reasonable advanced written notice and shall take all commercially reasonable measures to minimize the impact on the Owner and the Owner's

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§-operations.

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§ 3.4 Labor and Materials

PAGE 16

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform Work after regular working hours, the additional cost of such Work shall be borne by the contractor.

...

§ 3.4.4 The Contractor shall be responsible for all additional costs incurred to incorporate into the project substitute materials, products, or equipment approved by Owner during the bidding period.

...

§ 3.4.5 The Contractor shall exercise reasonable efforts, consistent with the provisions of the Contract Documents to obtain the maximum available cash discounts on all materials, provided that, in doing so, the Contractor shall not accept or use materials for incorporation into the Project which are of a type or quality not reasonably contemplated under the terms of the Contract Documents.

...

§ 3.4.6 After award of the Contract, a request for substitution of a material, product, or piece of equipment at no change in the Contract Sum will not be approved by the Owner or the Architect, unless the specified item is no longer manufactured, the specified item is unavailable as a result of an act of government such as a declaration of a national emergency, or delivery of the specified items is substantially delayed as a result of labor disputes affecting the manufacturer, unusual delay in transportation, or any other cause beyond control of the Contractor or a Subcontractor or material supplier which the Architect determines justified the delay. Requests will not be approved where the delay in delivery results from failure to promptly place subcontracts and material orders. Requests for substitution shall be submitted in writing to the Architect and shall clearly describe the proposed substitution, state

the reason for the unavailability of a specified item and be accompanied by such additional data and information as may be necessary in the discretion of the Owner and the Architect to establish the acceptability of the proposed substitute.

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§ 3.4.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed Substitutions and for changes made to the Contract Documents as a result of Owner's acceptance of such

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§ Substitutions.

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§ 3.5 Warranty

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§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers, and manufacturers.

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§ 3.5.3 Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its

PAGE 17

§ responsibilities.

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§ 3.6 Taxes

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§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for the Sewer Access (SAC) and Water Access (WAC) fees for the Project. The Contractor shall pay the SAC/WAC costs to the authorities having jurisdiction from the Allowance in the Base Bid for such charges as defined in the Construction Documents.

...

§ 3.7.3 If the Contractor performs Work knowing or believing it to be contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, without such notice to the Architect and Owner, the Contractor shall assume appropriate full responsibility for such Work and shall bear the costs attributable to correction. attributable costs, delays, and damages resulting from such failure to immediately notify the Architect and Owner of any such violation.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ten (10) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

PAGE 18

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work.~~Work including that performed by all Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications including and not limited to communications regarding design changes, alterations, substitutions, clarifications, cost changes, etc. shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. All communications given to the superintendent shall be confirmed in writing to the Contractor upon written request of either or both the superintendent and Contractor.

...

§ 3.9.3 The Contractor shall not employ a proposed superintendent or any other management personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

...

§ 3.9.4 If requested by the Owner, the Contractor shall preplace the Superintendent at no additional cost to the Owner. No other change in this position shall be made without notice to and written consent of the

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§-Owner.

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§ 3.10 Contractor's Construction and Submittal Schedules

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, critical path schedule milestones, major construction milestones including and not limited to Civil, Demolition, Structural, Mechanical, Electrical, and Plumbing, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the

Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

...

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by the Owner and Architect.

PAGE 19

The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and ~~marked currently updated daily~~ to indicate field changes and selections made during construction, ~~and the and in addition accepted and approved~~ Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and ~~Owner, Owner as required to complete routine inspections by Architect and Owner prior to any approval of payments to the Contractor,~~ and delivered to the Architect for submittal to the Owner upon completion of the ~~Work as a record-Work.~~ The Architect and Contractor must verify that all "as-built" Drawings, Specifications, Addenda, Change Orders, and other Modifications are up-to-date before Contractor's Application for Payment is acceptable and before the Owner incurs any duty to pay Contractor in accordance with the Contract. The record documents shall be a separate set of documents labeled "Record Documents" and used only for record purposes and kept clean and undamaged.

...

§ 3.11.1 No review or receipt of the ~~Work as constructed~~ such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

...

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved-accepted by the Architect.

PAGE 20

§ 3.12.8 The Work shall be in accordance with approved-accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval-acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval-acceptance to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval-acceptance thereof.

...

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval-acceptance of a resubmission shall not apply to such revisions.

...

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor

except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall hire a professional utilities locator to verify locations of all public and private utilities prior to initiating any cutting work. the Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area continuously free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, Contractor generated waste materials, the Contractor's generated hazardous waste materials, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

PAGE 21

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18. The Contractor, furthermore, agrees to obtain, maintain, and pay for such general liability coverage and endorsements (including product and completed operations coverage) as will ensure the provisions of this paragraph. The Contractor agrees to reimburse the Owner, its agents and employees for all costs and disbursements, including attorneys' fees, paid or incurred to enforce the provisions of this paragraph.

...

§ 3.18.3 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure of the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any liens, charges (including attorney's fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work by Contractor, its Subcontractors, or its material suppliers. Upon request of the Owner, the Contractor shall within 60 days remove any liens filed against the Owner or its property. If the Contractor fails to do so, the Owner is authorized by the Contractor to remove or satisfy any such liens, and the Contractor shall pay to the Owner all costs and damages incurred by the Owner to do so, including attorneys'

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ARTICLE fees.

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ARTICLE 4 ARCHITECT

PAGE 22

§ 4.1.3 In the event the employment of the Architect is terminated, the Owner may employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

...

§ 4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to action at law as provided in Paragraph 15.3.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have the Owner's consultant (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

...

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

...

§ 4.2.2.2 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

...

Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the **§ 4.2.3** The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

...

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to perform carry out the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the ~~Owner.~~ Owner unless otherwise provided. The Contract Documents may specify other communication protocols. The Owner may require the Architect and the Contractor to comply with Owner requirements in regards to public communications and site signage.

...

§ 4.2.5 Based on the Architect's ~~evaluations~~ observations and valuations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

...

§ 4.2.6 The Architect ~~has~~ will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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§ 4.2.7 The Architect will and the Owner may review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's ~~action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness or~~ Owner's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals ~~by the Architect or the Owner~~ is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's ~~or the Owner's~~ review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's ~~or the Owner's~~ review shall not constitute approval precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's ~~approval or Owner's acceptance~~ of a specific item shall not indicate ~~approval~~ acceptance of an assembly of which the item is a component.

...

§ 4.2.11 The Architect will interpret and decide matters concerning performance ~~under, and under the~~ requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made ~~in writing within any time limits agreed upon or otherwise with reasonable promptness, with reasonable promptness and within any time limits agreed upon.~~ If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made to them.

...

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

PAGE 24

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Contractor shall not employ any subcontractor or use any material to which the Architect or Owner may object as incompetent or unfit, or where there is reason to assume the Work will not be accomplished in accordance with the Contract Documents. Prior to the employment of the named subcontractors, the Contractor must obtain the Owner's approval of such subcontracts for the designated portion of the Work.

...

§ 5.2.2.1 The right to reject any Subcontractor or Sub-subcontractor will be exercised by the Owner or the Architect when in the reasonable opinion of either of them the proposed Subcontractor or Sub-subcontractor:

1. cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
2. cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of craft;
3. lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor or Sub-subcontractor is proposed;
4. has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
5. cannot satisfactorily perform the part of the Work for which the Subcontractor or Sub-subcontractor is proposed within the time schedule, due to financial status, size of organization, existing workload or other considerations;
6. cannot demonstrate ability, through examples of representative work, to perform the part of the Work for which the Subcontractor or Sub-subcontractor is being considered; or
7. exhibits other factors bearing on the probability of unsatisfactory performance.

...

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time~~ The Contract Sum shall be increased or decreased by the difference, if any, in cost occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum ~~or Contract Time~~ shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Notwithstanding the foregoing, the Contractor shall have a continuing duty to the Owner and Architect to find and propose such persons or entities as shall not result in material increase in the Contract Sum, or a material decrease in the quality of Work contemplated under the Contract Documents.

...

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Any proposed substitution or a subcontractor, person, or entity for one previously selected shall be made in a separate writing to the Owner and Architect. No substitution shall be deemed approved/accepted without written confirmation from the Owner and Architect. Neither acceptance of, nor objection to a Subcontractor or Sub-subcontractor, material supplier, or other person or organization by the

Owner and the Architect shall limit the responsibility of the Contractor to furnish materials, products, equipment, and services in conformance with the requirements of the Contract Documents.

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By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

§ 5.3.2 The Contractor, not the Owner, is responsible for the performance of, the actions of, the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the

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§-Contractor.

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§ 5.4 Contingent Assignment of Subcontracts

PAGE 26

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. The Contractor shall schedule, coordinate, and cooperate fully with all other contractors. The Contractor shall take all reasonable steps necessary to assure scheduling, coordination, and cooperation among the contractors.

...

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible

for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ reasonably discoverable.

...

§ 6.2.3 ~~The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.~~

...

§ 6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 provided the separate contractor has reciprocal obligations.

...

§ 6.2.6 ~~The Owner and each Separate Contractor~~ separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section-Paragraph 3.14.

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and ~~rubbish~~, rubbish as described in Paragraph 3.15, the Owner may clean up and the Architect will allocate the cost among those responsible ~~responsible as the Architect determines to be just.~~

...

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. ~~An order for a minor change in the Work may be issued by the Architect alone.~~

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§ 7.1.4 The amount of credit to be allowed by the contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for both overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

...

§ 7.1.5 In Paragraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost,
2. For the Contractor, for Work performed by the Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved for Work performed by the Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
4. For each Subcontractor for Work performed by the Subcontractor's Sub-subcontractor, five percent (5%) of the amount due the Subcontractor.

5. Costs to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$500 be approved without such itemization.

...

§ 7.2.2 Change Orders shall be prepared on AIA Document G701.

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- 3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others; others~~ (at rates approved by the Owner);

...

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

...

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for ~~Payment. Payment up to and not exceeding \$25,000.~~ The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

...

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in ~~writing; writing~~ and approved by the Owner. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement. ~~The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.~~

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean ~~calendar day unless otherwise specifically defined; shall mean calendar day of 24 hours beginning at 12:00 midnight.~~ Calendar days as stated in the Contract Documents, shall include all days of a seven (7) day week including Saturdays, Sundays, and holidays. The term "Milestone Date" is, in each instance, the date established in the Contract Documents for the Substantial completion of all or a designated portion of the Work.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve specific contractual Milestone Dates (if any), Substantial Completion and final Completion within the time stated in the Contract Documents..

...

§ 8.2.4 Contractor understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Substantial Completion, Final Completion, and Milestone Dates (if any) may be met by the Contractor.

...

§ 8.2.5 Timely final Completion of the Project being of critical importance to the Owner, Contractor agrees that they shall substantially complete all Work under the Contract documents within the time established herein and that they shall finally complete the Work in the detail required and in the time required by the Contract Documents.

...

§ 8.2.6 To the extent that the Contract Documents contain or provide for specific contractual Milestone Dates in addition to Final and Substantial Completion dates, such dates shall be adhered to and shall be the last acceptable dates for those milestones and completions, unless modified by the Owner.

...

§ 8.2.7 Notwithstanding anything to the contrary contained in the Contract Documents, in the event that any Contractor fails, or appears likely, in the reasonable opinion of the Owner, to fail to complete a critical portion of their Work on time or to complete any dates for Substantial Completion, Final Completion, or Milestone Dates as evidenced by the latest update of the CPM Schedule Report, the Owner shall have the right to select and require Contractor's performance under any or all of the following operations:

1. Require the Contractor to substantiate their capability to get back on schedule within two (2) days;
2. Require the Contractor, at no additional cost to the Owner, to increase their work force, work overtime and/or extra shifts and do whatever else is required by the Owner until the Contractor gets back on schedule as established by the CPM Schedule Report (including any updates thereto);
3. Withhold progress payments or portions thereof until such time as the contractor returns to schedule, but only related to Substantial Completion or Final Completion;
4. Contact or visit the factory, plant, or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work and expedite such production delivery at Contractor's expense; or
5. Require the Contractor to complete, in detail, and submit weekly a Short Interval Schedule (SIS) showing: 1) planning for the next two weeks; 2) work completed for the previous week; 3) sufficient detail to evaluate daily milestone (if any) and manpower/equipment loading, and shall identify/tie into the monthly updated CPM Schedule Report.

...

Any costs incurred by the Contractor in fulfilling the option(s) selected by the Owner shall be at the Contractor's expense.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) or (4) by other causes that the Contractor asserts, and the Architect determines, justify delay, then subject to the conditions hereinafter set forth, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Requests for extensions of time for causes enumerated above will be considered by the Architect only under the following conditions:

1. Only those conditions enumerated above over which the Contractor has no control will be considered. The burden of proof to substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond their control. It shall be deemed the Contractor has control over the supply of labor, materials, equipment, methods, techniques, and over their subcontractors and suppliers.
2. In the event of Changes in the Work, any consideration for a time extension will be made only at the time of authorizing the changes, and no later than when the Change Order is prepared, and only if the Change Order significantly affects the time and progress of the entire Work. For changes which do not affect the entire Work, time extension may be granted only for the area, phase, unit, or element affected by the change, if due to a valid reason for a time extension;
3. Any unusual delay in deliveries will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed;
4. With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, or variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extensions because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when operation necessarily were suspended to a significant degree when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated with credit given for unseasonably favorable weather;
5. Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved by the Architect, and may be less depending on the impact of the dispute, including what operations were suspended or curtailed;
6. A delay in the overall Project progress actually occurred and clearly disrupted the total Project programs as a result of one of the valid causes for time extension. An extension of time for parts, phases, or stages may be granted where a valid delay indicated such partial time extension is justified;
7. No time extension will be granted as a result of improper scheduling or for failure to have shop drawings or samples submitted in ample time for review under a reasonable and agreed upon schedule; or
8. Delays by subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Subparagraph 8.3.1.

...

§ 8.3.4 The Contractor shall be responsible for all Owner incurred costs associated with a Contractor related to delay in completion of the Project. These costs may include, but are not limited to, Owner staff overtime, Consultant additional fees, additional testing, and/or additional rental or storage costs. A Change Order or Construction Change Directive will be issued to cover these costs. If a Change Order is not agreed to by the Contractor, the Owner, after presenting documentation to the Contractor, may deduct these amounts without a Change Order from the Contract Sum. This is subject to the right of either party to disagree and assert a claim in accordance with Article

...

ARTICLE 15.

...

ARTICLE 9 PAYMENTS AND COMPLETION

PAGE 31

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. ~~The schedule of values shall be Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This~~ The schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Contractor, after receipt of Notice to Proceed, shall meet with the Owner and the Architect for the purpose of reviewing the Project CPM Schedule and the Contract Schedule of Values. The Contractor shall develop a CPM Schedule for completing their portion of the Work, in conjunction with all other Contractors or Bid Packages, at the Pre-Construction Meeting(s). The Schedule of Values is to be broken down into specification sections and by labor and materials.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, for operations completed in accordance with the Schedule of Values. Such application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

...

§ 9.3.1.2 Applications for Payment Such applications shall not include requests for payment for portions of the Work for which of amounts the Contractor does not intend to pay a Subcontractor or supplier because of a dispute or other reason.

...

§ 9.3.1.2 Following certification of the Application for Payment by the Architect, the Owner shall pay 95% of its value, retaining 5% until Final Completion.

...

or supplier, unless such Work has been performed by others whom the Contractor intends to

pay. **§ 9.3.1.3** Contractor shall provide lien waivers for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the pervious payment application before the Contractor has earned or has the right to receive payment for the specific items of work or materials covered by the lien waivers. All lien waivers shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers.

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§ 9.3.4 In each Application for Payment, the contractor shall certify as follows: "That there are no known mechanics' or materialmen's liens or stop notice claims outstanding by the application or any of its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers, or laborers at the date of this application, that all due and payable bills with respect to the Work have been paid or are included in the amount requested in current application, and that, except for such bills, not paid by Owner, but so included, there is no known basis for the filing of any mechanics' or materialmen's liens or stop notice claims on the Work, and that waivers from Contractor, its subcontractors of any tier, or any of the applicant's or subcontractor's material suppliers and laborers have been obtained in such form as to constitute an effective waiver of liens or stop notice claims, under the laws of the State of Minnesota to the extent of payments made by Owner to Contractor."

...

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt by Owner of Certificate of Payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

...

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Per Minnesota Statute 471.425, within ten (10) days of Contractor's receipt of payment from Owner, the Contractor must pay any Subcontractor for any undisputed services provided by the Subcontractor. The Contractor shall pay interest of one and one-half percent (1-1/2%) per month, or any part of a month, to the Subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.00. For an unpaid balance of less than \$100, the Contractor shall pay the actual interest penalty due to the Subcontractor. Contractor is advised that by reason of Minnesota Statute 471.425, Subd. 4a, if a Subcontractor prevails in a civil action to collect interest penalties from a prime contractor, the Subcontractor must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

...

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven-thirty (30)~~ days after the date established in the Contract Documents, the amount certified by the Architect ~~awarded by binding dispute resolution,~~ then the Contractor may, upon ~~seven-ten (10)~~ additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, ~~plus interest as provided for in the Contract Documents.~~ which shall be accomplished as provided in Article 7.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use ~~use and when the Architect issues a certificate of Substantial Completion.~~

...

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected ~~prior to final payment.~~ The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Document shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

...

~~Upon such acceptance, and consent of surety if any,~~ **§ 9.8.6** Upon Substantial completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

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§ 9.8.6.1 The retainage is for the performance of the Contractor. Nothing in this Agreement connects the retainage to the Subcontractors. Upon satisfactory completion of the Project, and full payment by the Owner to the Contractor for the Work of any Subcontractor, the Subcontractor is to be paid in full. The Owner, at its sole discretion, may continue or make adjustments of the full retainage for the performance of the Contractor.

...

~~shall make payment of retainage applying to the Work or designated portion thereof. Such payment~~ **§ 9.8.6.2** Prior to requesting a reduction of retainage, the Contractor shall obtain in writing an agreement from the Surety agreeing to such a reduction. In reducing retainage, the Contractor shall use the retainage to make full payment to Subcontractors who have completed 100% of their work. The Contractor shall provide to the Owner documentation of payment to Subcontractors and an agreement for retainage deduction from the Surety of the Subcontractor.

...

~~shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~ **§ 9.8.7** The Architect shall make inspection(s) for Substantial Completion and Final Completion in accordance with the AIA Document B101 Owner Architect Agreement. If additional inspections are required due to the Contractor's failure to complete previously listed corrective or uncompleted work, the Architect's expense for conducting such re-inspections and related time in processing, reviewing, and revision of requirements shall be charged to the Contractor and such payment shall be accomplished by a deductive Change Order to the Contractor.

...

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations, on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, ~~effect and will not be canceled or allowed to expire until at least sixty (60) days' prior written notice has been given to the Owner,~~ (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) if required by the Owner, including a summary listing all applicable warranties both standard and extended, itemized by specification section and included at the front of the Operation and Maintenance manuals, and (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~

...

§ 9.11 DAMAGES FOR DELAY

...

§ 9.11.1 The Contractor shall be responsible for damages incurred by the Owner and any other separate contractors for delay resulting from the Contractor's failure to complete the Work within the contract Time or resulting from the progress of the Work failing to substantially conform to the Project Construction Schedule.

...

§ 9.11.2 If the Contractor is delayed by the Owner, Architect, or any agent or employee of any of the foregoing, the Contractor's sole and exclusive remedy for the delay shall be the right to a time extension for completion of the Contract and not damages. This paragraph does not preclude Contractor's recovery of damage for contractor-caused delays under other provisions of the Contract

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ARTICLE Documents.

...

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

...

§ 10.1.1 Safety Precautions and Programs

...

§ 10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone

...

§-else.

...

§ 10.2 Safety of Persons and Property

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If either party suffers injury or ~~damaged~~ damages to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery, ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Paragraphs 15.1.4 and 15.1.5.

...

~~§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not~~

~~addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCV) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the~~

...

~~§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor. By Change Order, the Contract Time~~

- ~~1. Except where otherwise stated in the Contract Documents, no hazardous material work of any nature shall be performed by the Contractor pursuant to this Contract.~~
- ~~2. The term "hazardous materials" includes, but is not limited to, asbestos, toxic chemicals, acids, alkalis, irritants, contaminants, or other pollutants, together with any other waste, material, substance, pollutants, or contaminant, all or a portion of which is or would be designated as hazardous waste or substance under applicable local, state, or federal laws, ordinances, codes, rules, or regulations.~~

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~~§ 10.3.2 The Contractor shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)~~

...

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.~~

...

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor, and Architect shall then proceed in the same manner described in Subparagraph 10.3.1.

...

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

...

§ 10.3.6 Regulations concerning the availability of information and employee training in the use and handling of "hazardous substances" and "harmful physical agents", as set forth in the Employee Right-to-Know Act of 1983, Minnesota Statutes Section 182.65 to 182.676 are incorporated herein by reference as if fully set forth herein.

...

§ 10.3.7 The Contractor shall furnish three Material Safety Data Sheets to the Owner for each material used in the Work that is classified by the Employee Right-to-Know Act of 1983 as a "hazardous substance" or a "harmful physical agent."

...

§ 10.3.8 The Contractor shall label, in generally accepted and/or standardized fashion, all containers on the work site containing "hazardous substances" or as "harmful physical agents." This shall include factory containers and all subsequent containers used in the Work.

...

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

...

§ 10.5 MISCELLANEOUS GENERAL PROVISIONS

...

§ 10.5.1 In occupied facilities from the time the Work is begun until the Contract is completed, the Contractor shall be responsible for coordinating care and control of their contracted responsibilities with the Owner on the

construction premises. The Contractor shall maintain all the Contractor's Work areas on the Project site in first class condition during term of operation under this Contract.

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§ 10.5.2 The Contractor shall give full protection to existing adjacent buildings and occupants. The Contractor shall replace or repair, at the Contractor's own expense, all damage to existing buildings, sidewalks, curbs, drives, fences, planters, signage, monuments, lawns, plants, trees, and shrubbery arising as a result of Work performed under the Contract.

...

§ 10.5.3 Utilities encountered, whether shown on Project Drawings or not, shall be protected and maintained in service until moved or abandoned. The Contractor shall exercise care in the excavation around such utilities as may be shown on the Project Drawings or otherwise found, and which are not to be moved, replaced, or abandoned, and shall restore any damaged items or Work to the same conditions (or better) as existed prior to starting Work. Utilities or other service shown to be abandoned shall be maintained in service until facilities are provided, tested, and ready to use. The Contractor shall take all reasonable precautions in working in the area of excavation to avoid personal injury or property damage resulting from interception or interruption of electrical, telephone, sewer, water, gas, or other services, and shall also cause all Subcontractors, Sub-subcontractors material suppliers, laborers, and other persons on the construction premises to take such precautions. The location and nature of such concealed or buried services is not guaranteed or completely indicated by Owner or Architect.

...

§ 10.5.4 The Contractor shall at all times take reasonable and adequate precautions to protect the Work from damage by the elements, including flooding, rainstorms, windstorms, and any other elements or natural events, etc., and shall not expose the Work of any other contractor to such damages. Where the Contractor, any Subcontractor, or any Sub-subcontractor prepares or erects any material during any season of the year when freezing weather may be anticipated, the Contractor shall employ (and shall cause such Subcontractor or Sub-subcontractor to employ) such methods as may be necessary to render such Work equal in every respect to similar Work done under favorable conditions and the Contractor shall exercise (and shall cause any such Subcontractor or Sub-subcontractor to exercise) reasonable care and diligence to prevent its damage or deterioration. The Contractor shall be responsible for maintaining the building in a dry condition until acceptance. The Contractor shall be responsible for any damage from water, as well as for damage, collapse, or failure of any part of the building caused by excess water undermining or creating pressures on the structures.

...

§ 10.5.5 The Contractor shall not sue any internal combustion machinery that causes noxious, harmful, or toxic fumes inside an enclosed building. When use of internal combustion machinery is unavoidable inside enclosed buildings, the Contractor shall obtain written approval from the Owner prior to use of the machinery and shall provide full ventilation to the outside of the enclosed building for the exhaust of the internal combustion machinery. The Contractor shall locate internal combustion machinery outside an enclosed building so that the exhaust fumes will not enter the building through vent ducts, doors, windows, or other openings in the building.

...

§ 10.5.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by

the Contract Documents, the Owner shall ~~reimburse~~ indemnify the Contractor for all cost and expense thereby incurred. reasonable costs and expenses thereby incurred.

...

§ ~~10.4 Emergencies~~ 10.6 EMERGENCIES

...

In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement~~ Agreement, in EXH-C.3 Owner Insurance, or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located and which carry a Best's rating of A- or higher or are otherwise acceptable to the Owner. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor shall furnish Certificates of Insurance acceptable to the Owner which shall specifically set forth evidence of all coverage required by Article 11 and EXH-C.3 Owner Insurance and shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance.

...

The Contractor shall not allow insurance required by this Agreement to lapse, be canceled, reduced in limits or coverage, non-renewed, or materially changed or have restrictive modifications added during the life of this Agreement, including the periods of required coverage. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

...

§ 11.1.3.1 Acceptable insurance certificates are AIA Document G705, CICC of Minnesota Form 701, and/or ACORD form of the American Insurance Institute.

...

Failure of the Owner to collect certificates does not void the requirements to obtain insurance.

...

The acceptance of any certificate of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood the Owner and Architect do not in any way represent that the insurance specified in these articles are sufficient or adequate to protect the Contractor's interest or liabilities, but are merely minimum requirements.

...

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage and limits.

...

§ 11.1.4 In the event the Contractor fails to procure or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and deduct the cost thereof from any monies due to the Contractor, or terminate this Agreement under Paragraph 14.2. The Contractor shall be liable to the Owner for providing all coverage, defense, and payments that would have been provided by any insurance that the Contractor failed to procure and maintain as required by the Contract Documents.

...

§ 11.1.5 Compliance by the Contractor with the foregoing insurance requirements shall not relieve it from liability for amounts in excess of the limits of insurance.

...

§ 11.1.6 The Contractor and any of its Subcontractors, Sub-subcontractors, agents and employees, and any separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees shall waive any of their subrogation rights on their Workers Compensation Policy in favor of the Owner and Architect. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

PAGE 41

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner may self-insure and maintain the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

...

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

PAGE 42

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

...

§ 11.6.1 Contractor shall furnish a Performance Bond and a Payment Bond to the Owner in the amount of one hundred percent (100%) of the Contract Sum and issued by a Surety Company authorized to do business in the State of Minnesota, rated "A" or better, and approved by the Owner. The Performance Bond shall be in accordance with Minnesota Statutory requirements, and shall be in the form included in the Project Manual. The Bonds shall allow for any additions or deductions to the Contract Sum.

...

§ 11.6.2 In order to be acceptable as a surety, Contractor's bonding company must hold a "Certificate of Authority" acceptable to the U.S. Treasury Department and be listed in the Department's current publication of "Bond Qualifiers" with underwriting limitations not less than ten percent (10%) above the Contract Sum.

...

§ 11.6.3 The surety of the Bonds shall be by a corporate surety company authorized to do business in the state in which Work is being performed under this Contract and acceptable to the Owner. The conditions of the bonds shall meet requirements of the statutes of the state where Work is being performed and all other applicable provisions of state law.

...

§ 11.6.4 The Contractor shall furnish two (2) originals of the Bonds to the Architect within ten (10) days after notification of award and before execution of the Contract. Failure to do so shall constitute a violation of terms of the proposal and provide grounds for forfeiture of bid security.

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. ~~Costs~~ The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense thereby.

...

§ 12.2.2.1 ~~In addition to the Contractor's obligations under Section 3.5, if, If,~~ within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it ~~promptly~~ promptly (and any other property damaged or removed in effecting the correction) after receipt of notice from the Owner and/or Architect to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner and/or Architect shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. This period of

...

§ 12.2.2.2 ~~The one year period for correction of Work one year shall be extended with respect to portions of Work first performed after Substantial Completion completion by the period of time between Substantial Completion and the actual completion of that portion of the Work completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2.1 shall survive acceptance of the Work under the contract and termination of the Contract. The Owner and/or Architect shall give such notice promptly after discovery of the~~

...

§ 12.2.2.3 ~~The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. condition. The expiration of the above one year or any other specified time period, or any other period prescribed by the law, shall not relieve the Contractor of the obligation form the expense to correct any latent defect in the work or deficiencies which are not readily ascertained, including but not limited to, defective materials and quality of work performed, defects attributable to material substitutions for special materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Paragraph 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in the corrected or replaced materials and workmanship which is found within one year after the date of correction or replacement.~~

...

§ 12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may correct or remove it and store the salvageable materials or equipment all at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after

deducting costs and damages that should have been borne by the Contractor, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

...

~~§ 12.2.5~~ The Contractor shall bear the cost of correcting destroyed or damaged ~~construction of the Owner or Separate Contractors, construction,~~ whether completed or partially completed, ~~caused by the Contractor's or the Owner or separate contractors caused by the Contractor's~~ correction or removal of Work ~~that which~~ is not in accordance with the requirements of the Contract Documents.

...

~~§ 12.2.5~~ **12.2.6** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the ~~Contract Documents. Establishment of the one-year period for correction of Work as described in Section contract documents. Establishment of the time period of one year as described in Subparagraph 12.2.2~~ relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's Contractor's liability with respect to the Contractor's Contractor's obligations other than specifically to correct the Work.

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§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Contractor~~ The Owner shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. ~~authority.~~ The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may ~~be present for observe~~ such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give ~~timely a minimum of two (2) working days' notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.~~ observe procedures. The Owner shall bear such costs, except as provided in Subparagraph 13.4.3.

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§ 13.5 InterestNON-DISCRIMINATION

...

~~Payments due and unpaid under the Contract Documents shall bear interest~~ **§ 13.5.1** All contracts between the Owner and companies providing goods and services under the Contract Documents (including the Architect and Contractor) shall contain the following equal opportunity and civil right clause:

...

"During the performance of this Agreement, the provider agrees to the following: No contractor, material supplier, vendor, or other person shall on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from the date payment full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964."

...

Upon request, the provider shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The provider shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

The provider acknowledges that the violation of the above-stated paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

~~due at~~ This Agreement may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under this Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

...

the rate the parties agree upon **§ 13.5.2** During the completion of the work and all other services required by the Contract Documents, the Architect and Contractor agree that no contractor, material supplier, vendor, or other person shall, on the basis of sex, race, creed, color, religion, national origin, age, marital status, sexual orientation, or disability be excluded from full employment rights in participation in, be denied the benefits of, or be otherwise subjected to discrimination under the provisions of any and all applicable Federal and State laws against discrimination, including the Minnesota Human Rights Act and the Civil Rights Act of 1964. Upon request, the Architect and Contractor shall furnish all information and reports required by the Owner, or by the rules and regulations of investigation to ascertain compliance with all applicable rules and regulations. The Architect and Contractor shall also comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

...

Architect and Contractor acknowledge that the violation of the above-states paragraph is a misdemeanor pursuant to Minnesota Statutes Section 181.59.

...

The Contract Documents may be cancelled or terminated by the Owner or any other person authorized to grant the contracts for employment under this Agreement, and all money due, or to become due under the Agreement may be forfeited for a second or any subsequent violation of the non-discriminatory terms stated above.

in writing or, ~~in the absence thereof~~, at the legal rate prevailing ~~from time to time~~ at the place where the Project is located. § 13.6 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence of the Owner in a breach of the Contract Documents, except as may be specifically agreed in writing. None of the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use or occupancy of the Work, or any part thereof, the making of final payment, or any other action or inaction on the part of the Owner or Architect shall constitute a waiver of claims by or rights of the Owner or an acceptance of any Work that is not in accordance with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the representations of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases or decreases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~21~~ten (10) days after occurrence of the event giving rise to such Claim or within ~~21~~ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Any additional Claim made after and relating to the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

...

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

...

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. -Subject to paragraph 15.1.5, no such continuing performance by the Contractor, nor payment by the Owner shall be deemed a waiver of, or to otherwise impair any such Claim.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for ~~an~~any increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

...

§ 15.1.7 Waiver of Claims for Consequential Damages 15.2 Initial Decision

...

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~ § 15.2.1 Claims, including those alleging an error or omission by the Architect, shall be referred initially to

...

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~ the Architect for action. A decision by the Architect, as provided by Subparagraph 15.2.2, shall be required as a condition precedent to action at law or litigation of

...

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~ a Claim between the Contractor and Owner as to all such matters arising prior to the

...

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~ date final payment is due, regardless if (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to action at law or litigation in the event (1) the position of

...

§ 15.2 Initial Decision

...

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 15.2.2 within the ten (10) days after the Claim is made, (4) ten (10) days, which decision shall be final subject to action at law as provided in paragraph 15.3. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the

Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: Architect will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim, part stating reasons for the rejection, (4) recommend approval of the Claim by the other party, or (5) suggest a compromise. If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect shall notify the parties in writing that the Architect's decision will be made within ten (10) days, which decision shall be final subject to action at law as provided in Paragraph 15.3.~~

...

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.~~

...

~~§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. If a Claim has not been resolved, the party making the Claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim, or (3) notify the Architect that the initial Claim stands.~~

...

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven (7) days, which decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution to action at law. Upon expiration of such time period, the Architect will render to the parties~~

...

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. the Architect's written decision relative to the~~

...

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

...

§ 15.2.7 ~~In 15.2.6~~ in the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a ~~Contractor's~~ Contractor's default, the Owner may, but is not obligated to, notify the surety and request the ~~surety's~~ surety's assistance in resolving the controversy.

...

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

...

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

...

§ 15.4 Arbitration

...

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

...

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

...

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

...

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

...

§ 15.4.4 Consolidation or Joinder

...

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

...

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not

~~constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

...

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Minneapolis Public Schools, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:38:16 ET on 11/28/2018 under Order No. 8259021829 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

LEASE AGREEMENT

This Lease Agreement (“Lease”) is made this **10th day of October, 2021**, by and between Special School District No. 1, a public body corporate and politic under the laws of the State of Minnesota (“Landlord”) and **Fabric Minneapolis**, a Minnesota non-profit corporation (“Tenant”).

1. LEASED PREMISES. Landlord does hereby lease to Tenant and Tenant does hereby take from Landlord one site, located at Field Community School 4645 4th Ave S, Minneapolis, MN 55419 (individually and collectively, the “Leased Premises”) described on the attached Exhibit A. Tenant shall only be permitted to use the site during the days of the week and times stated in “Use Schedule” column set forth in Exhibit B.

2. TERM; EARLY TERMINATION.

(A) Term and Expiration. The term of this Lease shall commence on October 10, 2021 and shall expire on October 3, 2022, or such earlier date as provided herein (the “Term”). Tenant shall have the right to renew the Lease for three additional one-year terms (each such renewal term hereinafter referred to as the “Renewal Term”). Tenant must notify the Landlord in writing of Tenant’s intent to renew no later than 60 days prior to the expiration of the Term or the Renewal Term.

(B) Early Termination. This Lease may or Tenant’s lease of any individual site listed on Exhibit A may be cancelled with or without cause by either party upon 45 days’ written notice.

3. RENT. Tenant shall pay Landlord rent in monthly installments on the first day of each month starting on commencement date. The amount of the monthly rent for use of the Leased Premises is described in the attached Exhibit B. Tenant shall not be obligated to pay rent for any assigned space of the Leased Premises that it does not use during the Term or the Renewal Term. Tenant shall not be obligated to pay rent for any days that it does not use a particular assigned space of the Leased Premises.

4. COST FOR CUSTODIAL TIME. The Lease Premises will be opened for Tenant use and secured after each use by a school custodian. Tenant shall pay these costs as part of the Fees described in Exhibit B.

5. EXPECTATIONS OF CUSTODIAN. Expectations of the custodian are described in Exhibit C.

6. USE RESTRICTIONS.

(A) The Leased Premises must only be used by Tenant as facilities for conducting Sunday worship program activities. Tenant must not occupy the Leased Premises during any weather-related school cancellations by Landlord. Tenant must comply with all applicable laws, ordinances, governmental regulations, and Landlord’s policies and rules in using the Leased Premises. Tenant shall not do anything in or about the Leased Premises which would in any way

impair or invalidate the obligation of the insurer under any policy of insurance required by this Lease.

(B) Tenant shall not place or permit signs on the exterior or that are visible from the exterior of the Leased Premises, on the exterior of the building in which the Leased Premises is located, or elsewhere on the property in which the Leased Premises is located, unless otherwise approved in writing by Landlord.

(C) In the event of an emergency, as determined by Landlord in its sole discretion, Landlord shall have the right and privilege to enter and use any of the Leased Premises for the duration of the emergency. Following Landlord's emergency use of the Leased Premises, possession of the Leased Premises during the designated times set forth in the Use Schedule attached as Exhibit B shall be returned to Tenant. Landlord reserves the right to close some or all of the Leased Premises due to inclement weather or maintenance or repair of the Leased Premises. Landlord will attempt to provide reasonable advance notice to Tenant of such closure, however, due emergency circumstances such as weather conditions, advance notice of the closure may not be feasible.

(D) Tenant and its officials, employees, agents, contractors, and invitees may use the bathrooms on the Leased Premises during the operating hours of the buildings in which the Leased Premises are located.

(E) Tenant must implement a COVID-19 plan for its use of the Leased Premises and submit the plan to Landlord prior to the commencement date of this Lease. Tenant's COVID-19 plan must cover all aspects of COVID-19, including, but not limited to, testing, contact tracing, and staff and student health and safety precautions being taken by Tenant with respect to the Leased Premise and Tenant's operations. Tenant must not allow anyone into the buildings on the Leased Premises if they are exhibiting symptoms of COVID-19. Masks are required to be worn inside of the Leased Premises and all of Landlord's facilities of which the Leased Premises are a part and Tenant and its invitees must comply with this requirement. Landlord may immediately terminate this Lease if Tenant fails to follow any of the requirements set forth in this paragraph.

7. ENVIRONMENTAL. Tenant agrees that throughout the term of the Lease, it shall not use the Leased Premises for the storage, handling, transportation, or disposal of any Hazardous Substances. "Hazardous Substances" for purposes of this Lease shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under any Environmental Law or other applicable federal, state or local laws and the regulations promulgated thereunder as: (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921, as now or hereafter amended; (iii) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter

amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. "Hazardous Substances" shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but is not limited to, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

Tenant will be solely liable for and will defend, indemnify, and hold Landlord, its officials, employees, contractors, and agents harmless from and against any and all claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with Tenant's use, storage, handling, transportation, or disposal of Hazardous Substances on, at or under the Leased Premises, including cleanup or restoration of the Leased Premises if such cleanup or restoration is required by a governmental agency and directly related to the acts or omissions of Tenant. In no event will Tenant be responsible for the pre-existing condition of the Leased Premises.

The obligations of this paragraph shall survive the expiration or other termination of this Lease.

8. UTILITIES AND TAXES. Landlord shall pay all charges for all utilities, including water, sewer, gas, electric, garbage and refuse removal, Internet service, and cable/satellite television services to the Leased Premises. Landlord shall be responsible for paying all taxes, special assessments, or similar charges which are assessed, levied, charged, or imposed by any public authority upon the Leased Premises.

9. MAINTENANCE AND REPAIR OF THE PROPERTY. Landlord shall maintain the Leased Premises and the facilities and grounds of which the Leased Premises are a part in a safe and sanitary condition, free from debris, ice, and snow. Landlord shall be responsible for the operation, maintenance, and security of the Leased Premises, all wages, salaries, and related expenses of all on-site employees engaged in these activities, and all supplies and materials used in its operation and maintenance of the Leased Premises. Landlord shall be responsible for charges rendered under any maintenance and service agreements for the Leased Premises and the equipment therein and administrative costs for services that are directly connected to the operation of the Leased Premises. Landlord shall be responsible for any and all maintenance costs related to public areas of the buildings in which the Leased Premises are located, including all bathrooms, hallways, entrances, sidewalks, landscaping, parking lots, driveways, and service areas.

Tenant shall, at all times throughout the term of this Lease, and at its sole expense, clean, keep the Leased Premises and fixtures in at least as good condition as existed on the date of this Lease, reasonable wear and tear excepted. Tenant shall not allow any liens or encumbrances to be placed on the Leased Premises.

10. CONDITION OF LEASED PREMISES. Tenant agrees that by executing this Lease that it is accepting the Leased Premises in its present condition “AS IS” and that Landlord has made and makes no representations or warranty of any kind about the condition of the Leased Premises or its fitness for Tenant’s use. Tenant agrees that it will return the Leased Premises to the condition found at the commencement of this Lease, reasonable wear and tear excepted.

11. ALTERATION OR IMPROVEMENT OF THE LEASED PREMISES. Tenant may make alterations or improvements in or to the Leased Premises upon obtaining Landlord’s prior written consent. Any approved alterations or improvements shall be made at Tenant’s expense unless Landlord has agreed to pay for them. If an improvement or alteration is authorized by Landlord, the parties shall execute an amendment to this Lease that includes an improvement schedule that includes a description of the improvement or alteration, the value of the improvement or alteration and the date that the improvement or alteration was made. Any alterations or improvements made to the Leased Premises during the term of this Lease shall become the sole property of Landlord upon termination or expiration of the Lease term. Tenant agrees to pay all sums of money in respect of any labor, service, materials, supplies, or equipment furnished or alleged to have been furnished to Tenant in or about the Leased Premises, and not furnished on order of Landlord.

12. INDEMNIFICATION; COVENANTS TO DEFEND AND HOLD HARMLESS.

(A) To the fullest extent permitted by law, Tenant agrees to indemnify Landlord, its officials, employees, contractors, agents, and others acting on its behalf, to hold them harmless, and to defend and protect them, from and against any and all loss, damage, liability, cost, and expense (specifically including reasonable attorneys’ fees and other costs and expenses of defense), of any sort whatsoever, based upon, resulting from, or otherwise arising out of and in connection with any actions, claims or proceedings (from any source whatsoever) brought, or any loss, damage or injury of any type whatsoever sustained, by reason of any act or omission of Tenant, its officers, employees, contractors, invitees, or agents, or any other persons or entities for whose acts or omissions Tenant is legally responsible, in the performance of any of Tenant’s obligations (whether express or implied) under this Lease.

(B) Tenant, its officers, employees, contractors, agents, and others acting on its behalf agree to indemnify, defend, and hold harmless Landlord, its officials, employees, contractors, agents, and other acting on its behalf from any and all claims, losses, damages, liabilities, causes of action, judgments, costs or expenses, including reasonable attorneys’ fees which may be imposed upon or incurred by or asserted against Landlord or its officials, employees, contractors, agents, and others acting on its behalf with respect to any use, nonuse, or condition of the Leased Premises created by the Tenant or its invitees or attributable to the Tenant’s use or manner of use of the Leased Premises.

(C) Notwithstanding anything to the contrary in this Lease, Landlord does not waive any statutory limited immunity from municipal tort liability available to it under Minnesota Statutes, Chapter 466 or as otherwise provided. Such statutory limited immunity shall apply whether an action, claim, demand, or lawsuit is initiated by Tenant or by any third party. In no event, shall Tenant assert or rely upon such statutory limited liability of Landlord to avoid liability for any act for which Tenant would otherwise be legally responsible.

(D) Nothing in this Lease shall be deemed to limit Landlord's right to have access to the Leased Premises, or to exercise its remedies under the Lease, or to make applications to a governmental entity with respect to the Leased Premises, or to protest taxes or assessments related to the Leased Premises, or to take other similar action with respect to the Leased Premises as a responsible landlord would elect.

(E) The obligations of this paragraph shall survive the expiration or other termination of this Lease.

13. CASUALTY INSURANCE AND WAIVERS OF CLAIMS.

(A) Personal Property Insurance: All personal property kept, maintained, or stored on the Leased Premises shall be kept, maintained, or stored at the sole risk of Tenant. Tenant shall carry insurance for the full insurable value of Tenant's supplies, materials, furnishings, vehicles, equipment, and all other items of personal property of Tenant located on or within the Leased Premises

(B) Liability Insurance. Tenant will keep in force general commercial liability insurance in amount not more than \$1,000,000 per claimant for death, bodily injury, personal injury, property loss, and damages and \$2,000,000 for total personal injury, bodily injury, property loss and damages.

(C) Property Insurance. Landlord will carry insurance during the term of this Lease at its expense for the full insurable value of the Leased Premises, including the buildings, with the exception of any tenant improvements, fixtures, and Tenant's personal property located on or within the Leased Premises. Tenant hereby waives and releases all claims, liabilities, and causes of action against Landlord and its officials, employees, contractors, and agents for loss or damage to, or destruction of any tenant improvements, fixtures, and personal property of Tenant, located in, upon or about the Leased Premises.

14. QUIET ENJOYMENT. Landlord warrants that it has full right to execute and to perform this Lease and to grant the rights contained herein, and that Tenant, upon its performance of all of the terms, conditions, covenants and agreements on its part to be observed and performed under this Lease and notwithstanding the use restrictions set forth in paragraph 4 of this Lease and Landlord's shared use of the Leased Premises as detailed on Exhibit A may peaceably and quietly enjoy the Leased Premises subject to the terms and conditions of this Lease.

15. ASSIGNMENT OR SUBLETTING. Tenant shall not sublet any portion of the Leased Premises or transfer or assign this Lease without obtaining the prior written consent of Landlord. Landlord's right to assign this Lease is and shall remain unqualified.

16. SALE OR ENCUMBRANCE OF THE PROPERTY. If Landlord sells or otherwise voluntarily conveys the Leased Premises during the term of this Lease, this Lease shall terminate.

17. HOLDING OVER. If Tenant remains in possession of the Leased Premises after the expiration or termination of this Lease, it shall be deemed to be occupying the Leased Premises as a tenant at sufferance, subject to all the conditions, provisions, and obligations of this Lease insofar as the same can be applicable to a tenancy at sufferance.

18. SURRENDER. Upon expiration or termination of this Lease, Tenant shall peaceably surrender the Leased Premises and remove all debris and personal property from the Leased Premises. Tenant shall not remove any of the immovable fixtures. Tenant shall be conclusively deemed to have abandoned any personal property not removed prior to the effective date of the termination of this Lease or Tenant's surrender of the Leased Premises. All debris and personal property may be disposed of by Landlord. Tenant shall be responsible for any disposal costs.

19. ACCESS TO PROPERTY. Tenant agrees to permit Landlord and the authorized representatives of Landlord to enter the Leased Premises at all times during usual business hours (upon 24 hours' notice to Tenant) for the purpose of inspecting the same and conducting such maintenance and repairs to the Leased Premises as may be desired by Landlord. In the event of a bona fide emergency, Landlord need not provide notice to Tenant if doing so would be impractical.

20. DEFAULT OF TENANT.

(A) Events of Default: The occurrence of any one or more of the following events shall constitute an Event of Default:

(1) Tenant's failure to operate at the Leased Premises for a period of 60 days;

(2) Tenant's failure to maintain the insurance required herein, which failure remains uncured for 15 days following the written notice to Tenant of Tenant's failure to perform such obligation;

(3) Tenant's attempt to sublet any portion of the Leased Premises, or assign its interest under this Lease without the written permission of Landlord;

(4) Tenant files or has filed against it any bankruptcy, receivership, or other creditor's action or makes an assignment for the benefit of creditors;

(5) Tenant's failure to fully perform any of its obligations, other than the obligations referenced in subsections (1), (2), (3), or (4) above, which failure remains uncured for 30 days following Landlord's written notice to Tenant of its failure to perform such obligation.

(B) Landlord's Remedies: If an Event of Default occurs, Landlord shall have the following remedies:

(1) Landlord may, but shall not be obligated to, and without notice to or demand upon Tenant and without waiving or releasing Tenant from any obligations of Tenant under this Lease, pay or perform any obligations of Tenant; pay any cost or expense to be paid by Tenant; obtain any insurance coverage and pay premiums therefor; and make any other payment or perform any other act on the part of Tenant to be made and performed as provided for in this Lease, in such manner and to such extent as Landlord may deem desirable, and in exercising any such right, may also pay all necessary and incidental costs and expenses, employ counsel and incur and pay attorneys' fees.

(2) Neither the passage of time after the occurrence of an Event of Default nor Landlord's exercise of any other remedy with regard to such Event of Default shall limit Landlord's right to terminate the Lease by written notice to Tenant.

(3) Landlord may, whether or not Landlord has elected to terminate this Lease, immediately commence summary proceedings in unlawful detainer to recover possession of the Leased Premises. In the event of the issuance of a writ of restitution in such proceeding, upon Landlord's reentry upon and repossession of the Leased Premises, Landlord may remove Tenant and all other persons from the Leased Premises (subject to Tenant's right and responsibility to remove its personal property pursuant to paragraph 16). In the event Landlord reenters the Leased Premises pursuant to this paragraph and Tenant fails to remove its personal property within the time period provided in paragraph 16, all items of personal property not removed by Tenant within said period shall be deemed abandoned, and title thereto shall transfer to Landlord at the expiration of such period or, upon Tenant's vacation of the Leased Premises. These items may be disposed of by Landlord. Tenant shall be responsible for all disposal costs.

(4) In addition to all other remedies of Landlord, Landlord shall be entitled to reimbursement upon demand of all reasonable attorneys' fees which Landlord incurs in connection with any Event of Default.

(5) Landlord may initiate legal proceedings to enforce the provisions of this Lease.

No remedy provided for herein or elsewhere in this Lease or otherwise available to Landlord by law, statute, or equity, shall be exclusive of any other remedy, but all such remedies shall be cumulative and may be exercised from time to time and as often as the occasion may arise.

Minneapolis Public Schools
1250 West Broadway Avenue
Minneapolis, MN 55411

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph 20.

(F) Entire Agreement and Amendment: This Lease constitutes the entire agreement between Landlord and Tenant affecting the Leased Premises and there are no other agreements, either oral or written, between the parties other than said documents and as are herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and executed in the same form and manner in which this Lease is executed. If Tenant either leases an additional site from Landlord or vacates a site listed on Exhibit A, this Lease will need to be amended and Exhibit A replaced.

(G) Successors and Assigns: The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

(H) Severability. Each provision of this Lease is intended to be severable. If a provision of this Lease is held by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Lease.

(I) Authority to Execute. Each party represents and warrants to the other that (i) it has the full right, power and authority to execute this Lease and has the power to grant all rights hereunder; (ii) its execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on said party; and (iii) the execution and delivery of this Lease, and the performance of its obligations hereunder, have been duly authorized by all necessary personnel or corporate officers and do not violate any provision of law or the party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.

IN WITNESS WHEREOF, Landlord and Tenant have caused these presents to be executed in form and manner sufficient to bind them at law, as of the day and year first above written.

FABRIC MINNEAPOLIS

SPECIAL SCHOOL DISTRICT NO. 1

By: Kathryn S Kennedy

By: _____

Its: Operations Administrator

Its: Senior Operations Officer

Date: 10/08/2021

Date: _____

EXHIBIT A

Leased Premises

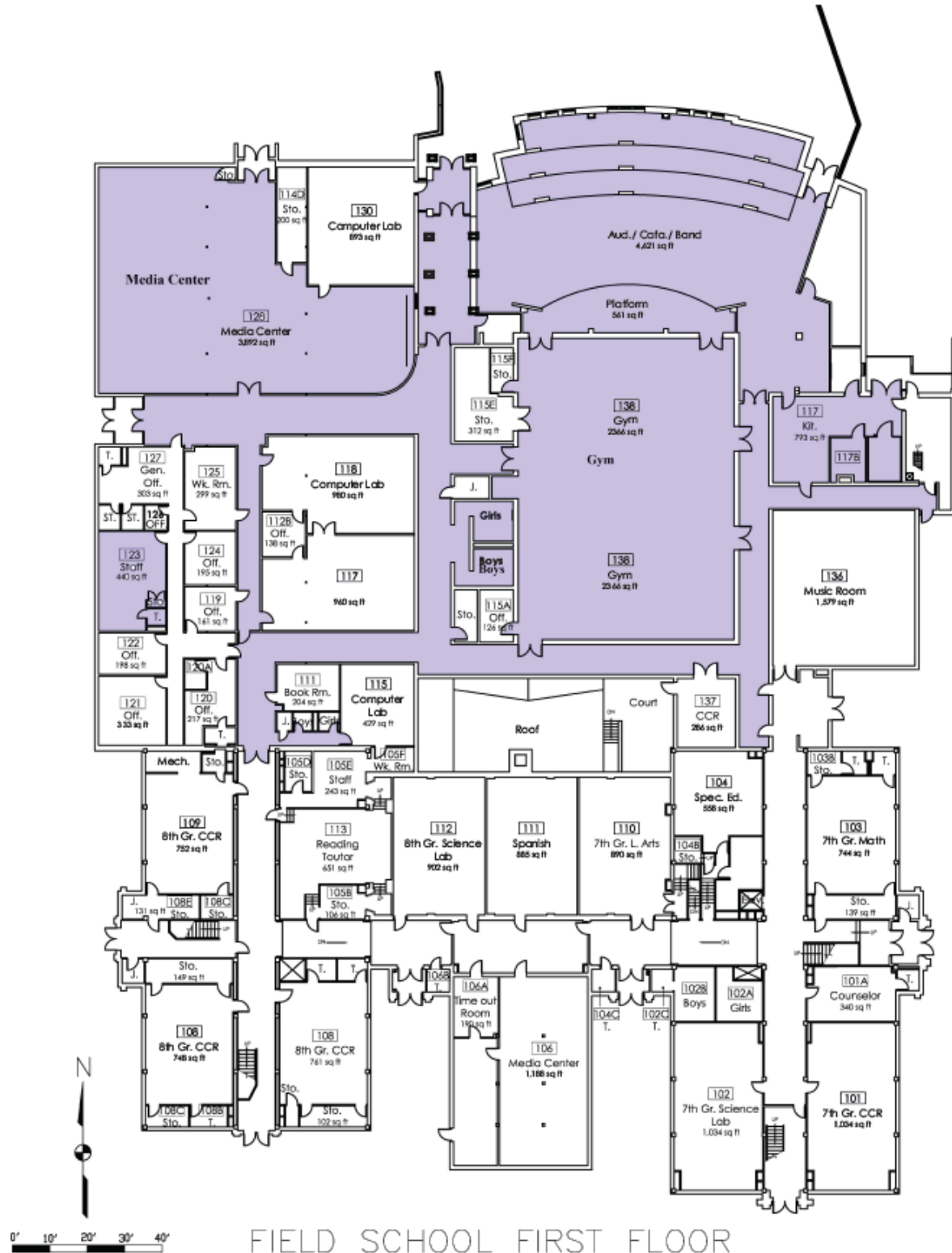


EXHIBIT B

Use Schedules and Monthly Rent

Leased Room	Purpose	Hours Occupied	Number of Weeks Used	Cost/Hour	Annual Cost
Student Commons/ Cafeteria	Main Gathering	4	44	\$20.00	\$3,520.00
Media Center	The Nest	3.5	40	\$20.00	\$2,800.00
Gym(South End)	Weavers/Spinners	3.5	26	\$30.00	\$2,730.00
Office/Staff Lounge	Office/Coffee	4	44	\$10.00	\$1,760.00
Room 115J	Storage (40 sq ft)	N/A	52	\$11.82	\$614.64
Total Annual Cost					\$11,424.64

Time Period	Rental Fee	Custodial Fee	Total Weekly Fees
October 10, 2021 – October 3, 2022	\$219.71	\$275	\$494.71

*Tenant shall make payment of rent to Landlord without demand on or before the 10th day of each month. A reconciliation of these fees paid versus fees due based on actual usage by Tenant will be performed in September of each year.

*A rental credit of \$8,876.40 is on account from previous lighting and AV equipment installation agreement. This is being extended due to no facility use during Covid-19 suspension. This agreement did not impact custodial fees. Monthly rent shall resume on July 17, 2022 in the amount of \$131.82. Regular rental payments of \$219.71 to start on July 24, 2022.

*Due to Covid-19 shutdown in March 2021, there is also a custodian credit on file of \$825.

EXHIBIT C

Expectations of Custodian

This information is provided to facilitate an effective working relationship between the Licensee and the custodian assigned. Licensee will provide a detailed check list at the site to serve as a guide for use of custodial time.

1. FABRIC MINNEAPOLIS CONTACT INFO

Office

3751 17th Avenue South
Minneapolis, MN 55407
612-822-0300

Pastor: Gregory Meyer (cell) 612-203-9586

Field Liaisons/Coordinators: Maia Dalager (cell) 218-391-7863

2. SUNDAY HOURS

Fabric Minneapolis has reserved the building for the following hours on typical Sundays:

8:30 AM - 12:30 PM (Student Commons/Cafeteria & Office/Staff Lounge)

9:00 AM - 12:30 PM (Media Center, and Gym-South End)

A specific schedule of any upcoming variations will be regularly provided to the Head Custodian at Field.

3. BUILDING PREP

- Bathrooms cleaned/stocked
- Commons lunch tables removed and floor swept and mopped*
- Orchestra chairs stacked and stands racked and removed (when possible)
- Carpeted area in the commons and reserved classrooms vacuumed
- Garbage in reserved rooms emptied
- Unlock all necessary doors

*If Field School is utilizing the COVID-specific lunchroom table arrangement, Field Custodian and the Fabric setup team will work together (keeping a safe distance from each other) to remove lunch tables from the Commons. The Field Custodian would then be responsible for sweeping and mopping the Commons floor.

4. SNOW REMOVAL, SALT, SAND

Remove snow, put down salt/sand ongoing as needed throughout reserved time outside of entry door #6. This is the highest priority for the engineer when ice/snow is present.

5. SUNDAY EXPECTATIONS

Work with the Fabric Minneapolis Team on clearing/resetting all reserved rooms and moving school property as needed. (Fabric Minneapolis will provide a *Checklist* as a reference point.)

Be available via walkie-talkie/pager throughout reserved time.

Signature: *Kathryn S Kennedy*
Kathryn S Kennedy (Oct 8, 2021 13:52 CDT)

Email: katy@fabricmpls.com






FIEL - 1 Fabric Minneapolis LEASE

Final Audit Report

2021-10-08

Created:	2021-10-08
By:	Heather Nelson (Heather.Nelson@mpls.k12.mn.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAX6BM-pnFFtmWF5gtydaP3tSbHi42mWov

"FIEL - 1 Fabric Minneapolis LEASE" History

-  Document created by Heather Nelson (Heather.Nelson@mpls.k12.mn.us)
2021-10-08 - 6:46:36 PM GMT- IP address: 205.215.177.188
-  Document emailed to Kathryn S Kennedy (katy@fabricmpls.com) for signature
2021-10-08 - 6:47:54 PM GMT
-  Email viewed by Kathryn S Kennedy (katy@fabricmpls.com)
2021-10-08 - 6:50:45 PM GMT- IP address: 74.125.212.23
-  Document e-signed by Kathryn S Kennedy (katy@fabricmpls.com)
Signature Date: 2021-10-08 - 6:52:26 PM GMT - Time Source: server- IP address: 207.153.48.158
-  Agreement completed.
2021-10-08 - 6:52:26 PM GMT

SPECIAL SCHOOL DISTRICT NO. 1
MINNEAPOLIS, MINNESOTA

CERTIFICATE OF OFFICIAL ACTION

The undersigned, being the duly qualified and acting School District Clerk of Special School District No. 1 (Minneapolis), Minnesota (the "District"), DOES HEREBY CERTIFY as follows:

Attached hereto is a true and correct copy of a resolution duly adopted by the affirmative vote of a majority of the members of the Board of Education of the District at a lawful meeting duly called and held on October 12, 2021, at which meeting a quorum was present and acting throughout. Such resolution remains in full force and effect in the form in which adopted.

IN WITNESS WHEREOF, the undersigned has hereunto set her/his hand and affixed the official seal of the District, this _____ day of October, 2021.

School District Clerk

RESOLUTION RELATING TO DEBT OBLIGATIONS UNDER MINNESOTA STATUTES, SECTION 126C.55, AS AMENDED; PROVIDING FOR EXECUTION OF DOCUMENTS RELATED TO THE CREDIT ENHANCEMENT THEREOF TO PROVIDE FOR STATE PAYMENT OF DEBT OBLIGATIONS UPON POTENTIAL DEFAULT

BE IT RESOLVED by the Board of Education (the “Board”) of Special School District No. 1 (Minneapolis), Minnesota (the “District”), as follows:

Section 1. State Credit Enhancement Program

1.01. The District hereby covenants and obligates itself to notify the Commissioner of Education of the State of Minnesota of any potential default in the payment of the principal of or interest on all “debt obligations” (as such term is defined in Minnesota Statutes, Section 126C.55 (the “State Payment Law”)) hereafter issued by the District as credit enhanced under the State Payment Law (collectively, the “Obligations”) and to use the provisions of the State Payment Law to guarantee (to the extent provided therein) payment of the principal of and interest on the Obligations when due. The District further covenants to deposit with the Registrar selected for a particular series of Obligations not less than three business days prior to each interest and principal payment date for the Obligations an amount sufficient to make that payment or to notify the Commissioner of Education as provided in the State Payment Law that it will be unable to make all or a portion of such payment. The Registrar shall be required to notify the Commissioner of Education if it becomes aware of a potential default in the payment of principal of and interest on the Obligations at maturity or, if on the date two business days prior to maturity, there are insufficient funds on deposit with the Registrar to pay the Obligations in full at maturity. The Registrar shall be required to cooperate with the District, the Commissioner of Education and the Commissioner of Management and Budget in implementing the provisions of the State Payment Law. In the event that amounts sufficient to make any such interest or principal payment are held by an escrow or paying agent and invested as authorized by Minnesota Statutes, Chapter 475, and such escrow or paying agent is required to use proceeds from such investment to pay to the Registrar the amount necessary to pay such interest or principal on such payment date, then the requirements of the State Payment Law relating to the deposit of such amounts with the Registrar prior to the payment date of such interest or principal shall be deemed satisfied and neither the District nor the Registrar shall be required to notify the Commissioner of Education that insufficient funds are available to pay such interest or principal on such payment date. The District shall do all other things which may be necessary to perform the obligations hereby undertaken under the State Payment Law with respect to the Obligations, including any requirements hereafter adopted by the Commissioner of Education or the Commissioner of Management and Budget.

1.02. The Senior Financial Officer of the District, the Executive Director of Finance, or the Manager of Accounting and Finance, or any authorized designee thereof, is hereby authorized to prepare (or cause to be prepared) and execute any applicable Minnesota Department of Education forms relating to the State Payment Law in connection with any issuance of Obligations.

1.03. Notwithstanding the covenants and obligations of the Board hereby approved, the Board shall include in each resolution of the Board hereafter adopted to authorize the sale and issuance of Obligations, provisions substantially in the form of the provisions set forth in Section 1.01 hereof.

[END OF RESOLUTION]

SPECIAL SCHOOL DISTRICT NO. 1
MINNEAPOLIS, MINNESOTA

CERTIFICATE OF OFFICIAL ACTION

The undersigned, being the duly qualified and acting School District Clerk of Special School District No. 1 (Minneapolis), Minnesota (the "District"), DOES HEREBY CERTIFY as follows:

Attached hereto is a true and correct copy of a resolution duly adopted by the affirmative vote of a majority of the members of the Board of Education of the District at a lawful meeting duly called and held on October 12, 2021, at which meeting a quorum was present and acting throughout. Such resolution remains in full force and effect in the form in which adopted.

IN WITNESS WHEREOF, the undersigned has hereunto set her/his hand and affixed the official seal of the District, this _____ day of October, 2021.

School District Clerk

RESOLUTION RELATING TO GENERAL OBLIGATION LONG-TERM FACILITIES MAINTENANCE BONDS; DECLARING INTENT TO ISSUE BONDS TO FINANCE A FACILITIES PLAN; PROVIDING FOR APPROVAL OF THE PLAN AND APPROVAL OF BONDS BY THE COMMISSIONER OF EDUCATION; AND AUTHORIZING THE PUBLICATION OF NOTICE

BE IT RESOLVED by the Board of Education (the “Board”) of Special School District No. 1 (Minneapolis), Minnesota (the “District”), as follows:

Section 1. Authorization and Approval

1.01. The District is authorized, pursuant to Minnesota Statutes, Section 123B.595 and Chapter 475, to borrow money by the issuance of its general obligation long-term facilities maintenance bonds. This Board hereby determines that it is necessary and desirable and in the best interest of the District to issue a series of general obligation long-term facilities maintenance bonds (the “Bonds”), pursuant to Minnesota Statutes, Section 123B.595 and Chapter 475. The District will issue the Bonds to finance approximately \$39,934,590 of projects throughout the District as described in the District’s ten-year facilities plan (the “Plan”) heretofore adopted by this Board.

1.02. The Plan has been submitted to the Commissioner of the Department of Education of the State of Minnesota (the “Commissioner of Education”) for approval as required by Minnesota Statutes, Section 123B.595, subdivision 4, and such approval has been or will be received prior to the date on which the Bonds will be issued.

Section 2. Notice

2.01. The officers and employees of the District are hereby authorized and directed to cause notice of the intended projects, the amount of the facilities maintenance bonds to be issued, and the total amount of the District’s indebtedness to be published in a legal newspaper of general circulation in the District as required by Minnesota Statutes, Section 123B.595, subdivision 5.

[END OF RESOLUTION]

**MINNEAPOLIS PUBLIC SCHOOLS
RESOLUTION 2021-0039**

RESOLUTION AMENDING POLICY 3270

WHEREAS, The Board’s Policy Committee has recommended the proposed changes.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

SECTION 1: **AMENDMENT** “Policy 3270: Sales And Leases Of Real Property” of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

AMENDMENT

Policy 3270: Sales And Leases Of Real Property

1. PURPOSE

The purpose of this policy is to establish the rules and procedures to be followed in the event that the Board approves a sale or lease of District real property.

2. GENERAL STATEMENT OF POLICY

- a. All sales or leases shall be accomplished in accordance with all legal requirements.
- b. Leases of District real property shall be in writing, and shall specify the costs to be borne by the lessee under the lease.
- c. Leases of District real property should be limited to those real properties or portions of real properties that are not needed for school purposes, or for portions of District property if the proposed lease does not interfere with the educational programs operated by the District on the property.

3. RESPONSIBILITY

- a. The Superintendent shall bring recommendations for the sale or lease of District property to the Board for approval.
- b. The Superintendent is authorized to promulgate regulations for the implementation of this policy.
- c. The Superintendent shall promulgate a regulation including a process for the disposition of surplus facilities.

Original Adoption:

04/25/1967

Revision Dates:

11/09/1971, 10/30/1990, 05/26/2009

Legal References:

- Minn. Stat. §123B.51 (Schoolhouses and Sites; Uses for School and Nonschool Purposes; Closings)

MPS Policy References:

- Regulation 3270 A (Definitions and Proceeds)

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

	AYE	NAY	ABSENT	ABSTAIN
Arneson	_____	_____	_____	_____
Ali	_____	_____	_____	_____
Caprini	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Inz	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Pauly	_____	_____	_____	_____

Presiding Officer

Attest

Kim Ellison, Chair, Minneapolis
Public Schools

Josh Pauly, Clerk, Minneapolis Public
Schools

**MINNEAPOLIS PUBLIC SCHOOLS
RESOLUTION 2021-0038**

RESOLUTION ADOPTING POLICY 8114

WHEREAS, The Board’s Policy Committee has recommended the proposed changes.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

SECTION 1: **ADOPTION** “Policy 8114: School Board Election Districts” of the Minneapolis Public Schools Policies & Regulations is hereby *added* as follows:

ADOPTION

Policy 8114: School Board Election Districts(*Added*)

1. PURPOSE

The purpose of this policy is to establish parameters for School Board election districts.

2. GENERAL STATEMENT OF POLICY

- a. The School Board shall consist of six members elected by district and three members elected at-large
- b. The School Board election districts shall be designated by number. Three districts shall have odd numbers and three districts shall have even numbers.
- c. Each election district must be as equal in population as practicable and must be composed of compact, contiguous territory.
- d. The election districts shall correspond to the Minneapolis Park and Recreation Board election districts.
- e. When districts are redrawn following a census, members continue to serve until the expiration of the term to which they were elected.
- f. A candidate for school board must file an affidavit of candidacy to be elected as a school board member for the election district where the candidate resides or for one of the at-large seats. A candidate must indicate on the affidavit the number of the district from which the candidate seeks election, or if applicable, that the candidate seeks one of the offices elected at-large.

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

	AYE	NAY	ABSENT	ABSTAIN
Arneson	_____	_____	_____	_____
Ali	_____	_____	_____	_____
Caprini	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Inz	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Pauly	_____	_____	_____	_____

Presiding Officer

Attest

 Kim Ellison, Chair, Minneapolis
 Public Schools

 Josh Pauly, Clerk, Minneapolis Public
 Schools

**MINNEAPOLIS PUBLIC SCHOOLS
RESOLUTION 2021-0052**

RESOLUTION AMENDING POLICIES 4200 AND 5690

WHEREAS, The Board’s Policy Committee has recommended the proposed changes

NOW THEREFORE BE IT RESOLVED, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

SECTION 1: **AMENDMENT** “Policy 4200: Personnel Data” of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

AMENDMENT

Policy 4200: Personnel Data

1. PURPOSE

The purpose of this policy is to provide guidance to school district employees as to the data the school district collects and maintains regarding its employees, volunteers, independent contractors, and applicants ("personnel").~~personnel.~~

2. GENERAL STATEMENT OF POLICY

- a. All data on individuals collected, created, received, maintained or disseminated by the school district, which is classified by statute or federal law as public, shall be accessible to the public pursuant to the procedures established by the school district.
- b. All other data on individuals is private or confidential

3. DEFINITIONS

- a. “*Public*” means that the data is available to anyone who requests it.
- b. “*Private*” means the data is not public and is available accessible only to the following: the subject of the data, as limited by any applicable state or federal law; individuals within the school district whose work assignments reasonably require access; entities and agencies as determined by the responsible authority who are authorized by law to gain access to that specific data; and entities or individuals given access by the express written direction of the data subject.~~and to school district staff who need it to conduct the business of the school district.~~
- c. “*Confidential*” means the data ~~is~~are not public and are not available accessible to the subject.
- d. “*Parking space leasing data*” means the following government data on an application for, or lease of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, location of parking space, and work telephone number.

- e. “*Personnel data*” means government data on individuals maintained because they are or were employees ~~of the school district~~, applicants for employment, or volunteers or independent contractors for the school district, ~~or members of or applicants for an advisory board or commission~~. Personnel data include data submitted by an employee to the school district ~~by an employee~~ as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or to improve school district operations. ~~An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.~~
- f. “*Finalist*” means an individual who is selected to be interviewed by the appointing authority prior to selection.
- g. “*Protected health information*” means individually identifiable health information as defined in 45 C.F.R. § 160.103 that is transmitted in electronic form by a school district acting as a by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium by a health care provider, in connection with a transaction covered by 45 C.F.R. Parts 160, 162 and 164. “Protected health information” excludes individually identifiable health information in education records covered by the ~~federal~~ Family Educational Rights and Privacy Act, ~~and~~ employment records held by a school district in its role as employer; and records regarding a person who has been deceased for more than fifty (50) years.
- h. “*Public officials*” means business managers; human resource directors; athletic directors whose duties include at least fifty (50) percent of their time spent in administration, personnel, supervision, and evaluation; chief financial officers; directors; and individuals defined as superintendents and principals.

4. PUBLIC PERSONNEL DATA

- a. The following information on current and former employees, ~~including~~ volunteers and independent contractors of the school district, is public:
 - i. name;
 - ii. employee identification number, which may not be the employee’s ~~s~~ Social ~~s~~ Security number;
 - iii. actual gross salary;
 - iv. salary range;
 - v. terms and conditions of employment relationship;
 - vi. contract fees;
 - vii. actual gross pension;
 - viii. the value and nature of employer-paid fringe benefits;
 - ix. the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
 - x. job title;
 - xi. bargaining unit;
 - xii. job description;
 - xiii. education and training background;

- xiv. previous work experience;
 - xv. date of first and last employment;
 - xvi. the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
 - xvii. the final disposition of any disciplinary action, as defined in ~~Minnesota Statutes~~ §section 13.43, ~~Ssubdivision~~ 2(b), together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the school district;
 - xxviii. the complete terms of any agreement settling any dispute arising out of the employment relationship, including superintendent buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money, and such agreement may not have the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data;
 - xix. work location;
 - xx. work telephone number;
 - xxi. badge number;
 - xxii. work-related continuing education;
 - xxiii. honors and awards received; and
 - xxiv. payroll time sheets or other comparable data that are used only to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.
- b. The following information on current and former applicants for employment by the school district is public:
- i. veteran status;
 - ii. relevant test scores;
 - iii. rank on eligible list;
 - iv. job history;
 - v. education and training; and
 - vi. work availability.
- c. Names of applicants are private data except when certified as eligible for appointment to a vacancy or when they applicants are considered by the school board to be-become finalists for anpublic employment position.
- d. Applicants for appointment to a public body.
- i. Data about applicants for appointment to a public body collected by the school district as a result of the applicant's application for employment are private data on individuals except that the following are public:
 - (1) name;
 - (2) city of residence, except when the appointment has a

residency requirement that requires the entire address to be public;

- (3) education and training;
- (4) employment history;
- (5) volunteer work;
- (6) awards and honors;
- (7) prior government service;
- (8) any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to Minn-~~esota~~ Stat-~~utes~~ ~~§~~ section 15.0597; and
- (9) veteran status.

ii. Once an individual is appointed to a public body, the following additional items of data are public:

- (1) residential address;
- (2) either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
- (3) first and last dates of service on the public body;
- (4) the existence and status of any complaints or charges against an appointee; and
- (5) upon completion of an investigation of a complaint or charge against an appointee, the final investigative report is public, unless access to the data would jeopardize an active investigation.

iii. Notwithstanding paragraph 2., any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached.

e. Regardless of whether there has been a final disposition as defined in Minn-~~esota~~ Stat-~~utes~~ ~~§~~ section 13.43, ~~S~~subdivision: 2(b), upon completion of an investigation of a complaint or charge against a public official, as defined in Minn-~~esota~~ Stat-~~utes~~ ~~§~~ section 13.43, ~~S~~subdivision: 2(e), or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.

f. Data relating to a complaint or charge against a public official is public only if: ~~(+)~~ the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or ~~(-)~~ potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement.

Data that is classified as private under another law is not made public by this provision.

5. PRIVATE PERSONNEL DATA

- a. All other personnel data not listed in Section 4 are private ~~and will only be shared with school district staff whose work requires such access. Private data will not be otherwise released unless authorized by law or by the employee's informed written consent.~~
- b. Data pertaining to an employee's dependents are private data on individuals.
- c. Data created, collected or maintained by the school district to administer employee assistance programs are private.
- d. Parking space leasing data with regard to data on individuals are private.
- e. An individual's checking account number is private when submitted to a government entity.
- f. Personnel data may be disseminated to labor organizations to the extent the ~~school district~~ responsible authority determines ~~it is~~ the dissemination is necessary for the labor organization to conduct ~~its business~~ elections, notify employees of fair share fee assessments and implement the provisions of Minnesota Statutes chapters 179 and 179A. Personnel data shall be disseminated to labor organizations and the Bureau of Mediation Services ("BMS") to the extent the dissemination is ~~or when~~ ordered or authorized by the Commissioner of the ~~BMS Bureau of Mediation Services.~~
- g. The school district may display a photograph of a current or former employee to prospective witnesses as part of the school district's investigation of any complaint or charge against the employee.
- h. The school district may, if ~~the~~ its responsible authority or designee reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, release data that are relevant to the concerns for safety to:
 - i. the person who may be harmed and to the attorney representing the person when the data are relevant to obtaining a restraining order;
 - ii. a pre-petition screening team conducting an investigation of the employee under Minn-~~esota~~ Stat:utes §section 253B.07, Ssubdivision: 1; or
 - iii. a court, law enforcement agency, or prosecuting authority.
- i. Private personnel data or confidential investigative data on employees may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of ~~such~~ a crime or alleged crime committed by an employee.
- j. A complainant has access to a statement provided by the complainant to the school district in connection with a complaint or charge against an employee.
- k. ~~To the extent as allowed by federal law, w~~ When allegations of sexual or other types of harassment are made against an employee, the employee ~~shall~~ does

not have access to data that would identify the complainant or other witnesses if the ~~school district~~ responsible authority determines that the employee's access to that data would:

- i. threaten the personal safety of the complainant or a witness; or
- ii. subject the complainant or witness to harassment.

If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.

- l. The school district ~~shall~~ must ~~make any~~ report to the Minnesota Professional Educator Licensing and Standards Board ("PELSB") or the ~~state board of education~~ Board of School Administrators ("BOSA"), whichever has jurisdiction over the teacher's or administrator's license as required by Minn.~~esota~~ Stat.~~utes~~ § section 122A.20, ~~S~~ subdivision 2, and shall, upon written request from the licensing board having jurisdiction over ~~a teacher's~~ license, provide the licensing board with information about the teacher or administrator from the school district's files, any termination or disciplinary proceeding, and settlement or compromise, or any investigative file in accordance with Minn.~~esota~~ Stat.~~utes~~ § section 122A.20, ~~S~~ subdivision 2.
- m. Private personnel data shall be disclosed to the ~~d~~ Department of Employment and Economic Development ~~security~~ for the purpose of administration of the unemployment insurance program under Minn.~~esota~~ Stat.~~utes~~ Chapter 268.
- n. When a report of alleged maltreatment of a student in an elementary, middle, or high school is made to the Commissioner of the Minnesota Department of Education ("MDE") under Minnesota Statutes Chapter 260E, data that are relevant and collected by the school facility about the person alleged to have committed maltreatment must be provided to the Commissioner on request for purposes of an assessment or investigation of the maltreatment report. Additionally, personnel data may be released for purposes of informing a providing information to a parent, legal guardian, or custodian of a child in accordance with MDE Screening Guidelines. ~~that an incident has occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.~~
- o. The school district shall release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if
 - i. an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data; or
 - ii. the employee resigned while a complaint or charge involving the allegations was pending, the allegations involved acts of sexual contact with a student, and the employer informed the employee in writing, before the employee resigned, that if the employee resigns while the complaint or charge is still pending, the employer must

release private personnel data about the employee's alleged sexual contact with a student to a school district or charter school requesting the data after the employee applies for employment with that school district or charter school and the data remain classified as provided in Minnesota Statutes Chapter 13.

Data that are released under this paragraph must not include data on the student.

- p. ~~The identity of an employee making a suggestion as part of an organized self-evaluation effort by the school district to cut costs, make the school district more efficient, or to improve school district operations is private.~~ Data submitted by an employee to the school district as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or improve the school district operations is private data. An employee who is identified in a suggestion, however, shall have access to all data in the suggestion except the identity of the employee making the suggestion.
- q. Protected Health information, as defined in 45 C.F.R. Parts 160 and 164, on employees is private and will not be disclosed except as permitted or required unless otherwise provided by law. ~~To the extent that the school district transmits protected health information, the school district will comply with all privacy requirements.~~
- r. Personal home contact information for employees may be used by the school district to ensure that an employee can be reached in the event of an emergency or other disruption affecting continuity of school district operations and may be shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation for the school district or government entity.
- s. The personal telephone number, home address, and electronic mail address of a current or former employee of a contractor or subcontractor maintained as a result of a contractual relationship between the school district and a contractor or subcontractor entered on or after August 1, 2012, are private data. These data must be shared with another government entity to perform a function authorized by law. The data also must be disclosed to a government entity or any person for prevailing wage purposes.
- t. When a continuing contract teacher is discharged immediately because the teacher's license has been revoked due to a conviction for child abuse or sexual offenses involving a child as set forth in Minnesota Statutes, section 122A.40, subdivision 13(b), ~~abuse~~ or when the Commissioner of the ~~Minnesota Department of Education (MDE)~~ makes a final determination of child maltreatment involving a teacher under Minnesota Statutes section 260E.21, subdivision 4 or 260E.35, the school principal or other person having administrative control of the school must include in the teacher's employment record the information contained in the record of the disciplinary

action or the final maltreatment determination, consistent with the definition of public data under Minn.~~esota~~ Stat.~~utes~~§ section 13.41, ~~S~~subdivision: 5, and must provide PELSB~~the Minnesota Professional Educator Licensing and Standards Board~~ and the licensing division at MDE with the necessary and relevant information to enable PELSB and~~the Minnesota Professional Educator Licensing and Standards Board and~~ MDE's licensing division to fulfill their statutory and administrative duties related to issuing, renewing, suspending, or revoking a teacher's license. In addition to the background check required under Minn.~~esota~~ Stat.~~utes~~§ section 123B.03, a school board or other school hiring authority must contact ~~the Minnesota Professional Educator Licensing and Standards Board~~PELSB and MDE to determine whether the teacher's license has been suspended or revoked, consistent with the discharge and final maltreatment determinations. Unless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a school district must disseminate to another school district private personnel data on a current or former teacher (employee or contractor) of the district, including the results of background investigations, if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.

6. MULTIPLE CLASSIFICATIONS

If data on individuals are classified as both private and confidential by Minn.~~esota~~ Stat.~~utes~~: ~~Chapter~~: 13, or any other state or federal law, the data are private.

7. CHANGE IN CLASSIFICATIONS

The school district shall change the classification of data in its possession if it is required to do so to comply with ~~other~~either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

8. RESPONSIBLE AUTHORITY

The responsible authority, or a school district employee if so designated, shall serve as the school district's data practices compliance official and, as such, shall be the employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems.

Contact for the responsible authority ~~responsible~~ for personnel data can be found at: <https://board.mpls.k12.mn.us/publicdatarequests>.

Legal References: ~~(TO BE UPDATED UPON ADOPTION)Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)Minn. Stat. § 13.02 (Definitions)Minn. Stat. § 13.37 (General Nonpublic Data)Minn. Stat. § 13.39 (Civil Investigation Data)Minn. Stat. § 13.43 (Personnel Data)Minn. Stat. § 13.601, Subd. 3 (Elected and Appointed Officials)Minn. Stat. § 122A.20, Subd. 2 (Mandatory Reporting)Minn. Stat. § 122A.40, Subds. 13 and 16 (Employment; Contracts; Termination)Minn. Stat. § 626.556, Subd. 7 (Reporting of Maltreatment of Minors)P.L. 104-191 (HIPAA)45 C.F.R. Parts 160 and 164 (HIPAA Regulations)~~

SECTION 2:**AMENDMENT** “Policy 5690: Student Data” of the Minneapolis Public Schools Policies & Regulations is hereby *amended* as follows:

AMENDMENT

Policy 5690: Student Data

1. **PURPOSE**

The school district recognizes its responsibility in regard to the collection, maintenance, and dissemination of pupil records and the protection of the privacy rights of students as provided in federal law and state statutes.

2. **GENERAL STATEMENT OF POLICY**

The following procedures and policies regarding the protection and privacy of parents and students are adopted by the school district, pursuant to the requirements of 20 U.S.C. § 1232g, et seq., (Family Educational Rights and Privacy Act (FERPA)) 34 C.F.R. Part 99 and consistent with the requirements of the Minnesota Government Data Practices Act, ~~Minnesota Statutes Chapter~~ 13, and ~~Minnesota Rules Parts~~ 1205.0100-1205.2000.

3. **DEFINITIONS**

- a. “*Authorized representative*” means any entity or individual designated by the school district, state, or an agency headed by an official of the Comptroller of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or state and local educational authorities to conduct, with respect to federal or state supported education programs, any audit or evaluation or any compliance or enforcement activity in connection with federal legal requirements that relate to these programs.
- b. “*Biometric record*,” as referred to in “*Personally Identifiable*,” means a record of one or more measurable biological or behavioral characteristics that can be used for ~~authorized~~automated recognition of an individual (e.g., fingerprints, retina and iris patterns, voice-prints, DNA sequence, facial characteristics, and handwriting).
- c. “*Dates of attendance*,” as referred to in “*Directory Information*,” means the period of time during which a student attends or attended a school or schools in the school district, including attendance in person or by paper correspondence, videoconference, satellite, ~~i~~Internet, or other electronic information and telecommunications~~communication~~ technologies for students who are not in the classroom, and including the period during which a student is working under a work-study program. The term does not include specific daily records of a student’s attendance at a school or schools in the school district.
- d. “*Directory information*” means information contained in an education record of a student ~~which~~that would not generally be considered harmful or an invasion of privacy if disclosed.

- i. *General Public Access.* The following information is designated as directory information to any member of the public not identified in section 3.d.ii:
 - (1) Name, height and weight of individual members of athletic teams;
 - (2) Name of recipient and name of award or scholarship received, and
 - (3) Names of participants in officially recognized school activities.
- ii. *Government Agency Access.* In addition to the information available to the general public, the following information is designated as directory information regarding any student or the student's identified parent or person acting as the parent to the student to any properly identified member of a governmental agency:
 - (1) Name
 - (2) Home Address(es)
 - (3) Telephone Number(s)
 - (4) School of enrollment
 - (5) Photograph, audio or video image
 - (6) Electronic mail address
 - (7) Date of Birth
 - (8) Dates of attendance
 - (9) Grade level
- iii. Directory information does not include:
 - (1) a student's social security number;
 - (2) a student's identification number (ID), user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems if the identifier may be used to access education records without use of one or more factors that authenticate the student's identity such as a personal identification number (PIN), password, or other factor^s known or possessed only by the authorized user;
 - (3) a student ID or other unique personal identifier that is displayed on a student ID badge if the identifier can be used to gain access to educational records when used in conjunction with one or more factors that authenticate the student's identity, such as a PIN, password, or other factor known or possessed only by the student;
 - (4) personally identifiable data which references religion, race, color, social position, or nationality; or
 - (5) data collected from nonpublic school students, other than those who receive shared time educational services, unless written consent is given by the student's parent or guardian.

e. "Education Records"

- i. What constitutes “education records.” Education records means those records ~~which~~that are: (1)~~are~~ directly related to a student; and (2) ~~are~~ maintained by the school district or by a party acting for the school district.
- ii. What does not constitute ~~an~~ education records. The term, “education records,” does not include:
 - (1) Records of instructional personnel ~~which~~that are:
 - (A) ~~are~~kept in the sole possession of the maker of the record;~~and~~
 - (B) used only as a personal memory aid;
 - (C) ~~are~~ not accessible or revealed to any other individual except a temporary substitute teacher; and
 - (D) ~~are~~ destroyed at the end of the school year.
 - (2) Records relating to an individual, including a student, who is employed by the school district which:
 - (A) are made and maintained in the normal course of business;
 - (B) relate exclusively to the individual in that individual’s capacity as an employee; and
 - (C) are not available for use for any other purpose.

However, records relating to an individual in attendance at the school district who is employed as a result of his or her status as a student are education records.

- (3) Records relating to an eligible student, or a student attending an institution of post-secondary education, ~~which~~that are:
 - (A) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity or assisting in that capacity;
 - (B) made, maintained, or used only in connection with the provision of treatment to the student; and
 - (C) disclosed only to individuals providing the treatment; provided that the records can be personally reviewed by a physician or other appropriate professional of the student’s choice. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are a part of the program of instruction within the school district.
- (4) Records created or received by the school district~~that only contain information about an individual~~ after an individual~~he or she~~ is no longer a student at the school district and that are not directly related to the individual’s attendance as a student.
- (5) Grades on peer-related papers before the papers are collected

and recorded by the teacher.

- f. “*Eligible student*” means a student who has attained eighteen (18) years of age or is attending an institution of post-secondary education.
- g. “*Juvenile justice system*” includes criminal justice agencies and the judiciary when involved in juvenile justice activities.
- h. “*Legitimate educational interest*” includes an interest directly related to classroom instruction, teaching, student achievement and progress, discipline of a student, student health and welfare, and the ability to respond to a request for education data. It includes a person’s need to know in order to:
 - i. Perform an administrative task required in the school or employee’s contract or position description approved by the school board;
 - ii. Perform a supervisory or instructional task directly related to the student’s education; ~~or~~
 - iii. Perform a service or benefit for the student or the student’s family such as health care, counseling, student job placement, or student financial aid; or;
 - iv. Perform a task directly related to responding to a request for data.
- i. “*Parent*” means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent of the student in the absence of a parent or guardian. The school district may presume the parent has the authority to exercise the rights provided herein, unless it has been provided with evidence that there is a state law or court order governing such matters as marriage dissolution, separation or child custody, or a legally binding instrument which provides to the contrary.
- j. “*Personally identifiable*” means that the data or information includes, but is not limited to: (a) a student’s name; (b) the name of the student’s parent or other family member; (c) the address of the student or student’s family; (d) a personal identifier such as the student’s social security number or student number or biometric record; (e) other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name; (f) other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) information requested by a person who the school district reasonably believes knows the identity of the student to whom the education record relates.
- k. “*Record*” means any information or data recorded in any way including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
- l. “*Responsible authority*” means the individual designated by the School Board.
- m. “*Student*” includes any individual who is or has been in attendance, enrolled, or registered at the school district and regarding whom the school district maintains education records. Student also includes applicants for enrollment or registration at the school district and individuals who receive shared time

educational services from the school district.

- n. “*School official*” includes: (a) a person duly elected to the school board; (b) a person employed by the school board in an administrative, supervisory, instructional, or other professional position; (c) a person employed by the school board as a temporary substitute in a professional position for the period of his or her performance as a substitute; and (d) a person employed by, or under contract to, the school board to perform a special task such as a secretary, a clerk, a public information officer or data practices compliance official, an attorney, or an auditor for the period of his or her performance as an employee or contractor.
- o. “*Summary data*” means 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 the individual is ascertainable.
- p. All other terms and phrases shall be defined in accordance with applicable state and federal law or ordinary customary usage.

4. GENERAL CLASSIFICATION

- a. State law provides that all data collected, created, received, or maintained by a school district are public unless classified by state or federal law as not public or private or confidential. State law classifies all data on individuals maintained by a school district which relates to a student as private data on individuals. This data may not be disclosed to parties other than the parent or eligible student without consent, except pursuant to a valid court order, certain state statutes authorizing access, and the provisions of FERPA and the regulations promulgated thereunder.

5. STATEMENT OF RIGHTS

a. Rights of Parents and Eligible Students

Parents and eligible students have the following rights under this policy:

- i. The right to inspect and review the student’s education records;
- ii. The right to request the amendment of the student’s education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student’s privacy or other rights;
- iii. The right to consent to disclosures of personally identifiable information contained in the student’s education records, except to the extent that such consent is not required for disclosure pursuant to this policy, state or federal law, or the regulations promulgated thereunder;
- iv. The right to refuse release of names, addresses, and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions;
- v. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the school district to comply with the federal law and the regulations promulgated thereunder;
- vi. The right to be informed about rights under the federal law; and
- vii. The right to obtain a copy of this policy at the location set forth in Section 21 of this policy.

b. *Eligible Students*

All rights and protections given to parents under this policy transfer to the student when he or she reaches eighteen (18) years of age or enrolls in an institution of post-secondary education. The student then becomes an “eligible student.” However, the parents of an eligible student who is also a “dependent student” are entitled to gain access to the education records of such student without first obtaining the consent of the student. In addition, parents of an eligible student may be given access to education records in connection with a health or safety emergency if the disclosure meets the conditions of any provision set forth in 34 C.F.R. § 99.31(a).

c. *Students with a Disabilities*

The school district shall also follow 34 C.F.R. §§ 300.610-300.617 with regard to the privacy, notice, access, record keeping and accuracy~~confidentiality~~ of information related to students with a disability.

6. DISCLOSURE OF EDUCATION RECORDS

a. *Consent Required for Disclosure*

- i. The school district shall obtain a signed and dated written informed consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of the student, except as provided herein.
- ii. The written consent required by this subdivision must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:
 - (1) a specification of the records to be disclosed;
 - (2) the purpose or purposes of the disclosure;
 - (3) the party or class of parties to whom the disclosure may be made;
 - (4) the consequences of giving informed consent; and
 - (5) if appropriate, a termination date for the consent.
- iii. When a disclosure is made under this subdivision:
 - (1) if the parent or eligible student so requests, the school district shall provide him or her with a copy of the records disclosed; and
 - (2) if the parent of a student who is not an eligible student so requests, the school district shall provide the student with a copy of the records disclosed.
- iv. A signed and dated written consent may include a record and signature in electronic form that:
 - (1) identifies and authenticates a particular person as the source of the electronic consent; and
 - (2) indicates such person’s approval of the information contained in the electronic consent.
- v. If the responsible authority seeks an individual’s informed consent to the release of private data to an insurer or the authorized

representative of an insurer, informed consent shall not be deemed to have been given unless the statement is:

- (1) in plain language;
- (2) dated;
- (3) specific in designating the particular persons or agencies the data subject is authorizing to disclose information about the data subject;
- (4) specific as to the nature of the information the subject is authorizing to be disclosed;
- (5) specific as to the persons or agencies to whom the subject is authorizing information to be disclosed;
- (6) specific as to the purpose or purposes for which the information may be used by any of the parties named in Clause e. above, both at the time of the disclosure and at any time in the future; and
- (7) specific as to its expiration date which should be within a reasonable time, not to exceed one year except in the case of authorizations given in connection with applications for: (i) life insurance or noncancellable or guaranteed renewable health insurance and identified as such, two years after the date of the policy, or (ii) medical assistance under ~~Minnesota Statutes Chapter 256B~~ or Minnesota Care under ~~Minnesota Statute Chapter 256L~~, which shall be ongoing during all terms of eligibility, for individualized education program health-related services provided by a school district that are subject to third party reimbursement.

vi. *Eligible Student Consent*

Whenever a student has attained eighteen (18) years of age or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except as provided in section 5 of this policy.

b. *Prior Consent for Disclosure Not Required*

The school district may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student unless otherwise provided herein, if the disclosure is:

- i. To other school officials, including teachers, within the school district whom the school district determines have a legitimate educational interest in such records;
- ii. To a contractor, consultant, volunteer, or other party to whom the school district has outsourced institutional services or functions provided that the outside party:
 - (1) performs an institutional service or function for which the school district would otherwise use employees;

- (2) is under the direct control of the school district with respect to the use and maintenance of education records; and
 - (3) will not disclose the information to any other party without the prior consent of the parent or eligible student and uses the information only for the purposes for which the disclosure was made.
- iii. To officials of other schools, school districts, or post-secondary educational institutions in which the student seeks or intends to enroll, or is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer. The records shall include information about disciplinary action taken as a result of any incident in which the student possessed or used a dangerous weapon, and with proper annual notice (see Section 19), suspension and expulsion information pursuant to section 7917 of the federal Every Student Succeeds Act, [20 U.S.C. § 7917](#), and, if applicable, data regarding a student's history of violent behavior. The records also shall include a copy of any probable cause notice or any disposition or court order under ~~Minnesota Statutes~~ [§ 260B.171](#), unless the data are required to be destroyed under ~~Minnesota Statutes~~ [§ 120A.22, Subdivision: 7\(c\) or §section 121A.75](#). On request, the school district will provide the parent or eligible student with a copy of the education records ~~which~~[that](#) have been transferred and provide an opportunity for a hearing to challenge the content of those records in accordance with Section 15 of this policy;
- iv. To authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or the Commissioner of the State Department of Education or his or her representative, subject to the conditions relative to such disclosure provided under federal law;
- v. In connection with financial aid for which a student has applied or has received, if the information is necessary for such purposes as to:
- (1) To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to state statute adopted:
 - (A) determine eligibility for the aid;
 - (B) determine the amount of the aid;
 - (C) determine conditions for the aid; or
 - (D) enforce the terms and conditions of the aid.

“Financial aid” for purposes of this provision means a payment of funds provided to an individual or a payment in kind of tangible or intangible property to

- the individual that is conditioned on the individual's attendance at an educational agency or institution;
- vi. To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to state statute adopted:
 - (1) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released; or
 - (2) after November 19, 1974, if the reporting or disclosure allowed by state statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, provided the officials and authorities to whom the records are disclosed certify in writing to the school district that the data will not be disclosed to any other party, except as provided by state law, without the prior written consent of the parent of the student. At a minimum, the school district shall disclose the following information to the juvenile justice system under this paragraph: a student's full name, home address, telephone number, and date of birth; a student's school schedule, attendance record, and photographs, if any; and parents' names, home addresses, and telephone numbers;
 - vii. To organizations conducting studies for or on behalf of educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction; provided that the studies are conducted in a manner which does not permit the personal identification of parents or students by individuals other than representatives of the organization who have a legitimate interest in the information, the information is destroyed when no longer needed for the purposes for which the study was conducted, and the school district enters into a written agreement with the organization that: (a) specifies the purpose, scope, and duration of the study or studies and the information to be disclosed; (b) requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement; (c) requires the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests; and (d) requires the organization to destroy all personally identifiable information when information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed. For purposes of this provision, the term, "organizations," includes, but is not limited to,

federal, state, and local agencies and independent organizations. In the event the Department of Education determines that a third party outside of the school district to whom information is disclosed violates this provision, the school district may not allow that third party access to personally identifiable information from education records for at least five (5) years;

- viii. To accrediting organizations in order to carry out their accrediting functions;
- ix. To parents of a student eighteen (18) years of age or older if the student is a dependent of the parents for income tax purposes;
- x. To comply with a judicial order or lawfully issued subpoena, provided, however, that the school district makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance therewith so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with a federal grand jury subpoena, or any other subpoena issued for law enforcement purposes, and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, or the disclosure is in compliance with an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. § 2332b(g)(5)(B), an act of domestic or international terrorism as defined in 18 U.S.C. § 2331, or a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of the proceeding. If the school district initiates legal action against a parent or student, it may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the school district to proceed with the legal action as a plaintiff. Also, if a parent or eligible student initiates a legal action against the school district, the school district may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the school district to defend itself;
- xi. To appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health, including the mental health, or safety of the student or other individuals. The decision is to be based upon information available at the time the threat occurs that indicates that there is an articulable and significant threat to the health or safety of a student or other individuals. In making a determination whether to disclose information under this section, the school district may take into account the totality of the circumstances pertaining to a threat and may disclose information from education records to any person whose

knowledge of the information is necessary to protect the health or safety of the student or other students. A record of this disclosure must be maintained pursuant to Section 13.E. of this policy. In addition, an educational agency or institution may include in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. This information may be disclosed to teachers and school officials within the school district and/or teachers and school officials in other schools who have legitimate educational interests in the behavior of the student;

- xii. To the juvenile justice system if information about the behavior of a student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals;
- xiii. Information the school district has designated as “directory information” pursuant to Section 7 of this policy;
- xiv. To military recruiting officers and post-secondary educational institutions pursuant to Section 11 of this policy;
- xv. To the parent of a student who is not an eligible student or to the student himself or herself;
- xvi. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiologic investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted;
- xvii. To volunteers who are determined to have a legitimate educational interest in the data and who are conducting activities and events sponsored by or endorsed by the educational agency or institution for students or former students;
- xviii. To the juvenile justice system, on written request that certifies that the information will not be disclosed to any other person except as authorized by law without the written consent of the parent of the student:
 - (1) the following information about a student must be disclosed: a student’s full name, home address, telephone number, date of birth; a student’s school schedule, daily attendance record, and photographs, if any; and any parents’ names, home addresses, and telephone numbers;
 - (2) the existence of the following information about a student, not the actual data or other information contained in the student’s education record, may be disclosed provided that a request for access must be submitted on the statutory form and it must contain an explanation of why access to the information is necessary to serve the student: (1) use of a controlled

substance, alcohol, or tobacco; (2) assaultive or threatening conduct that could result in dismissal from school under the Pupil Fair Dismissal Act; (3) possession or use of weapons or look-alike weapons; (4) theft; or (5) vandalism or other damage to property. Prior to releasing this information, the principal or chief administrative officer of a school who receives such a request must, to the extent permitted by federal law, notify the student's parent or guardian by certified mail of the request to disclose information. If the student's parent or guardian notifies the school official of an objection to the disclosure within ten (10) days of receiving certified notice, the school official must not disclose the information and instead must inform the requesting member of the juvenile justice system of the objection. If no objection from the parent or guardian is received within fourteen (14) days, the school official must respond to the request for information.

The written requests of the juvenile justice system member(s), as well as a record of any release, must be maintained in the student's file.

- xix. To the principal where the student attends and to any counselor directly supervising or reporting on the behavior or progress of the student if it is information from a disposition order received by a superintendent under [Minn-esota Statutes-§ section 260B.171](#), Subd-[ivision 3](#). The principal must notify the counselor immediately and must place the disposition order in the student's permanent education record. The principal also must notify immediately any teacher or administrator who directly supervises or reports on the behavior or progress of the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other school district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individual need the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student, outline the offense, and describe any conditions of probation about which the school must provide information if this information is provided in the disposition order. Disposition order information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information may not be further disseminated by the counselor, teacher, administrator, staff

- member, substitute, or volunteer except as necessary to serve the student, to protect students and staff, or as otherwise required by law, and only to the student or the student's parent or guardian;
- xx. To the principal where the student attends if it is information from a peace officer's record of children received by a superintendent under ~~Minnesota Statutes~~ § section 260B.171, ~~Subdivision~~ 5. The principal must place the information in the student's education record. The principal also must notify immediately any teacher, counselor, or administrator directly supervising the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individuals need the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student and describe the alleged offense if this information is provided in the peace officer's notice. Peace officer's record information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information must not be further disseminated by the counselor, teacher administrator, staff member, substitute, or volunteer except to communicate with the student or the student's parent or guardian as necessary to serve the student, to protect students and staff, or as otherwise required by law.

The principal must delete the peace officer's record from the student's education record, destroy the data, and make reasonable efforts to notify any teacher, counselor, staff member, administrator, substitute, or volunteer who received information from the peace officer's record if the county attorney determines not to proceed with a petition or directs the student into a diversion or mediation program or if a juvenile court makes a decision on a petition and the county attorney or juvenile court notifies the superintendent of such action;~~or~~

- xxi. To the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of state and local educational and other agencies and institutions receiving funding or providing benefits of one or more programs authorized under the National School Lunch Act or the Child Nutrition Act of 1966 for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that: (a) any data collected

shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and (b) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements; ~~or~~

- xxii. To an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in 25 U.S.C. § 5304), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

c. *Nonpublic School Students*

The school district may disclose personally identifiable information from the education records of a nonpublic school student, other than a student who receives shared time educational services, without the written consent of the parent of the student or the eligible student unless otherwise provided herein, if the disclosure is:

- i. Pursuant to a valid court order;
- ii. Pursuant to a statute specifically authorizing access to the private data;
- or
- iii. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiological investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted.

7. RELEASE OF DIRECTORY INFORMATION

a. *Classification*

Directory information is public except as provided herein.

b. *Former Students*

Unless a former student validly opted out of the release of directory information while the student was in attendance and has not rescinded the opt out request at any time, the school district may disclose directory information from the education records generated by it regarding the former student without meeting the requirements of Paragraph C. of this section. In addition, under an explicit exclusion from the definition of an "education record," the school district may release records that only contain information about an

individual obtained after he or she is no longer a student at the school district and that are not directly related to the individual's attendance as a student (e.g., a student's activities as an alumnus of the school district).

c. *Present Students and Parents*

The school district may disclose directory information from the education records of a student and information regarding parents without prior written consent of the parent of the student or eligible student, except as provided herein. Prior to such disclosure the school district shall:

- i. Annually give public notice by any means that are reasonably likely to inform the parents and eligible students of:
 - (1) the types of personally identifiable information regarding students and/or parents that the school district has designated as directory information;
 - (2) the parent's or eligible student's right to refuse to let the school district designate any or all of those types of information about the student and/or the parent as directory information; and
 - (3) the period of time in which a parent or eligible student has to notify the school district in writing that he or she does not want any or all of those types of information about the student and/or the parent designated as directory information.
- ii. Allow a reasonable period of time after such notice has been given for a parent or eligible student to inform the school district in writing that any or all of the information so designated should not be disclosed without the parent's or eligible student's prior written consent, except as provided in Section 6 of this policy.
- iii. A parent or eligible student may not opt out of the directory information disclosures to:
 - (1) prevent the school district from disclosing or requiring the student to disclose the student's name, ID, or school district e-mail address in a class in which the student is enrolled; or
 - (2) prevent the school district from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information and that has been properly designated by the school district as directory information.
- iv. The school district shall not disclose or confirm directory information without meeting the written consent requirements contained in Section 6.A. of this policy if a student's social security number or other non-directory information is used alone or in combination with other data elements to identify or help identify the student or the student's records.

d. *Procedure for Obtaining Nondisclosure of Directory Information*

The parent's or eligible student's written notice shall be directed to the

responsible authority and shall include the following:

- i. Name of the student and/or parent, as appropriate;
- ii. Home address;
- iii. School presently attended by student;
- iv. Parent's legal relationship to student, if applicable; and
- v. Specific categories of directory information to be made not public without the parent's or eligible student's prior written consent, which shall only be applicable for that school year.

e. *Duration*

The designation of any information as directory information about a student or parents will remain in effect for the remainder of the school year unless the parent or eligible student provides the written notifications provided herein.

8. **DISCLOSURE OF PRIVATE RECORDS**

a. *Private Records*

For the purposes herein, education records are records which are classified as private data on individuals by state law and which are accessible only to the student who is the subject of the data and the student's parent if the student is not an eligible student. The school district may not disclose private records or their contents except as summary data, or except as provided in Section 6 of this policy, without the prior written consent of the parent or the eligible student. The school district will use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other party to whom personally identifiable information from education records is disclosed.

b. *Private Records Not Accessible to Parent*

In certain cases, state law intends, and clearly provides, that certain information contained in the education records of the school district pertaining to a student be accessible to the student alone, and to the parent only under special circumstances, if at all.

- i. The responsible authority may deny access to private data by a parent when a minor student who is the subject of that data requests that the responsible authority deny such access. The minor student's request must be submitted in writing setting forth the reasons for denying access to the parent and must be signed by the minor. Upon receipt of such request the responsible authority shall determine if honoring the request to deny the parent access would be in the best interest of the minor data subject. In making this determination the responsible authority shall consider the following factors:
 - (1) whether the minor is of sufficient age and maturity to be able to explain the reasons for and understand the consequences of the request to deny access;
 - (2) whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm;
 - (3) whether there are grounds for believing that the minor data

subject's reasons for precluding parental access are reasonably accurate;

- (4) whether the data in question is of such a nature that disclosure of it to the parent may lead to physical or emotional harm to the minor data subject; and
- (5) whether the data concerns medical, dental or other health services provided pursuant to Minn-~~esota~~ Stat-~~utes~~ ~~§§ sections~~ 144.341-144.347, in which case the data may be released only if the failure to inform the parent would seriously jeopardize the health of the minor.

c. *Private Records Not Accessible to Student*

Students shall not be entitled to access to private data concerning financial records and statements of the student's parent or any information contained therein.

d. *Military-Connected Youth Identifier*

When a school district updates its enrollment forms in the ordinary course of business, the school district must include a box on the enrollment form to allow students to self-identify as a military-connected youth. For purposes of this section, a "military-connected youth" means having an immediate family member, including a parent or sibling, who is currently in the armed forces either as a reservist or on active duty or has recently retired from the armed forces. Data collected under this provision is private data on individuals, but summary data may be published by the Department of Education.

9. DISCLOSURE OF CONFIDENTIAL RECORDS

a. *Confidential Records*

Confidential records are those records and data contained therein which are made not public by state or federal law, and which are inaccessible to the student and the student's parents or to an eligible student.

b. *Reports Under the Maltreatment of Minors Reporting Act*

Pursuant to Minn-~~esota~~ Stat-~~utes~~ ~~§ Chapter 260E~~~~626.556~~, written copies of reports pertaining to a neglected and/or physically and/or sexually abused child shall be accessible only to the appropriate welfare and law enforcement agencies. In respect to other parties, such data shall be confidential and will not be made available to the parent or the subject individual by the school district. The subject individual, however, may obtain a copy of the report from either the local welfare agency, county sheriff, or the local police department subject to the provisions of Minn-~~esota~~ Stat-~~utes~~ ~~§ 626.556, Subd. 11~~~~Chapter 260E~~.

Regardless of whether a written report is made under Minn-~~esota~~ Stat-~~utes~~ ~~Chapter 260E-§ 626.556, Subd. 7~~, as soon as practicable after a school receives information regarding an incident that may constitute maltreatment of a child in a school facility, the school shall inform the parent, legal guardian, or custodian of the child that an incident occurred that may constitute

maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.

c. *Investigative Data*

Data collected by the school district as part of an active investigation undertaken for the purpose of the commencement or defense of pending civil legal action, or ~~which~~that are retained in anticipation of a pending civil legal action are classified as protected nonpublic data in the case of data not on individuals, and confidential data in the case of data on individuals.

- i. The school district may make any data classified as protected non-public or confidential pursuant to this subdivision accessible to any person, agency, or the public if the school district determines that such access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest.
- ii. A complainant has access to a statement he or she provided to the school district.
- iii. Parents or eligible students may have access to investigative data of which the student is the subject, but only to the extent the data is not inextricably intertwined with data about other school district students, school district employees, and/or attorney data as defined in Minn-esota Stat.utes§ section 13.393.
- iv. Once a civil investigation becomes inactive, civil investigative data becomes public unless the release of the data would jeopardize another pending civil legal action, except for those portions of such data that are classified as not public data under state or federal law. Any civil investigative data presented as evidence in court or made part of a court record shall be public. For purposes of this provision, a civil investigation becomes inactive upon the occurrence of any of the following events:
 - (1) a decision by the school district, or by the chief attorney for the school district, not to pursue the civil legal action.
However, such investigation may subsequently become active if the school district or its attorney decides to renew the civil legal action;
 - (2) the expiration of the time to file a complaint under the statute of limitations or agreement applicable to the civil legal action;
or
 - (3) the exhaustion or expiration of rights of appeal by either party to the civil legal action.
- v. A “pending civil legal action” for purposes of this subdivision is defined as including, but not limited to, judicial, administrative, or arbitration proceedings.

d. *Chemical Abuse Records*

To the extent the school district maintains records of the identity, diagnosis, prognosis, or treatment of any student which are maintained in connection with the performance of any drug abuse prevention function conducted,

regulated, or directly or indirectly assisted by any department or agency of the United States, such records are classified as confidential and shall be disclosed only for the purposes and under the circumstances expressly authorized by law.

10. DISCLOSURE OF SCHOOL RECORDS PRIOR TO EXCLUSION OR EXPULSION HEARING

At a reasonable time prior to any exclusion or expulsion hearing, the student and the student's parent or guardian or representative shall be given access to all school district records pertaining to the student, including any tests or reports upon which the action proposed by the school district may be based, pursuant to the Minnesota Pupil Fair Dismissal Act, ~~Minn-esota~~ ~~Stat-utes~~ §section 121A.40, et seq.

11. DISCLOSURE OF DATA TO MILITARY RECRUITING OFFICERS AND POST-SECONDARY EDUCATIONAL INSTITUTIONS

a. The school district will release the names, addresses, electronic mail address (which shall be the electronic mail address provided by the school district, if available, that may be released to military recruiting officers only), and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions within sixty (60) days after the date of the request unless a parent or eligible student has refused in writing to release this data pursuant to Paragraph C. below.

b. Data released to military recruiting officers under this provision:

- i. may be used only for the purpose of providing information to students about military service, state and federal veterans' education benefits, and other career and educational opportunities provided by the military;~~and~~
- ii. cannot be further disseminated to any other person except personnel of the recruiting services of the armed forces~~;~~ and
- iii. copying fees shall not be imposed.

c. A parent or eligible student has the right to refuse the release of the name, address, electronic mail address (which shall be the electronic mail address provided by the school district , if available, that may be released to military recruiting officers only),

or home telephone number to military recruiting officers and post-secondary educational institutions. To refuse the release of the above information to military recruiting officers and post-secondary educational institutions, a parent or eligible student must notify the responsible authority in writing by October 1 each year. The written request must include the following information:

- i. Name of student and parent, as appropriate;
- ii. Home address;
- iii. Student's grade level;
- iv. School presently attended by student;
- v. Parent's legal relationship to student, if applicable;
- vi. Specific category or categories of information which are not to be

- released to military recruiting officers and post-secondary educational institutions; and
- vii. Specific category or categories of information which are not to be released to the public, including military recruiting officers and post-secondary educational institutions.
- d. Annually, the school district will provide public notice by any means that are reasonably likely to inform the parents and eligible students of their rights to refuse to release the names, addresses, and home phone numbers of students in grades 11 and 12 without prior consent.
 - e. A parent or eligible student's refusal to release the above information to military recruiting officers and post-secondary educational institutions does not affect the school district's release of directory information to the rest of the public, which includes military recruiting officers and post-secondary educational institutions. In order to make any directory information about a student private, the procedures contained in Section 7 of this policy also must be followed. Accordingly, to the extent the school district has designated the name, address, home phone number, and grade level of students as directory information, absent a request from a parent or eligible student not to release such data, this information will be public data and accessible to members of the public, including military recruiting officers and post-secondary educational institutions.

12. LIMITS ON REDISCLOSURE

a. *Redisclosure*

Consistent with the requirements herein, the school district may only disclose personally identifiable information from the education records of a student on the condition that the party to whom the information is to be disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the officers, employees, and agents of any party receiving personally identifiable information under this section may use the information, but only for the purposes for which the disclosure was made.

b. *Redisclosure Not Prohibited*

- i. Subdivision A. of this section does not prevent the school district from disclosing personally identifiable information under Section 6 of this policy with the understanding that the party receiving the information may make further disclosures of the information on behalf of the school district provided:
 - (1) The disclosures meet the requirements of Section 6 of this policy; and
 - (2) The school district has complied with the record-keeping requirements of Section 13 of this policy.
- ii. Subdivision A. of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas or litigation, to disclosures of directory information, to disclosures to a parent or student or to parents of dependent students, or to disclosures

concerning sex offenders and other individuals required to register under 42 U.S.C. § 14071. However, the school district must provide the notification required in Section 12.D. of this policy if a redisclosure is made based upon a court order or lawfully issued subpoena.

c. *Classification of Disclosed Data*

The information disclosed shall retain the same classification in the hands of the party receiving it as it had in the hands of the school district.

d. *Notification*

The school district shall inform the party to whom a disclosure is made of the requirements set forth in this section, except for disclosures made pursuant to court orders or lawfully issued subpoenas, disclosure of directory information under Section 7 of this policy, disclosures to a parent or student, or disclosures to parents of a dependent student. In the event that the Family Policy Compliance Office determines that a state or local educational authority, a federal agency headed by an official listed in 34 C.F.R. § 99.31(a)(3), or an authorized representative of a state or local educational authority or a federal agency headed by an official listed in § 99.31(a)(3), or a third party outside of the school district improperly rediscloses personally identifiable information from education records or fails to provide notification required under this section of this policy, the school district may not allow that third party access to personally identifiable information from education records for at least five (5) years.

13. RESPONSIBLE AUTHORITY; RECORD SECURITY; AND RECORD KEEPING

a. *Responsible Authority*

The responsible authority shall be responsible for the maintenance and security of student records.

b. *Record Security*

The principal of each school subject to the supervision and control of the responsible authority shall be the records manager of the school, and shall have the duty of maintaining and securing the privacy and/or confidentiality of student records.

c. *Plan for Securing Student Records*

The building principal shall submit to the responsible authority a written plan for securing students records by September 1 of each school year. The written plan shall contain the following information:

- i. A description of records maintained;
- ii. Titles and addresses of person(s) responsible for the security of student records;
- iii. Location of student records, by category, in the buildings;
- iv. Means of securing student records; and
- v. Procedures for access and disclosure.

d. *Review of Written Plan for Securing Student Records*

The responsible authority shall review the plans submitted pursuant to Paragraph C. of this section for compliance with the law, this policy and the various administrative policies of the school district. The responsible authority shall then promulgate a chart incorporating the provisions of Paragraph C. which shall be attached to and become a part of this policy.

e. *Record Keeping*

i. The principal shall, for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record, with the education records of the student, ~~which~~ ~~that~~ indicates:

- (1) the parties who have requested or received personally identifiable information from the education records of the student;
- (2) the legitimate interests these parties had in requesting or obtaining the information; and
- (3) the names of the state and local educational authorities and federal officials and agencies listed in Section 6.B.iv. of this policy that may make further disclosures of personally identifiable information from the student's education records without consent.

ii. In the event the school district discloses personally identifiable information from an education record of a student pursuant to Section 12.B. of this policy, the record of disclosure required under this section shall also include:

- (1) the names of the additional parties to which the receiving party may disclose the information on behalf of the school district;
- (2) the legitimate interests under Section 6 of this policy which each of the additional parties has in requesting or obtaining the information; and
- (3) a copy of the record of further disclosures maintained by a state or local educational authority or federal official or agency listed in Section 6.B.iv. of this policy in accordance with 34 C.F.R. § 99.32 and to whom the school district disclosed information from an education record. The school district shall request a copy of the record of further disclosures from a state or local educational authority or federal official or agency to whom education records were disclosed upon a request from a parent or eligible student to review the record of requests for disclosure.

iii. Section 13.E.i. does not apply to requests by or disclosure to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student, requests by or disclosures to other school officials under Section 6.B.i. of this policy, to requests for disclosures of directory information under Section 7 of

this policy, or to a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or agency has ordered that the existence or the contents of the subpoena or the information provided in response to the subpoena not be disclosed or as directed by an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18. U.S.C. § 2332b(g)(5)(B) or an act of domestic or international terrorism.

- iv. The record of requests of disclosures may be inspected by:
 - (1) the parent of the student or the eligible student;
 - (2) the school official or his or her assistants who are responsible for the custody of the records; and
 - (3) the parties authorized by law to audit the record-keeping procedures of the school district.
- v. The school district shall record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception:
 - (1) the articulable and significant threat to the health or safety of a student or other individual that formed the basis for the disclosure; and
 - (2) the parties to whom the school district disclosed the information.
- vi. The record of requests and disclosures shall be maintained with the education records of the student as long as the school district maintains the student's education records.

14. RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS

a. *Parent of a Student, an Eligible Student or the Parent of an Eligible Student Who is Also a Dependent Student*

The school district shall permit the parent of a student, an eligible student, or the parent of an eligible student who is also a dependent student who is or has been in attendance in the school district to inspect or review the education records of the student, except those records which are made confidential by state or federal law or as otherwise provided in Section 8 of this policy.

b. *Response to Request for Access*

The school district shall respond to any request pursuant to Subdivision A. of this section immediately, if possible, or within ten (10) days of the date of the request, excluding Saturdays, Sundays, and legal holidays.

c. *Right to Inspect and Review*

The right to inspect and review education records under Subdivision A. of this section includes:

- i. The right to a response from the school district to reasonable requests for explanations and interpretations of records; and
- ii. If circumstances effectively prevent the parent or eligible student from

exercising the right to inspect and review the education records, the school district shall provide the parent or eligible student with a copy of the records requested or make other arrangements for the parent or eligible student to inspect and review the requested records.

- iii. Nothing in this policy shall be construed as limiting the frequency of inspection of the education records of a student with a disability by the student's parent or guardian or by the student upon the student reaching the age of majority.

d. *Form of Request*

Parents or eligible students shall submit to the school district a written request to inspect education records which identify as precisely as possible the record or records he or she wishes to inspect.

e. *Collection of Student Records*

If a student's education records are maintained in more than one location, the responsible authority may collect copies of the records or the records themselves from the various locations so they may be inspected at one site. However, if the parent or eligible student wishes to inspect these records where they are maintained, the school district shall attempt to accommodate those wishes. The parent or eligible student shall be notified of the time and place where the records may be inspected.

f. *Records Containing Information on More Than One Student*

If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information which pertains to that student.

g. *Authority to Inspect or Review*

The school district may presume that either parent of the student has authority to inspect or review the education records of a student unless the school district has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as marriage dissolution, separation, or custody which provides to the contrary.

h. *Fees for Copies of Records*

- i. The school district shall charge a reasonable fee for providing photocopies or printed copies of records unless printing a copy is the only method to provide for the inspection of data. In determining the amount of the reasonable fee, the school district shall consider the following:
 - (1) the cost of materials, including paper, used to provide the copies;
 - (2) the cost of the labor required to prepare the copies;
 - (3) any schedule of standard copying charges established by the school district in its normal course of operations;
 - (4) any special costs necessary to produce such copies from machine based record-keeping systems, including but not limited to computers and microfilm systems; and
 - (5) mailing costs.

- ii. If 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and, instead, the charge shall be no more than 25 cents for each page copied.
- iii. The cost of providing copies shall be borne by the parent or eligible student.
- iv. The responsible authority, however, may not impose a fee for a copy of an education record made for a parent or eligible student if doing so would effectively prevent or, in the case of a student with a disability, impair the parent or eligible student from exercising their right to inspect or review the student's education records.

15. REQUEST TO AMEND RECORDS; PROCEDURES TO CHALLENGE DATA

a. *Request to Amend Education Records*

The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading, or violates the privacy rights of the student may request that the school district amend those records.

- i. The request shall be in writing, shall identify the item the requestor believes to be inaccurate, misleading, or in violation of the privacy or other rights of the student, shall state the reason for this belief, and shall specify the correction the requestor wishes the school district to make. The request shall be signed and dated by the requestor.
- ii. The school district shall decide whether to amend the education records of the student in accordance with the request within thirty (30) days after receiving the request.
- iii. If the school district decides to refuse to amend the education records of the student in accordance with the request, it shall inform the parent of the student or the eligible student of the refusal and advise the parent or eligible student of the right to a hearing under Subdivision B. of this section.

b. *Right to a Hearing*

If the school district refuses to amend the education records of a student, the school district, on request, shall provide an opportunity for a hearing in order to challenge the content of the student's education records to ensure that information in the education records of the student is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. A hearing shall be conducted in accordance with Subdivision C. of this section.

- i. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.
- ii. If, as a result of the hearing, the school district decides that the

information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the school district, or both.

- iii. Any statement placed in the education records of the student under Subdivision B. of this section shall:
 - (1) be maintained by the school district as part of the education records of the student so long as the record or contested portion thereof is maintained by the school district; and
 - (2) if the education records of the student or the contested portion thereof is disclosed by the school district to any party, the explanation shall also be disclosed to that party.

c. *Conduct of Hearing*

- i. The hearing shall be held within a reasonable period of time after the school district has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing.
- ii. The hearing may be conducted by any individual, including an official of the school district who does not have a direct interest in the outcome of the hearing. The school board attorney shall be in attendance to present the school board's position and advise the designated hearing officer on legal and evidentiary matters.
- iii. The parent of the student or eligible student shall be afforded a full and fair opportunity for hearing to present evidence relative to the issues raised under Subdivisions A. and B. of this section and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.
- iv. The school district shall make a decision in writing within a reasonable period of time after the conclusion of the hearing. The decision shall be based solely on evidence presented at the hearing and shall include a summary of evidence and reasons for the decision.

d. *Appeal*

The final decision of the designated hearing officer may be appealed in accordance with the applicable provisions of Minn-~~esota~~ Stat-~~utes~~ Chapter: 14 relating to contested cases.

16. PROBLEMS ACCESSING DATA

- a. The data practices compliance official is the designated employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems.
- b. Data practices compliance official means the individual designated by the responsible authority.
- c. Any request by an individual with a disability for reasonable modifications of the school district's policies or procedures for purposes of accessing records

shall be made to the data practices compliance official.

17. COMPLAINTS FOR NONCOMPLIANCE WITH FERPA

a. Where to File Complaints

Complaints regarding alleged violations of rights accorded parents and eligible students by FERPA, and the rules promulgated thereunder, shall be submitted in writing to the ~~Family Policy Compliance Office~~, U.S. Department of Education, Student Privacy Office, 400 Maryland Avenue S.W., Washington, D.C. 20202.

b. Content of Complaint

A complaint filed pursuant to this section must contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA and the rules promulgated thereunder has occurred.

18. WAIVER

A parent or eligible student may waive any of his or her rights provided herein pursuant to FERPA. A waiver shall not be valid unless in writing and signed by the parent or eligible student. The school district may not require such a waiver.

19. ANNUAL NOTIFICATION OF RIGHTS

a. Contents of Notice

The school district shall give parents of students currently in attendance and eligible students currently in attendance annual notice by such means as are reasonably likely to inform the parents and eligible students of the following:

- i. That the parent or eligible student has a right to inspect and review the student's education records and the procedure for inspecting and reviewing education records;
- ii. That the parent or eligible student has a right to seek amendment of the student's education records to ensure that those records are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights and the procedure for requesting amendment of records;
- iii. That the parent or eligible student has a right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that federal and state law and the regulations promulgated thereunder authorize disclosure without consent;
- iv. That the parent or eligible student has a right to file a complaint with the U.S. Department of Education regarding an alleged failure by the school district to comply with the requirements of FERPA and the rules promulgated thereunder;
- v. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest for purposes of disclosing education records to other school officials whom the school district has determined to have legitimate educational interests; and
- vi. That the school district forwards education records on request to a

school in which a student seeks or intends to enroll or is already enrolled as long as the disclosure is for purposes related to the student's enrollment or transfer and that such records may include suspension and expulsion records pursuant to the federal Every Student Succeeds Act and, if applicable, a student's history of violent behavior.

b. *Notification to Parents of Students Having a Primary Home Language Other Than English*

The school district shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

c. *Notification to Parents or Eligible Students Who are Disabled*

The school district shall provide for the need to effectively notify parents or eligible students identified as disabled.

20. **DESTRUCTION AND RETENTION OF RECORDS**

Destruction and retention of records by the school district shall be controlled by state and federal law.

21. **COPIES OF POLICY**

Copies of this policy may be obtained by parents and eligible students at the ~~office of~~ the superintendent's office.

Legal References: (TO BE UPDATED UPON ADOPTION)

~~Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. Ch. 14 (Administrative Procedures Act)
Minn. Stat. § 120A.22 (Compulsory Instruction)Minn. Stat. § 121A.40-121A.56 (The Pupil Fair Dismissal Act)Minn. Stat. § 121A.75 (Sharing Disposition Order and Peace Officer Records)Minn. Stat. § 127A.852 (Military-Connected Youth Identifier)Minn. Stat. § 144.341-144.347 (Consent of Minors for Health Services)Minn. Stat. § 260B.171, Subds. 3 and 5 (Disposition Order and Peace Officer Records of Children)Minn. Stat. § 363A.42 (Public Records; Accessibility)Minn. Stat. § 626.556 (Reporting of Maltreatment of Minors)Minn. Rules Parts 1205.0100-1205.2000 (Data Practices)10 U.S.C. § 503(b) and (c) (Enlistments; Recruiting Campaigns; Compilation of Directory Information)18 U.S.C. § 2331 (Definitions)18 U.S.C. § 2332b (Acts of Terrorism Transcending National Boundaries)20 U.S.C. § 1232g et seq. (Family Educational Rights and Privacy Act)20 U.S.C. § 6301 et seq. (Every Student Succeeds Act)20 U.S.C. § 7908 (Armed Forces Recruiting Information)26 U.S.C. §§ 151 and 152 (Internal Revenue Code)34 C.F.R. §§ 99.1-99.67 (Family Educational Rights and Privacy)34 C.F.R. § 300.610-300.627 (Confidentiality of Information)42 C.F.R. § 2.1 et seq. (Confidentiality of Drug Abuse Patient Records)Gonzaga University v. Doc, 536 U.S. 273, 122 S.Ct. 2268, 153 L.Ed. 2d 309 (2002)~~

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS _____.

	AYE	NAY	ABSENT	ABSTAIN
Arneson	_____	_____	_____	_____
Ali	_____	_____	_____	_____
Caprini	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Inz	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Pauly	_____	_____	_____	_____

Presiding Officer

Attest

 Kim Ellison, Chair, Minneapolis
 Public Schools

 Josh Pauly, Clerk, Minneapolis Public
 Schools

SPECIAL SCHOOL DISTRICT NO. 1

Board of Education

Authorizing a Regular COVID-19 Testing Requirement for Participation in High School Athletics

WHEREAS Athletics provides important physical and mental health benefits for students; and

WHEREAS the Minnesota Health Department recognizes organized sports as an activity with increased risk of spreading COVID-19; and

WHEREAS the spread of COVID-19 in athletic settings results in increased absences in classrooms and has a negative impact on academics; and

WHEREAS the spread of COVID-19 has cancelled and impaired athletic opportunity for Minneapolis Public School students for over 18 months; and

WHEREAS Minneapolis Public Schools desires to maintain playing opportunities for our student athletes while maintaining health guidelines advised by local health officials; and

WHEREAS medical professionals and public health officials advise regular testing and vaccination as the best strategies in slowing community spread and infections, and CDC guidelines advise shorter quarantine periods for vaccinated individuals who come in close contact with infected individuals; and

WHEREAS vaccines are available for students ages 12-18 which coincides with students eligible to participate in high school athletics; and

WHEREAS unlike academic and classroom access, athletic participation is a privilege, not a right; and

WHEREAS Minneapolis Public Schools currently includes medical clearance as part of our high school athletic registration process.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Special School District No. 1, hereby directs and grants necessary authorization to the Superintendent to implement the following procedure effective immediately:

1. Requirement that all student athletes produce a negative COVID-19 test weekly in order to participate in MPS athletics
2. An exemption option to the weekly testing requirement by being fully vaccinated against COVID-19, as defined by the CDC

FINALLY, BE IT RESOLVED that failure to comply will result in immediate suspension from participation.