

## Human Resources/Finance Committee - Working Session

Tuesday, April 14, 2020 4:30 PM

Historic Old Central High School - Board Room, 2nd Floor, 215 N 1st Ave E,  
Duluth, MN 55802

1. **Guest Presentations for this Meeting - None**
2. **Human Resources Report**
  - A. Staffing Report Action Items - Consent Agenda
  - B. HR Resolutions - Consent Agenda - None
  - C. HR Action Items - Consent Agenda
    - 1) \*PLACEHOLDER
  - D. HR Informational Items - None
3. **Finance Report**
  - A. Financial Report - Consent Agenda
    - 1) Financial Report
    - 2) Approval of Payment of Claims - Attached as an "extra"
      - a. Vendor Payments Report
      - b. Student Activity Expenditures Report
      - 3) Budget Revisions
      - 4) Wire Transfers
      - 5) Investment Transactions
      - 6) APU Projections
      - 7) Fundraisers
      - 8) Finance Education - None
    - B. Bids, R.F.P.s and Quotes Reports - Consent Agenda
      - 1) Bids
        - a. BID 1281 - Congdon Park ES Masonry Restoration Project- Restoration Systems, Inc.

This agreement is to perform the work as defined in the attached documents, performing needed masonry tuck pointing on the exterior of the building. The contract sum for this work is \$587,351.00.
      - 2) RFPs - None
      - 3) Quotes - None
    - C. Contracts, Change Orders, and Leases - Consent Agenda
      - 1) Contracts - None
        - a. PLACEHOLDER - Other Contracts
        - 2) Change Orders - None
        - 3) Leases - None
          - a. PLACEHOLDER - Other Leases
      - D. Resolutions - Consent Agenda
        - 1) B-4-20-xxxx - Acceptance of Donations
        - 2) B-4-20-xxxx - Authorized Bank Account Signer
        - 3) B-4-20-xxxx - Release and Pledge of Collateral
        - 4) PLACEHOLDER - Other Resolutions
      - E. Informational - These items are provided for informational purposes only; no action is required.
        - 1) Expenditure Contracts

The Superintendent or CFO/Executive Director of Business Services has signed these contracts during the month of March 2020.
        - 2) Extension or Renewal Contracts - None

- 3) No Cost Contracts  
The Superintendent or CFO/Executive Director of Business Services has signed these contracts during the month of March 2020.
- 4) Revenue Contracts - None
- 5) Grant Applications - None
- 6) Property Sale Updates
- 7) Facilities Management & Capital Project Status Report
- 8) Change Orders Signed - None
- 9) Policies and Regulations - None
- 10) Legislative Update
- 11) Preliminary 2020-2021 Budget Information

**HUMAN RESOURCES ACTION ITEMS FOR: 4/21/2020**

| <u>CERT LEAVES</u> | <u>POSITION/LOCATION/LEAVE TYPE</u>                               | <u>EFFECTIVE DATES</u> |
|--------------------|---|------------------------|
| MOOERS, BRIAN      | SPEC ED ELEM PHY ED/CHESTER/MERRITT/LESTER, A MEDICAL" LWOP DATE" | 2/24/2020              |
| REMINGTON, SARAH   | SPEC ED/EBD/ROCKRIDGE, #4125 LWOP                                 | 3/23/2020 3/27/2020    |
| Total: 2           |   |                        |

| <u>CERT RETIREMENT</u> | <u>POSITION/LOCATION</u>             | <u>EFFECTIVE DATES</u> |
|------------------------|--------------------------------------|------------------------|
| ANDERSON, JILL         | SPEC ED/EBD/ARROWHEAD ACADEMY        | 6/8/2020               |
| DANIEL, GAYLE          | KINDERGARTEN/MYERS-WILKINS           | 6/8/2020               |
| DAVERN, JULIE          | SPEC ED INTERVENTIONIST/LESTER       | 6/8/2020               |
| FULLER, LISA           | SOCIAL STUDIES/ORDEAN EAST           | 6/8/2020               |
| FURTMAN, MARY JO       | MATH/EAST                            | 6/8/2020               |
| GLASER, LINDA          | ECFE PARENT EDUCATOR/DW              | 6/8/2020               |
| MURPHY, CAMILLE        | SCHOOL NURSE/DW                      | 6/8/2020               |
| PICKAR, WENDY          | SPEC ED PHYSICAL THERAPIST/MACARTHUR | 6/30/2020              |
| TYLLIA, RAE            | GRADE 4/PIEDMONT                     | 6/8/2020               |
| WATKINS-MELBY, LAUREL  | PRE-KINDERGARTEN/MYERS-WILKINS       | 6/8/2020               |
| Total: 10              |                                      |                        |

| <u>NONCERT APPOINTMENT</u> | <u>POSITION/LOCATION/WEEKS/RATE OF PAY/REASON</u>                           | <u>EFFECTIVE DATES</u> |
|----------------------------|---|------------------------|
| COOK, AVERY                | PARA/ASL FACILITATOR/EAST, 32.5/38WKS, \$16.08/HR, TEMP POS                 | 3/9/2020 6/5/2020      |
| HALVER, STEVEN             | ENGINEER II/LESTER, 40/52WKS, \$23.29/HR, A DARTANYAN                       | 3/2/2020               |
| KILPELA, CIERRA            | SPEC ED PARA/BW/ORDEAN EAST, 32.5/38WKS, \$16.08/HR, M GILBERTSON, TEMP POS | 3/2/2020 6/5/2020      |
| THIES, CELINA              | SPEC ED PARA/PROG/EAST, 32.5/38WKS, \$16.08/HR, K ADAMS, TEMP POS           | 3/3/2020 6/5/2020      |
| TOSO, SCOTT                | ENGINEER I/ROCKRIDGE, 40/52WKS, \$22.22/HR, M PATENAUDE                     | 3/3/2020               |
| Total: 5                   |   |                        |

| <u>NONCERT LEAVES</u>  | <u>POSITION/LOCATION/TYPER OF LEAVE</u>              | <u>EFFECTIVE DATES</u> |
|------------------------|--|------------------------|
| ADAMS, KATHLEEN        | SPEC ED PAR/EAST, A MEDICAL" LWOP DATE TBD"          | 3/19/2020              |
| CROWE, KAYLI           | SPEC ED PARA/LOWELL, A MEDICAL" LWOP DATE TBD"       | 3/18/2020              |
| EASTWOOD, ALEXIS       | SPEC ED PARA/LINCOLN, A MEDICAL" LWOP DATE TBD"      | 3/18/2020              |
| FEDLER, ANNETTE        | HEALTH PARA/LPN/STOWE, A MEDICAL" LWOP DATE TBD"     | 2/14/2020              |
| GIERNOT, BERNICE       | FOOD SERVICE HELPER/MYERS-WILKINS, A MEDICAL" LWOP"  | 3/12/2020              |
| KIRK, LARAE            | FOOD SERVICE HELPER/LTS/LINCOLN, A MEDICAL" LWOP"    | 3/13/2020              |
| MARSHALL, HOLLY        | HEALTH PARA/LPN/LESTER, A MEDICAL" LWOP DATE TBD"    | 3/18/2020              |
| MODEAN, ROCHELLE       | PRE-SCHOOL PARA/MYERS-WILKINS, A PERSONAL" LWOP TBD" | 2/18/2020              |
| SERRA-WIBERG, PATRICIA | PRE-SCHOOL PARA/PIEDMONT, A" MEDICAL LWOP"           | 3/18/2020              |
| SUNDLAND, MIRANDA      | SPEC ED PARA/PIEDMONT, A" MEDICAL LWOP"              | 3/18/2020              |
| VANDAL, TYLER          | SUPV PARA/PIEDMONT, A" PERSONAL LWOP"                | 3/16/2020 3/20/2020    |
| WILSON, KATHLEEN       | OSS/EAST, A PERSONAL LWOP                            | 3/18/2020 3/25/2020    |
| Total: 12              |  |                        |

| <u>NONCERT PERM DECREASE</u> | <u>POSITION/LOCATION/CONDITION</u>   | <u>EFFECTIVE DATES</u> |
|------------------------------|--------------------------------------|------------------------|
| NEPHEW, SARA                 | SPEC ED PARA/LPN/EAST, .8125 TO .775 | 3/9/2020               |
| Total: 1                     |                                      |                        |

| <u>NONCERT RESIGNATION</u> | <u>POSITION/LOCATION</u>                           | <u>EFFECTIVE DATES</u> |
|----------------------------|--|------------------------|
| BAKKEN, KIM                | PRE-SCHOOL PARA/PIEDMONT                           | 3/13/2020              |
| BARNESS, JASON             | COORDHEALTH, SAFETY & ENVIRONMENTAL MGT/FACILITIES | 4/10/2020              |
| BETTS, COLLEEN             | FOOD SERVICE SITE SUPERVISOR/HOCHS                 | 3/26/2020              |
| QUINN, THOMAS              | EARLY CHILDHOOD BUSINESS MANAGER/HOCHS             | 3/24/2020              |
| THOMSON, CHRISTOPHER       | CUSTODIAN II/CONGDON                               | 3/5/2020               |
| VANERT, MICHAEL            | CUSTODIAN II/DENFELD                               | 4/3/2020               |
| Total: 6                   |  |                        |

| <u>NONCERT TERMINATION</u> | <u>POSITION/LOCATION</u>                     | <u>EFFECTIVE DATES</u> |
|----------------------------|--|------------------------|
| WILLIAMSON, LIZA           | SUPV PARA/DENFELD, REJECTED DURING PROBATION | 3/13/2020              |
| YATES, MEGHAN              | SPEC ED PARA/STUD SPEC/LESTER                | 3/11/2020              |
| Total: 2                   |  |                        |

**Duluth Public Schools - ISD 709**  
**Cash Flow Report**  
**Month Ending 02/28/20**

|                                    |           | General       | Food         |                     | Community      | Operating    |                   | Debt         | Trust &         |              | Student               |              |
|------------------------------------|-----------|---------------|--------------|---------------------|----------------|--------------|-------------------|--------------|-----------------|--------------|-----------------------|--------------|
|                                    | Total     | Fund<br>1     | Service<br>2 | Transportation<br>3 | Education<br>4 | Capital<br>5 | Construction<br>6 | Service<br>7 | Agency<br>8 & 9 | Dental<br>20 | Activities<br>71 & 79 |              |
| Cash and investments               | 1/31/2020 | \$ 16,221,924 | \$ 5,799,945 | \$ 1,206,417        | \$ (4,007,824) | \$ 2,468,854 | \$ 3,208,493      | \$ 156,071   | \$ 4,468,419    | \$ 1,177,480 | \$ 562,731            | \$ 1,181,338 |
| Receivables (increase)/decrease -  |           | 4,339         | 779          | 839                 | 2,062          | -            | -                 | -            | 0               | -            | 658                   | -            |
| Payables increase/(decrease) -     |           | 156,572       | (64,647)     | 38,690              | 50,043         | 95,777       | 36,669            | -            | -               | -            | 40                    | -            |
| Revenues increase/(decrease) -     |           | 13,077,944    | 8,265,951    | 459,605             | 398,052        | 372,451      | 2,798,558         | 163          | -               | 1,383        | 75,908                | 705,872      |
| Expenditures (increase)/decrease - |           | (15,153,013)  | (10,021,808) | (389,356)           | (693,757)      | (567,029)    | (2,803,664)       | -            | -               | -            | (101,851)             | (575,548)    |
| Cash and investments               | 2/28/2020 | \$ 14,307,765 | \$ 3,980,221 | \$ 1,316,195        | \$ (4,251,424) | \$ 2,370,053 | \$ 3,240,055      | \$ 156,234   | \$ 4,468,419    | \$ 1,178,864 | \$ 537,486            | \$ 1,311,662 |

|                                   |  | General Fund<br>Feb-20 |                |                | Percent of year              | 66.67%                         |
|-----------------------------------|--|------------------------|----------------|----------------|------------------------------|--------------------------------|
|                                   |  | FY20<br>Actual         | FY 20 Budget   |                | Revised<br>Budget<br>Balance | Percent<br>Budget<br>Remaining |
|                                   |  |                        | Adopted        | Revised        |                              |                                |
| <b>Revenues</b>                   |  |                        |                |                |                              |                                |
| Levy                              |  | \$ 8,569,388           | \$ 18,094,028  | \$ 18,094,028  | \$ 9,524,640                 | 53%                            |
| State aids                        |  | 43,101,551             | 69,862,620     | 70,659,748     | 27,558,197                   | 39%                            |
| Special ED (fin 740)              |  | 8,550,402              | 13,955,922     | 13,955,922     | 5,405,520                    | 39%                            |
| Federal                           |  | 1,279,487              | 5,812,924      | 7,034,395      | 5,754,908                    | 82%                            |
| Other                             |  | 60,855                 | -              | 141,122        | 80,267                       | 57%                            |
| Other Local                       |  | 1,727,144              | 3,267,468      | 3,876,768      | 2,149,624                    | 55%                            |
| Student Activities                |  | 1,005,894              | 1,419,021      | 1,419,021      | 413,127                      | 29%                            |
| <hr/>                             |  |                        |                |                |                              |                                |
| Total Revenue                     |  | \$ 64,294,721          | \$ 112,411,983 | \$ 115,181,004 | \$ 50,886,283                | 44%                            |
| <hr/>                             |  |                        |                |                |                              |                                |
| <b>Expenditures</b>               |  |                        |                |                |                              |                                |
| 010-050 Administration            |  | \$ 3,032,039           | \$ 5,430,487   | \$ 5,446,083   | \$ 2,414,044                 | 44%                            |
| 105-110 District Support Services |  | 4,218,055              | 5,522,790      | 5,620,969      | 1,402,914                    | 25%                            |
| 200-298 Elem & Secondary Reg      |  | 22,503,641             | 44,450,886     | 45,199,444     | 22,695,803                   | 50%                            |
| 300-380 Vocational Education      |  | 770,155                | 1,656,336      | 1,661,710      | 891,555                      | 54%                            |
| 400-422 Special Education         |  | 13,468,241             | 24,295,216     | 25,315,213     | 11,846,972                   | 47%                            |
| 505-590 Community Education       |  |                        |                |                |                              |                                |
| 605-640 Instructional Support     |  | 2,267,103              | 4,392,611      | 4,466,135      | 2,199,032                    | 49%                            |
| 710-770 Pupil Support             |  | 5,548,802              | 7,950,242      | 8,365,104      | 2,816,302                    | 34%                            |
| 805-865 Sites and Buildings       |  | 8,812,897              | 13,434,269     | 15,177,679     | 6,364,782                    | 42%                            |
| 910-940 Fiscal & Other Fixed      |  | 965,131                | 3,363,554      | 3,363,554      | 2,398,423                    | 71%                            |
| Student Activities                |  | 731,114                | 1,419,021      | 1,419,021      | 687,907                      | 48%                            |
| <hr/>                             |  |                        |                |                |                              |                                |
| Total Expenditures                |  | \$ 62,317,178          | \$ 111,915,412 | \$ 116,034,912 | \$ 53,717,734                | 46%                            |
| <hr/>                             |  |                        |                |                |                              |                                |
| Excess Rev Over (Under)           |  | \$ 1,977,543           | \$ 496,571     | \$ (853,908)   | \$ (2,831,451)               |                                |

|                                   |    | Percent of year           |               |               | 66.67%         |           |
|-----------------------------------|----|---------------------------|---------------|---------------|----------------|-----------|
|                                   |    | General Fund Unrestricted |               |               |                |           |
|                                   |    | Feb-20                    |               |               |                |           |
|                                   |    | FY20                      | FY 20 Budget  |               | Revised        | Percent   |
|                                   |    | Actual                    | Adopted       | Revised       | Budget         | Budget    |
|                                   |    |                           |               |               | Balance        | Remaining |
| <b>Revenues</b>                   |    |                           |               |               |                |           |
| Levy                              | \$ | 6,617,740                 | \$ 13,865,066 | \$ 13,865,066 | \$ 7,247,326   | 52%       |
| State aids                        |    | 42,896,732                | 59,677,472    | 60,374,804    | 17,478,072     | 29%       |
| Special ED (fin 740)              |    | 8,550,402                 | 13,955,922    | 13,955,922    | 5,405,520      | 39%       |
| Federal                           |    | -                         | -             | -             | -              |           |
| Other                             |    | 60,855                    | -             | 141,122       | 80,267         | 57%       |
| Other Local                       |    | 1,012,449                 | 2,430,255     | 2,449,700     | 1,437,251      | 59%       |
| Student Activities                |    | 1,005,894                 | 1,419,021     | 1,419,021     | 413,127        | 29%       |
| <hr/>                             |    |                           |               |               |                |           |
| Total Revenue                     | \$ | 60,144,072                | \$ 91,347,736 | \$ 92,205,635 | \$ 32,061,563  | 35%       |
| <hr/>                             |    |                           |               |               |                |           |
| <b>Expenditures</b>               |    |                           |               |               |                |           |
| 010-050 Administration            | \$ | 3,026,693                 | \$ 5,430,487  | \$ 5,430,737  | \$ 2,404,044   | 44%       |
| 105-110 District Support Services |    | 4,084,673                 | 5,382,790     | 5,433,874     | 1,349,201      | 25%       |
| 200-298 Elem & Secondary Reg      |    | 17,626,881                | 32,574,725    | 33,085,118    | 15,458,237     | 47%       |
| 300-380 Vocational Education      |    | 739,480                   | 1,504,853     | 1,504,853     | 765,373        | 51%       |
| 400-422 Special Education         |    | 11,490,498                | 21,355,799    | 21,358,068    | 9,867,570      | 46%       |
| 505-590 Community Education       |    |                           |               |               |                |           |
| 605-640 Instructional Support     |    | 1,012,546                 | 1,905,429     | 1,907,329     | 894,783        | 47%       |
| 710-770 Pupil Support             |    | 5,253,378                 | 7,950,242     | 8,290,205     | 3,036,827      | 37%       |
| 805-865 Sites and Buildings       |    | 6,795,911                 | 9,722,794     | 9,986,113     | 3,190,202      | 32%       |
| 910-940 Fiscal & Other Fixed      |    | 965,131                   | 3,363,554     | 3,363,554     | 2,398,423      | 71%       |
| Student Activities                |    | 731,114                   | 1,419,021     | 1,419,021     | 687,907        | 48%       |
| <hr/>                             |    |                           |               |               |                |           |
| Total Expenditures                | \$ | 51,726,305                | \$ 90,609,694 | \$ 91,778,872 | \$ 40,052,567  | 44%       |
| <hr/>                             |    |                           |               |               |                |           |
| Excess Rev Over (Under)           | \$ | 8,417,767                 | \$ 738,042    | \$ 426,763    | \$ (7,991,004) |           |

|                                   |                       | Percent of year         |                       |                      | 66.67%     |
|-----------------------------------|-----------------------|-------------------------|-----------------------|----------------------|------------|
|                                   |                       | General Fund Restricted |                       |                      |            |
|                                   |                       | Feb-20                  |                       |                      |            |
|                                   | FY20                  | FY 20 Budget            |                       | Revised              | Percent    |
|                                   | Actual                | Adopted                 | Revised               | Budget               | Budget     |
|                                   |                       |                         |                       | Balance              | Remaining  |
| <b>Revenues</b>                   |                       |                         |                       |                      |            |
| Levy                              | \$ 1,951,648          | \$ 4,228,962            | \$ 4,228,962          | \$ 2,277,314         | 54%        |
| State aids                        | 204,819               | 10,185,148              | 10,284,944            | 10,080,125           | 98%        |
| Special ED (fin 740)              | -                     | -                       | -                     | -                    |            |
| Federal                           | 1,279,487             | 5,812,924               | 7,034,395             | 5,754,908            | 82%        |
| Other                             | -                     | -                       | -                     | -                    |            |
| Other Local                       | 714,695               | 837,213                 | 1,427,068             | 712,373              | 50%        |
| Student Activities                | -                     | -                       | -                     | -                    |            |
| <b>Total Revenue</b>              | <b>\$ 4,150,649</b>   | <b>\$ 21,064,247</b>    | <b>\$ 22,975,369</b>  | <b>\$ 18,824,720</b> | <b>82%</b> |
| <b>Expenditures</b>               |                       |                         |                       |                      |            |
| 010-050 Administration            | \$ 5,346              | \$ -                    | \$ 15,346             | \$ 10,000            | 65%        |
| 105-110 District Support Services | 133,382               | 140,000                 | 187,095               | 53,713               | 29%        |
| 200-298 Elem & Secondary Reg      | 4,876,760             | 11,876,161              | 12,114,326            | 7,237,566            | 60%        |
| 300-380 Vocational Education      | 30,675                | 151,483                 | 156,857               | 126,182              | 80%        |
| 400-422 Special Education         | 1,977,743             | 2,939,417               | 3,957,145             | 1,979,402            | 50%        |
| 505-590 Community Education       |                       |                         |                       |                      |            |
| 605-640 Instructional Support     | 1,254,557             | 2,487,182               | 2,558,806             | 1,304,249            | 51%        |
| 710-770 Pupil Support             | 295,424               | -                       | 74,899                | (220,525)            | -294%      |
| 805-865 Sites and Buildings       | 2,016,986             | 3,711,475               | 5,191,566             | 3,174,580            | 61%        |
| 910-940 Fiscal & Other Fixed      | -                     | -                       | -                     | -                    |            |
| Student Activities                |                       |                         |                       |                      |            |
| <b>Total Expenditures</b>         | <b>\$ 10,590,873</b>  | <b>\$ 21,305,718</b>    | <b>\$ 24,256,040</b>  | <b>\$ 13,665,167</b> | <b>56%</b> |
| <b>Excess Rev Over (Under)</b>    | <b>\$ (6,440,224)</b> | <b>\$ (241,471)</b>     | <b>\$ (1,280,671)</b> | <b>\$ 5,159,553</b>  |            |

Percent of year **66.67%**

**Food Service Fund  
Feb-20**

|                                   | FY20<br>Actual      | FY 20 Budget          |                     | Revised<br>Budget<br>Balance | Percent<br>Budget<br>Remaining |
|-----------------------------------|---------------------|-----------------------|---------------------|------------------------------|--------------------------------|
|                                   |                     | Adopted               | Revised             |                              |                                |
| <b>Revenues</b>                   |                     |                       |                     |                              |                                |
| Levy                              | \$ -                | \$ -                  | \$ -                | \$ -                         |                                |
| State aids                        | 134,787             | 232,000               | 232,000             | 97,213                       | 42%                            |
| Special ED (fin 740)              | -                   | -                     | -                   | -                            |                                |
| Federal                           | 1,225,812           | 2,674,000             | 2,721,840           | 1,496,028                    | 55%                            |
| Other                             | 905,993             | 8,000                 | 1,400,800           | 494,807                      | 35%                            |
| Other Local                       | 11,845              |                       | 12,500              | 655                          | 5%                             |
| Student Activities                | -                   | -                     | -                   | -                            |                                |
| <b>Total Revenue</b>              | <b>\$ 2,278,437</b> | <b>\$ 2,914,000</b>   | <b>\$ 4,367,140</b> | <b>\$ 2,088,703</b>          | <b>48%</b>                     |
| <b>Expenditures</b>               |                     |                       |                     |                              |                                |
| 010-050 Administration            | \$ -                | \$ -                  | \$ -                | \$ -                         |                                |
| 105-110 District Support Services | -                   | -                     | -                   | -                            |                                |
| 200-298 Elem & Secondary Reg      | -                   | -                     | -                   | -                            |                                |
| 300-380 Vocational Education      | -                   | -                     | -                   | -                            |                                |
| 400-422 Special Education         | -                   | -                     | -                   | -                            |                                |
| 505-590 Community Education       | -                   | -                     | -                   | -                            |                                |
| 605-640 Instructional Support     | -                   | -                     | -                   | -                            |                                |
| 710-770 Pupil Support             | 2,249,890           | 4,315,142             | 4,367,482           | 2,117,592                    | 48%                            |
| 805-865 Sites and Buildings       | -                   | -                     | -                   | -                            |                                |
| 910-940 Fiscal & Other Fixed      | -                   | -                     | -                   | -                            |                                |
| Student Activities                | -                   | -                     | -                   | -                            |                                |
| <b>Total Expenditures</b>         | <b>\$ 2,249,890</b> | <b>\$ 4,315,142</b>   | <b>\$ 4,367,482</b> | <b>\$ 2,117,592</b>          | <b>48%</b>                     |
| <b>Excess Rev Over (Under)</b>    | <b>\$ 28,547</b>    | <b>\$ (1,401,142)</b> | <b>\$ (342)</b>     | <b>\$ (28,889)</b>           |                                |



Percent of year **66.67%**

**Community Service Fund  
Feb-20**

|  | FY20<br>Actual      | FY 20 Budget        |                     | Revised<br>Budget<br>Balance | Percent<br>Budget<br>Remaining |
|--|---------------------|---------------------|---------------------|------------------------------|--------------------------------|
|  |                     | Adopted             | Revised             |                              |                                |
| <b>Revenues</b>                                    |                     |                     |                     |                              |                                |
| Levy   | \$ 227,608          | \$ 967,904          | \$ 967,904          | \$ 740,296                   | 76%                            |
| State aids   | 1,720,977           | 2,554,075           | 2,554,075           | 833,098                      | 33%                            |
| Special ED (fin 740)                               | -                   | -                   | -                   | -                            |                                |
| Federal  | 867,423             | 2,048,958           | 2,056,528           | 1,189,105                    | 58%                            |
| Other  | -                   | -                   | -                   | -                            |                                |
| Other Local  | 1,384,181           | 1,992,063           | 2,002,063           | 617,882                      | 31%                            |
| Student Activities                                 | -                   | -                   | -                   | -                            |                                |
| <b>Total Revenue</b>                               | <b>\$ 4,200,189</b> | <b>\$ 7,563,000</b> | <b>\$ 7,580,570</b> | <b>\$ 3,380,381</b>          | <b>45%</b>                     |
| <b>Expenditures</b>                                |                     |                     |                     |                              |                                |
| 010-050 Administration                             | \$ -                | \$ -                | \$ -                | \$ -                         |                                |
| 105-110 District Support Services                  | -                   | -                   | -                   | -                            |                                |
| 200-298 Elem & Secondary Reg                       | -                   | -                   | -                   | -                            |                                |
| 300-380 Vocational Education                       | -                   | -                   | -                   | -                            |                                |
| 400-422 Special Education                          | -                   | -                   | -                   | -                            |                                |
| 505-590 Community Education                        | 4,096,711           | 7,789,371           | 7,806,941           | 3,710,230                    | 48%                            |
| 605-640 Instructional Support                      | -                   | -                   | -                   | -                            |                                |
| 710-770 Pupil Support                              | -                   | -                   | -                   | -                            |                                |
| 805-865 Sites and Buildings                        | -                   | -                   | -                   | -                            |                                |
| 910-940 Fiscal & Other Fixed<br>Student Activities | -                   | -                   | -                   | -                            |                                |
| <b>Total Expenditures</b>                          | <b>\$ 4,096,711</b> | <b>\$ 7,789,371</b> | <b>\$ 7,806,941</b> | <b>\$ 3,710,230</b>          | <b>48%</b>                     |
| <b>Excess Rev Over (Under)</b>                     | <b>\$ 103,478</b>   | <b>\$ (226,371)</b> | <b>\$ (226,371)</b> | <b>\$ (329,849)</b>          |                                |

Percent of year

66.67%

**Capital Projects Fund  
Feb-20**

|  | FY20<br>Actual    | FY 20 Budget |                     | Revised<br>Budget<br>Balance | Percent<br>Budget<br>Remaining |
|--|-------------------|--------------|---------------------|------------------------------|--------------------------------|
|  |                   | Adopted      | Revised             |                              |                                |
| <b>Revenues</b>                                    |                   |              |                     |                              |                                |
| Levy   | \$ -              | \$ -         | \$ -                | \$ -                         |                                |
| State aids   | -                 | -            | -                   | -                            |                                |
| Special ED (fin 740)                               | -                 | -            | -                   | -                            |                                |
| Federal  | -                 | -            | -                   | -                            |                                |
| Sales  | -                 | -            | -                   | -                            |                                |
| Other Local  | 1,303             | -            | 1,140               | (163)                        |                                |
| Student Activities                                 | -                 | -            | -                   | -                            |                                |
| <b>Total Revenue</b>                               | <b>\$ 1,303</b>   | <b>\$ -</b>  | <b>\$ 1,140</b>     | <b>\$ (163)</b>              |                                |
| <b>Expenditures</b>                                |                   |              |                     |                              |                                |
| 010-050 Administration                             | \$ -              | \$ -         | \$ -                | \$ -                         |                                |
| 105-110 District Support Services                  | -                 | -            | -                   | -                            |                                |
| 200-298 Elem & Secondary Reg                       | -                 | -            | -                   | -                            |                                |
| 300-380 Vocational Education                       | -                 | -            | -                   | -                            |                                |
| 400-422 Special Education                          | -                 | -            | -                   | -                            |                                |
| 505-590 Community Education                        | -                 | -            | -                   | -                            |                                |
| 605-640 Instructional Support                      | -                 | -            | -                   | -                            |                                |
| 710-770 Pupil Support                              | -                 | -            | -                   | -                            |                                |
| 805-865 Sites and Buildings                        | 9,129             | -            | 165,191             | 156,062                      | 94%                            |
| 910-940 Fiscal & Other Fixed<br>Student Activities | -                 | -            | -                   | -                            |                                |
| <b>Total Expenditures</b>                          | <b>\$ 9,129</b>   | <b>\$ -</b>  | <b>\$ 165,191</b>   | <b>\$ 156,062</b>            | <b>94%</b>                     |
| <b>Excess Rev Over (Under)</b>                     | <b>\$ (7,826)</b> | <b>\$ -</b>  | <b>\$ (164,051)</b> | <b>\$ (156,225)</b>          |                                |

Percent of year

**66.67%**

**Debt Service Fund  
Feb-20**

|  | FY20<br>Actual        | FY 20 Budget         |                      | Revised<br>Budget<br>Balance | Percent<br>Budget<br>Remaining |
|--|-----------------------|----------------------|----------------------|------------------------------|--------------------------------|
|  |                       | Adopted              | Revised              |                              |                                |
| <b>Revenues</b>                                    |                       |                      |                      |                              |                                |
| Levy   | \$ 10,254,352         | \$ 19,509,440        | \$ 19,509,440        | \$ 9,255,088                 | 47%                            |
| State aids   | 1,995,984             | 2,194,363            | 2,194,363            | 198,379                      | 9%                             |
| Special ED (fin 740)                               | -                     | -                    | -                    | -                            |                                |
| Federal  | -                     | -                    | -                    | -                            |                                |
| Other  | -                     | -                    | -                    | -                            |                                |
| Other Local  | 463                   | 10,000               | 10,000               | 9,537                        | 95%                            |
| Student Activities                                 | -                     | -                    | -                    | -                            |                                |
| <b>Total Revenue</b>                               | <b>\$ 12,250,799</b>  | <b>\$ 21,713,803</b> | <b>\$ 21,713,803</b> | <b>\$ 9,463,004</b>          | <b>44%</b>                     |
| <b>Expenditures</b>                                |                       |                      |                      |                              |                                |
| 010-050 Administration                             | \$ -                  | \$ -                 | \$ -                 | \$ -                         |                                |
| 105-110 District Support Services                  | -                     | -                    | -                    | -                            |                                |
| 200-298 Elem & Secondary Reg                       | -                     | -                    | -                    | -                            |                                |
| 300-380 Vocational Education                       | -                     | -                    | -                    | -                            |                                |
| 400-422 Special Education                          | -                     | -                    | -                    | -                            |                                |
| 505-590 Community Education                        | -                     | -                    | -                    | -                            |                                |
| 605-640 Instructional Support                      | -                     | -                    | -                    | -                            |                                |
| 710-770 Pupil Support                              | -                     | -                    | -                    | -                            |                                |
| 805-865 Sites and Buildings                        | -                     | -                    | -                    | -                            |                                |
| 910-940 Fiscal & Other Fixed<br>Student Activities | 20,729,586            | 20,744,824           | 20,744,824           | 15,238                       | 0%                             |
| <b>Total Expenditures</b>                          | <b>\$ 20,729,586</b>  | <b>\$ 20,744,824</b> | <b>\$ 20,744,824</b> | <b>\$ 15,238</b>             | <b>0%</b>                      |
| <b>Excess Rev Over (Under)</b>                     | <b>\$ (8,478,787)</b> | <b>\$ 968,979</b>    | <b>\$ 968,979</b>    | <b>\$ 9,447,766</b>          |                                |

|                                   |    | Trust Fund<br>Feb-20 |              |            | Percent of year              | 66.67%                         |
|-----------------------------------|----|----------------------|--------------|------------|------------------------------|--------------------------------|
|                                   |    | FY20<br>Actual       | FY 20 Budget |            | Revised<br>Budget<br>Balance | Percent<br>Budget<br>Remaining |
|                                   |    |                      | Adopted      | Revised    |                              |                                |
| <b>Revenues</b>                   |    |                      |              |            |                              |                                |
| Levy                              | \$ | -                    | \$ -         | \$ -       | \$ -                         |                                |
| State aids                        |    | -                    | -            | -          | -                            |                                |
| Special ED (fin 740)              |    | -                    | -            | -          | -                            |                                |
| Federal                           |    | -                    | -            | -          | -                            |                                |
| Other                             |    | -                    | -            | -          | -                            |                                |
| Other Local                       |    | 6,790                | 252,950      | 252,950    | 246,160                      | 97%                            |
| Student Activities                |    | -                    | -            | -          | -                            |                                |
| <hr/>                             |    |                      |              |            |                              |                                |
| Total Revenue                     | \$ | 6,790                | \$ 252,950   | \$ 252,950 | \$ 246,160                   | 97%                            |
| <hr/>                             |    |                      |              |            |                              |                                |
| <b>Expenditures</b>               |    |                      |              |            |                              |                                |
| 010-050 Administration            | \$ | -                    | \$ -         | \$ -       | \$ -                         |                                |
| 105-110 District Support Services |    | -                    | -            | -          | -                            |                                |
| 200-298 Elem & Secondary Reg      |    | 250,000              | 250,000      | 250,000    | -                            | 0%                             |
| 300-380 Vocational Education      |    | -                    | -            | -          | -                            |                                |
| 400-422 Special Education         |    | -                    | -            | -          | -                            |                                |
| 505-590 Community Education       |    | -                    | -            | -          | -                            |                                |
| 605-640 Instructional Support     |    | -                    | -            | -          | -                            |                                |
| 710-770 Pupil Support             |    | -                    | -            | -          | -                            |                                |
| 805-865 Sites and Buildings       |    | -                    | -            | -          | -                            |                                |
| 910-940 Fiscal & Other Fixed      |    | -                    | -            | -          | -                            |                                |
| Student Activities                |    | -                    | -            | -          | -                            |                                |
| <hr/>                             |    |                      |              |            |                              |                                |
| Total Expenditures                | \$ | 250,000              | \$ 250,000   | \$ 250,000 | \$ -                         | 0%                             |
| <hr/>                             |    |                      |              |            |                              |                                |
| Excess Rev Over (Under)           | \$ | (243,210)            | \$ 2,950     | \$ 2,950   | \$ 246,160                   |                                |

Percent of year **66.67%**

**Dental Internal Service Fund  
Feb-20**

|  | FY20<br>Actual    | FY 20 Budget<br>Adopted | Revised           | Revised<br>Budget<br>Balance | Percent<br>Budget<br>Remaining |
|--|-------------------|-------------------------|-------------------|------------------------------|--------------------------------|
| <b>Revenues</b>                                    |                   |                         |                   |                              |                                |
| Levy   | \$ -              | \$ -                    | \$ -              | \$ -                         |                                |
| State aids   | -                 | -                       | -                 | -                            |                                |
| Special ED (fin 740)                               | -                 | -                       | -                 | -                            |                                |
| Federal  | -                 | -                       | -                 | -                            |                                |
| Other  | -                 | -                       | -                 | -                            |                                |
| Other Local  | 705,014           | 878,400                 | 878,400           | 173,386                      | 20%                            |
| Student Activities                                 | -                 | -                       | -                 | -                            |                                |
| <b>Total Revenue</b>                               | <b>\$ 705,014</b> | <b>\$ 878,400</b>       | <b>\$ 878,400</b> | <b>\$ 173,386</b>            | <b>20%</b>                     |
| <b>Expenditures</b>                                |                   |                         |                   |                              |                                |
| 010-050 Administration                             | \$ -              | \$ -                    | \$ -              | \$ -                         |                                |
| 105-110 District Support Services                  | -                 | -                       | -                 | -                            |                                |
| 200-298 Elem & Secondary Reg                       | -                 | -                       | -                 | -                            |                                |
| 300-380 Vocational Education                       | -                 | -                       | -                 | -                            |                                |
| 400-422 Special Education                          | -                 | -                       | -                 | -                            |                                |
| 505-590 Community Education                        | -                 | -                       | -                 | -                            |                                |
| 605-640 Instructional Support                      | -                 | -                       | -                 | -                            |                                |
| 710-770 Pupil Support                              | -                 | -                       | -                 | -                            |                                |
| 805-865 Sites and Buildings                        | -                 | -                       | -                 | -                            |                                |
| 910-940 Fiscal & Other Fixed<br>Student Activities | 325,700           | 878,400                 | 878,400           | 552,700                      | 63%                            |
| <b>Total Expenditures</b>                          | <b>\$ 325,700</b> | <b>\$ 878,400</b>       | <b>\$ 878,400</b> | <b>\$ 552,700</b>            | <b>63%</b>                     |
| <b>Excess Rev Over (Under)</b>                     | <b>\$ 379,314</b> | <b>\$ -</b>             | <b>\$ -</b>       | <b>\$ (379,314)</b>          |                                |

**Duluth Public Schools  
Budget Revisions Fiscal Year Ending June 30, 2020  
Period Ending February 28, 2020**

| <b>Revenues</b>            | <b><u>General-U</u></b> | <b><u>General-R</u></b> | <b><u>Food Service</u></b> | <b><u>Transport</u></b> | <b><u>Community Services</u></b> | <b><u>Capital Expenditure</u></b> | <b><u>Building Construction</u></b> | <b><u>Debt Service</u></b> | <b><u>Trust</u></b> | <b><u>Internal Service</u></b> | <b><u>Student Activities</u></b> | <b><u>Total</u></b> |
|----------------------------|-------------------------|-------------------------|----------------------------|-------------------------|----------------------------------|-----------------------------------|-------------------------------------|----------------------------|---------------------|--------------------------------|----------------------------------|---------------------|
| Revised Budget 01/31/2020  | \$79,782,366            | \$18,788,412            | \$4,325,070                | \$5,934,036             | \$7,580,570                      | \$8,824,129                       | \$1,140                             | \$21,713,803               | \$252,950           | \$878,400                      | \$1,419,021                      | \$149,499,897       |
| Men as Peacemakers         | 250                     |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | 250                 |
| Lowell PTA Donation        | 17,295                  |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | 17,295              |
| ADM Revenue Increase       | 412,032                 |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | 412,032             |
| Eddy Foundation            |                         | 3,463                   |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | 3,463               |
| Food Service Adj           |                         |                         | 42,070                     |                         |                                  |                                   |                                     |                            |                     |                                |                                  | 42,070              |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
|                            |                         |                         |                            |                         |                                  |                                   |                                     |                            |                     |                                |                                  | -                   |
| Revised Budget, 02/28/2020 | \$80,211,943            | \$18,791,875            | \$4,367,140                | \$5,934,036             | \$7,580,570                      | \$8,824,129                       | \$1,140                             | \$21,713,803               | \$252,950           | \$878,400                      | \$1,419,021                      | \$149,975,007       |

**Duluth Public Schools**  
**Budget Revisions Fiscal Year Ending June 30, 2020**  
**Period Ending February 28, 2020**

| <b>Expenditures</b>        | <u>General-U</u>     | <u>General-R</u>   | <u>Food Service</u> | <u>Transport</u>   | <u>Community Services</u> | <u>Capital Expenditure</u> | <u>Building Construction</u> | <u>Debt Service</u> | <u>Trust</u>   | <u>Internal Service</u> | <u>Student Activities</u> | <u>Total</u>       |
|----------------------------|----------------------|--------------------|---------------------|--------------------|---------------------------|----------------------------|------------------------------|---------------------|----------------|-------------------------|---------------------------|--------------------|
| Revised Budget 01/31/2020  | \$79,273,506         | \$18,890,547       | \$4,325,412         | \$6,096,456        | \$7,806,941               | \$9,922,342                | \$165,191                    | \$20,744,824        | \$250,000      | \$878,400               | \$1,419,021               | \$149,772,640      |
| Men as Peacemakers         | 250                  |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | 250                |
| Lowell PTA Donation        | 17,295               |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | 17,295             |
| ADM Revenue Increase       | 412,032              |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | 412,032            |
| Eddy Foundation            |                      | 3,463              |                     |                    |                           |                            |                              |                     |                |                         |                           | 3,463              |
| Food Service Adj           |                      |                    | 42,070              |                    |                           |                            |                              |                     |                |                         |                           | 42,070             |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
|                            |                      |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | -                  |
| Revised Budget, 02/28/2020 | \$79,703,083         | \$18,894,010       | \$4,367,482         | \$6,096,456        | \$7,806,941               | \$9,922,342                | \$165,191                    | \$20,744,824        | \$250,000      | \$878,400               | \$1,419,021               | \$150,247,750      |
| Operating Transfers - in   |                      |                    |                     |                    |                           | 2,671,113                  |                              |                     |                |                         |                           | \$2,671,113        |
| Operating Transfers - out  | (2,671,113)          |                    |                     |                    |                           |                            |                              |                     |                |                         |                           | (\$2,671,113)      |
| <b>Net</b>                 | <b>(\$2,162,253)</b> | <b>(\$102,135)</b> | <b>(\$342)</b>      | <b>(\$162,420)</b> | <b>(\$226,371)</b>        | <b>\$1,572,900</b>         | <b>(\$164,051)</b>           | <b>\$968,979</b>    | <b>\$2,950</b> | <b>\$0</b>              | <b>\$0</b>                | <b>(\$272,743)</b> |

**ISD #709 - Duluth Public Schools**  
**ACH & Wire Transfer Summary**  
**Period Ending 02/29/2020**

| <u>CHECK DATE</u> | <u>VENDOR ID</u> | <u>DESCRIPTION</u>            | <u>MSDLFA</u> |
|-------------------|------------------|-------------------------------|---------------|
| 02/07/2020        | V109781          | AFSCME MN COUNCIL 5 EFT       | 11,481.81     |
| 02/07/2020        | V106466          | CITISTREET FOR MSRS           | 70,138.96     |
| 02/07/2020        | V79764           | DULUTH FEDERATION OF TEA      | 35,111.35     |
| 02/07/2020        | V106637          | EBC - FLEX EFT                | 9,026.36      |
| 02/07/2020        | V106636          | EBC - TSA EFT                 | 88,311.85     |
| 02/07/2020        | V79771           | EDUCATION MN CLERICAL EFT     | 840.34        |
| 02/07/2020        | V102915          | FEDERAL 941 PR TAXES          | 576,051.27    |
| 02/07/2020        | V107231          | HARBOR POINTE CREDIT UNION    | 6,106.00      |
| 02/07/2020        | V108066          | MG TRUST                      | 132,598.04    |
| 02/07/2020        | V05173           | MN CHILD SUPPORT EFT          | 1,532.14      |
| 02/07/2020        | V108320          | MN DEPT OF REVENUE EFT        | 474.55        |
| 02/07/2020        | V102916          | MN STATE PR TAXES             | 94,494.35     |
| 02/07/2020        | V79708           | PUBLIC EMPLOYEES RETIREMENT   | 95,457.53     |
| 02/07/2020        | V108783          | TEACHERS RETIREMENT ASSOC EFT | 284,008.60    |
| 02/07/2020        | V79704           | U S BANK - PY DIRECT DEPOSIT  | 1,665,350.01  |
| 02/21/2020        | V79764           | DULUTH FEDERATION OF TEA      | 35,076.13     |
| 02/21/2020        | V106637          | EBC - FLEX EFT                | 9,026.36      |
| 02/21/2020        | V106636          | EBC - TSA EFT                 | 58,395.85     |
| 02/21/2020        | V79771           | EDUCATION MN CLERICAL EFT     | 840.34        |
| 02/21/2020        | V102915          | FEDERAL 941 PR TAXES          | 608,765.84    |
| 02/21/2020        | V107231          | HARBOR POINTE CREDIT UNION    | 6,106.00      |
| 02/21/2020        | V108066          | MG TRUST                      | 135,287.95    |
| 02/21/2020        | V05173           | MN CHILD SUPPORT EFT          | 1,532.14      |
| 02/21/2020        | V108320          | MN DEPT OF REVENUE EFT        | 358.69        |
| 02/21/2020        | V102916          | MN STATE PR TAXES             | 100,377.77    |
| 02/21/2020        | V79708           | PUBLIC EMPLOYEES RETIREMENT   | 108,246.71    |
| 02/21/2020        | V108783          | TEACHERS RETIREMENT ASSOC EFT | 284,233.07    |
| 02/21/2020        | V79704           | U S BANK - PY DIRECT DEPOSIT  | 1,783,572.25  |
| 02/27/2020        | V106737          | ASSOCIATED BANK (EFT)         | 2,531,429.54  |
| 02/27/2020        | V06645           | MEDICA HEALTH PLAN (EFT)      | 171,235.90    |
| 02/27/2020        | V106638          | PEIP - HLTH EFT               | 1,455,380.56  |
| 02/27/2020        | V80030           | DELTA DENTAL PLAN OF MN(EFT)  | 101,851.07    |
| 02/27/2020        | V104923          | HARRIS BANK                   | 28,573.94     |
|                   |                  |                               | 10,491,273.27 |



**ISD 709 - Duluth Public Schools**  
**GF Investment Activity for FY20**  
**As of February 29, 2020**

**Beginning Investment Balance (January 31, 2020) \$ 2,208,806.83**

**Add Purchases:**

| Date | Issuer | Broker | Matures | Yield (YTM) |
|------|--------|--------|---------|-------------|
|------|--------|--------|---------|-------------|

**Total Purchases \$ -**

**Deduct Maturities/Calls/Sales:**

| Date | Issuer | Broker | Matures | Yield (YTM) |
|------|--------|--------|---------|-------------|
|------|--------|--------|---------|-------------|

|           |                                  |     |           |       |               |
|-----------|----------------------------------|-----|-----------|-------|---------------|
| 2/18/2020 | Great Westrn Bank Sioux Falls SD | MBS | 2/18/2020 | 1.50% | \$ 249,000.00 |
| 2/21/2020 | Bar Harbor Bank & Trust ME       | MBS | 2/21/2020 | 1.55% | \$ 249,000.00 |
| 2/25/2020 | Bank of China NY                 | MNT | 2/25/2020 | 2.08% | \$ 247,300.00 |
| 2/25/2020 | Pacific Western Bank CA          | MNT | 2/25/2020 | 1.98% | \$ 247,400.00 |
| 2/25/2020 | Citadel FCU PA                   | MNT | 2/25/2020 | 1.94% | \$ 247,500.00 |
| 2/25/2020 | Servisfirst Bank FL              | MNT | 2/25/2020 | 1.96% | \$ 247,400.00 |
| 2/26/2020 | Beal Bank Las Vegas              | MBS | 2/26/2020 | 1.60% | \$ 249,000.00 |

**Total Maturities \$ 1,736,600.00**

**Other items:**

|      |                             |           |
|------|-----------------------------|-----------|
| Add: | Money Market Funds Interest | \$ 147.36 |
|      | Beginning Value Adjustment  |           |
|      | Service Charge Fee Reversed |           |

|         |  |
|---------|--|
| Deduct: | Transaction Fees/Service Charge/Other            |
|         | Market Value Adjustment-Adjust for Cost Basis    |
|         | Other Interest/Cash Balance on Account (Reverse) |

**Total Other \$ 147.36**

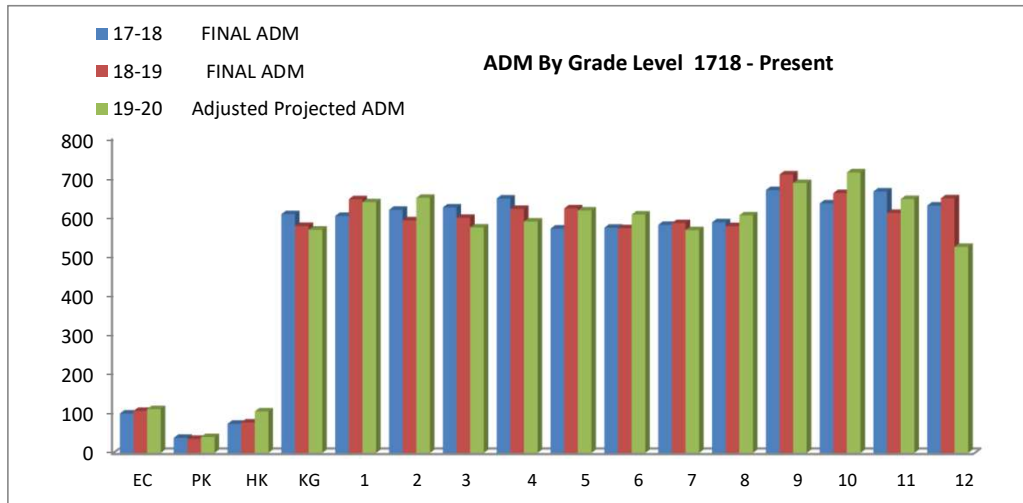
**Ending Investment Balance (February 29, 2020) \$ 472,354.19**

**Note:** Ending Investment Balance as of February 28, 2019 was \$223,051.86

**Duluth Public Schools Projected Average Daily Membership (ADM) Report  
APRIL 2020**

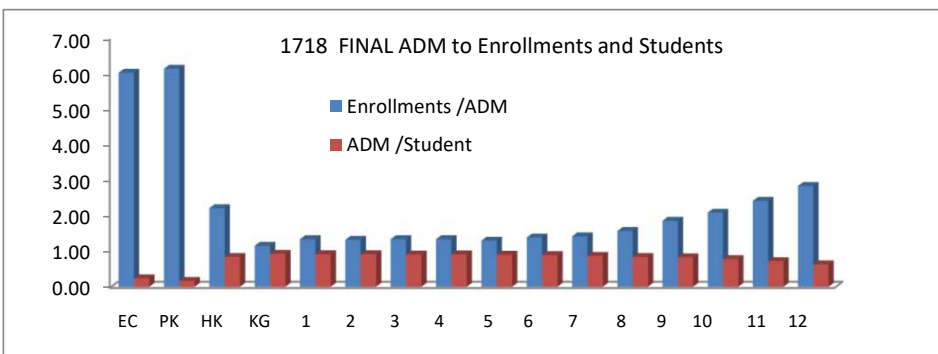
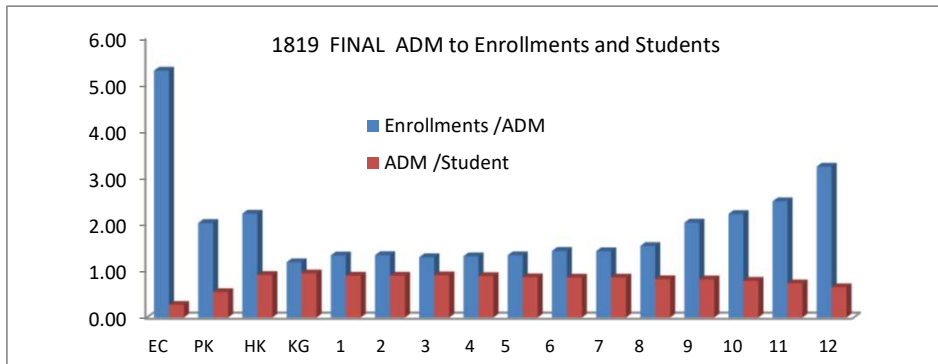
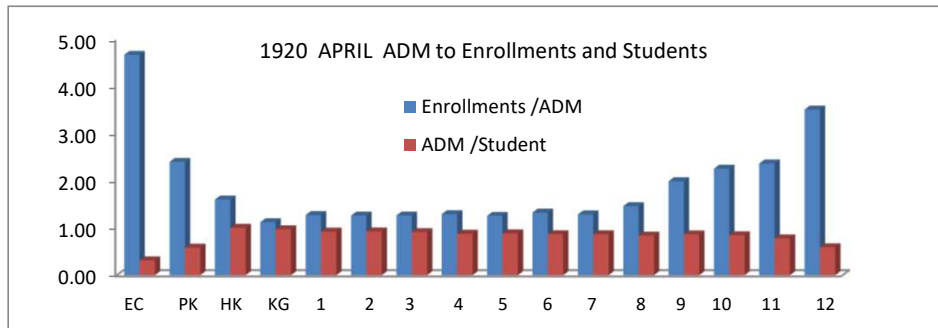
| Grade         | Total Number of Enrollments | Unique Student Count | Current Enrollments | Projected ADM  | Budgeted ADM   | Enrollments /ADM | ADM /Student |
|---------------|-----------------------------|----------------------|---------------------|----------------|----------------|------------------|--------------|
| EC            | 521                         | 355                  | 295                 | 111.40         | 102.00         | 4.68             | 0.31         |
| PK            | 97                          | 69                   | 65                  | 40.30          | 47.12          | 2.41             | 0.58         |
| HK            | 168                         | 104                  | 105.27              | 105.67         | 70.00          | 1.61             | 1.01         |
| KG            | 638                         | 584                  | 569                 | 567.38         | 554.00         | 1.12             | 0.97         |
| 1             | 812                         | 688                  | 642.6               | 637.12         | 640.00         | 1.28             | 0.92         |
| 2             | 818                         | 697                  | 654                 | 648.43         | 616.00         | 1.26             | 0.93         |
| 3             | 724                         | 625                  | 578                 | 573.08         | 590.00         | 1.27             | 0.91         |
| 4             | 759                         | 664                  | 599.51              | 587.98         | 574.00         | 1.30             | 0.88         |
| 5             | 773                         | 692                  | 628.32              | 616.23         | 608.00         | 1.26             | 0.89         |
| 6             | 802                         | 693                  | 617.75              | 605.87         | 592.00         | 1.33             | 0.87         |
| 7             | 744                         | 663                  | 595.68              | 574.07         | 587.00         | 1.29             | 0.87         |
| 8             | 901                         | 733                  | 634.8               | 611.78         | 590.00         | 1.47             | 0.84         |
| 9             | 1390                        | 806                  | 718.8               | 694.06         | 672.00         | 1.99             | 0.86         |
| 10            | 1636                        | 856                  | 746.73              | 721.03         | 705.00         | 2.26             | 0.85         |
| 11            | 1572                        | 849                  | 683.95              | 660.41         | 634.00         | 2.37             | 0.78         |
| 12            | 2011                        | 963                  | 589.77              | 569.47         | 599.00         | 3.52             | 0.59         |
| <b>Total:</b> | <b>14366</b>                | <b>10041</b>         | <b>8724.18</b>      | <b>8324.26</b> | <b>8180.12</b> | <b>1.72</b>      | <b>0.83</b>  |

| GRADE         | 17-18 FINAL ADM | 18-19 FINAL ADM | 19-20 Adjusted | Expected Attrition |
|---------------|-----------------|-----------------|----------------|--------------------|
| EC            | 100.31          | 106.79          | 111.40         |                    |
| PK            | 38.4            | 35.96           | 40.30          |                    |
| HK            | 74.02           | 77.53           | 105.67         |                    |
| KG            | 607.06          | 576.74          | 567.38         |                    |
| 1             | 602.43          | 644.98          | 637.12         |                    |
| 2             | 617.88          | 591.03          | 648.43         |                    |
| 3             | 624.05          | 597.55          | 573.08         |                    |
| 4             | 646.85          | 620.48          | 587.98         |                    |
| 5             | 570.25          | 621.52          | 616.23         |                    |
| 6             | 572.48          | 571.29          | 605.87         |                    |
| 7             | 579.71          | 584.07          | 566.07         | -8.00              |
| 8             | 586.18          | 576.28          | 603.78         | -8.00              |
| 9             | 668.14          | 707.65          | 686.06         | -8.00              |
| 10            | 634.02          | 660.55          | 713.03         | -8.00              |
| 11            | 664.72          | 609.9           | 645.21         | -15.20             |
| 12            | 628.87          | 647.15          | 523.87         | -45.60             |
| <b>Total:</b> | <b>8215.37</b>  | <b>8229.47</b>  | <b>8231.46</b> | <b>-92.80</b>      |



**Duluth Public Schools: Enrollments, Students and Projected Average Daily Membership (ADM)  
APRIL 2020**


| Grade         | of           | Student      | Enrollments    | ADM            | Budgeted ADM   | /ADM        | ADM /Student |
|---------------|--------------|--------------|----------------|----------------|----------------|-------------|--------------|
| EC            | 521          | 355          | 295            | 111.40         | 102.00         | 4.68        | 0.31         |
| PK            | 97           | 69           | 65             | 40.30          | 47.12          | 2.41        | 0.58         |
| HK            | 168          | 104          | 105.27         | 105.67         | 70.00          | 1.61        | 1.01         |
| KG            | 638          | 584          | 569            | 567.38         | 554.00         | 1.12        | 0.97         |
| 1             | 812          | 688          | 642.6          | 637.12         | 640.00         | 1.28        | 0.92         |
| 2             | 818          | 697          | 654            | 648.43         | 616.00         | 1.26        | 0.93         |
| 3             | 724          | 625          | 578            | 573.08         | 590.00         | 1.27        | 0.91         |
| 4             | 759          | 664          | 599.51         | 587.98         | 574.00         | 1.30        | 0.88         |
| 5             | 773          | 692          | 628.32         | 616.23         | 608.00         | 1.26        | 0.89         |
| 6             | 802          | 693          | 617.75         | 605.87         | 592.00         | 1.33        | 0.87         |
| 7             | 744          | 663          | 595.68         | 566.07         | 587.00         | 1.29        | 0.87         |
| 8             | 901          | 733          | 634.8          | 603.78         | 590.00         | 1.47        | 0.84         |
| 9             | 1390         | 806          | 718.8          | 686.06         | 672.00         | 1.99        | 0.86         |
| 10            | 1636         | 856          | 746.73         | 713.03         | 705.00         | 2.26        | 0.85         |
| 11            | 1572         | 849          | 683.95         | 645.21         | 634.00         | 2.37        | 0.78         |
| 12            | 2011         | 963          | 589.77         | 523.87         | 599.00         | 3.52        | 0.59         |
| <b>Total:</b> | <b>14366</b> | <b>10041</b> | <b>8724.18</b> | <b>8231.46</b> | <b>8180.12</b> | <b>1.72</b> | <b>0.83</b>  |





# Memorandum

**To:** Ms. Jill Lofald / School Board Chair  
Ms. Cathy Erickson / CFO Executive Director of Business Services

**From:** Dave Spooner   
Manager of Facilities

**Date:** March 23, 2020

**Re:** BID #1281 Congdon Park ES Masonry Restoration Project- Restoration Systems, Inc.

**\*School Board Approved LTFM FY-21 Project\***

Attached are three copies of the agreement with Restoration Systems, Inc. This agreement is to perform the work as defined in the attached documents, performing needed masonry tuck pointing on the exterior of the building.

The contract sum for this work as defined in the attached agreement is **\$587,351.00**. We also have add alternate pricing for stair replacement, and unit pricing for additional brick and sealants if deemed necessary by change order.

**Recommendation:**

This project is budget compliant per the School Board approved FY21 LTFM Ten-Year Plan, and I am recommending that Ms. Jill Lofald, School Board Chair, enter into agreement on behalf of the School Board with Restoration Systems, Inc. as authorized by the regular School Board Meeting on April, 21, 2020.

The contract sum for the work defined in the agreement with Restoration Systems, Inc. is **\$587,351.00**.

Attachments:



# MJR Consultants, LLC

Roof and Building Exterior Solutions

March 12, 2020

Mr. Dave Spooner  
Manager of Facilities  
Duluth Public Schools- ISD. #709  
215 N. 1<sup>st</sup> Avenue East  
Duluth, MN 55802

RE: 2020 Congdon Park Masonry Restoration Bids – Letter of Recommendation

Dear Mr. Spooner

On February 6<sup>th</sup>, 2020 Bids were received and opened for the 2020 Congdon Park Masonry Restoration Project. Six Contractors attended the pre-bid meeting and indicated that they would be submitting bids. Five bids were received. American Masonry Restoration missed the bid date and did not submit a bid.

The apparent low bid for Base Bid and Bid Item #1 was submitted by Cities Masonry Restoration Inc. in the combined amount of \$387,700.00. The second apparent low bid for the Base bid and Bid Item #1 was submitted by Restoration Systems Inc. in the combined amount of \$587,351.00.

On February 11, 2020 we contacted Cities Masonry Restoration and discussed the significant disparity between their bid and the other submitted bids. After reviewing their numbers, Cities Masonry Restoration requested permission to withdraw their bid due to mistakes in their calculations. This request was granted by Dave Spooner of ISD#709.

On February 12, 2020 we contacted Restoration Systems Inc. and verified that they were satisfied with their bid of \$587,351.00. They indicated that they had a clear understanding of the project expectations and requirements. We have worked with Restoration Systems Inc. on past projects and have had no issues or problems.

We recommend award of the project to Restoration Systems Inc. in the amount of \$587,351.00

We have prepared the AIA contract documents for the project and have sent them to Restorations Systems Inc. for review and signature. They will forward 3 full copies to your attention to present to the Board for final acceptance and acceptance.

If you should have any questions regarding the bids, contracts or the project, please contact me.

Respectfully,

A handwritten signature in black ink that reads "Mike Johnston". The signature is written in a cursive style with a large, prominent "M" and "J".

Mike Johnston RRC  
MRJ Consultants, LLC  
5712 Royal Oaks Drive  
Shoreview, MN 55126  
[m.johnstonrrc@gmail.com](mailto:m.johnstonrrc@gmail.com)  
612-406-5996

## BID TABULATION

Date: 3/16/2020

### DULUTH PUBLIC SCHOOLS ISD # 709

2020 Congdon Park Masonry Restoration Project- Duluth Schools Bid #1281

Opening Date: February 6, 2020 2:00pm

**MRJ CONSULTANTS, LLC**

| CONTRACTOR                        | BASE BID     | BID ITEM 1   | BID ITEM 2  | Unit\$-Brick           |    | Unit\$-Sealant         |    | Unit\$-Lintel   |     | ADDENDUM | BID BOND | Responsible |
|-----------------------------------|--------------|--------------|-------------|------------------------|----|------------------------|----|-----------------|-----|----------|----------|-------------|
|                                   |              |              |             | ADD /Deduct LF         | LF | ADD / Deduct LF        | LF | ADD / Deduct LF | LF  |          |          |             |
| 1. Cities Masonry Restoration     | \$255,700.00 | \$132,000.00 | \$22,000.00 | A-\$45.00<br>D-\$45.00 |    | A-\$14.00<br>D-\$14.00 |    | \$225.00        | YES | YES      | YES      | YES         |
| Restoration Systems Inc.          | \$379,351.00 | \$208,000.00 | \$18,500.00 | A-\$65.00<br>D-\$65.00 |    | A-\$20.00<br>D-\$20.00 |    | \$65.00         | YES | YES      | YES      | YES         |
| 3. Stretar Masonry & Concrete     | \$410,000.00 | \$311,000.00 | \$15,000.00 | A-\$45.00<br>D-\$45.00 |    | A-\$4.00<br>D-\$4.00   |    | \$350.00        | YES | YES      | YES      | YES         |
| 4. Building Restoration Corp      | \$418,595.00 | \$172,070.00 | \$8,478.00  | A-\$32.00<br>D-\$20.00 |    | A-\$18.00<br>D-\$12.00 |    | \$435.00        | YES | YES      | YES      | YES         |
| 5. Innovative Masonry Restoration | \$427,000.00 | \$168,000.00 | \$30,000.00 | A-\$30.00<br>D-\$30.00 |    | A-\$10.00<br>D-\$10.00 |    | \$420.00        | YES | YES      | YES      | YES         |
| 6. American Masonry Restoration   | Missed Bid   |              |             |                        |    |                        |    |                 |     |          |          |             |

On February 11, 2020 we discussed the bid submitted by Cities Masonry Restoration with the contractor. Their combined bid for Base Bid and Bid Item #: 1 was \$387,700.00. The second combined bid was submitted by Restoration Systems Inc in the amount of \$587,351.00. After review of their significantly low bid, Cities Masonry Restoration acknowledged that they had missed required information and miscalculated their numbers. Cities Masonry Restoration requested permission to withdraw their bid which was approved by Dave Spooner-Duluth Public Schools.

We recommend that the project be awarded to the next low bidder, Restoration Systems Inc. c. in the amount of \$587,351.00. We have discussed the bid submitted by Restoration Systems Inc. with the contractor and they are satisfied with their bid.



 **AIA** Document A101™ – 2007

**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the Twelveth (12th) day of March  
in the year Twenty- Twenty (2020)  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

Duluth Public Schools  
ISD# 709  
215 North 1st. Avenue East.  
Duluth, MN 55802

and the Contractor:  
*(Name, legal status, address and other information)*

Restoration Systems, Inc.  
1605 Old Audubon Road  
Chaska, MN 55318

for the following Project:  
*(Name, location and detailed description)*

2020 Congdon Park Elementary Masonry Restoration Project BID #1281  
3116 East Superior Street  
Duluth, MN

The Architect: Substitute Term " Consultant"  
*(Name, legal status, address and other information)*

MRJ Consultants, LLC  
5712 Royal Oaks Drive  
Shoreview, MN 55126

The Owner and Contractor agree as follows.

The Term Consultant will be used instead of Architect for this document and any associated documents

Init.

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## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.  
*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

Upon Contractor's receipt of Notice to Proceed by the Owner.  
Work can commence on site on or after June 15, 2020

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

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

Init.

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**§ 3.3** The Contractor shall achieve Substantial Completion of the entire Work not later than (XXXXXX ) days from the date of commencement, or as follows:  
*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

**Portion of Work**

**Substantial Completion Date**

All work on site shall be substantially completed by August 15, 2020  
 All work including project close-out shall be fully completed by August 24, 2020

, subject to adjustments of this Contract Time as provided in the Contract Documents.  
*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

N/A

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Five Hundred Eighty Seven Thousand Three Hundred Fifty One Dollars Zero Cents. (\$587,351.00-----), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2** The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

Base Bid: \$379,351.00  
 Bid Item #1: \$208,000.00  
  
 TOTAL: \$587,351.00

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

| Item                                    | Units and Limitations | Price per Unit (\$0.00) |
|---|-----------------------|-------------------------|
| Additional / Deduct Brick Replacement   | Per Unit              | \$65.00/ each           |
| Additional / Deduct Sealant Replacement | Per Lineal Foot       | \$20.00/ each           |
| Lintel Replacement                      | Per Lineal Foot       | \$65.00/ each           |

**§ 4.4** Allowances included in the Contract Sum, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

| Item  | Price  |
|---|--|
| Replacement Brick Allowance Included in Bid Prices.                 |  |
| Base Bid Area: 100 Brick Units<br>Bid Item #1 Area: 100 Brick Units | REFER TO UNIT PRICES FOR CREDIT TO OWNER FOR UNUSED BRICK INCLUDED IN BID. |

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

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

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

N/A

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the 5<sup>th</sup> day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 5<sup>th</sup> day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.  
*(Federal, state or local laws may require payment within a certain period of time)*

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

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

**§ 5.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of FIVE PERCENT percent (-----5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of FIVE PERCENT percent (-----5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

**§ 5.1.7** The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

Init.

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

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

N/A

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.2 Final Payment**

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

AS STATED.

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

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

Mike Johnston RRC  
MRJ CONSULTANTS, LLC  
5712 Royal Oaks Drive  
Shoreview, MN 55126

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

**ARTICLE 7 TERMINATION OR SUSPENSION**

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

AS STATED

§ 8.3 The Owner’s representative:  
*(Name, address and other information)*

Mr. David Spooner  
Duluth Public Schools ISD#709  
215 North 1st Avenue East  
Duluth, MN 55802

Mr. Mike Johnston RRC  
MRJ CONSULTANTS, LLC  
5712 Royal Oaks Drive  
Shoreview, MN 55126

§ 8.4 The Contractor’s representative:  
*(Name, address and other information)*

Mr. Blake Dronen  
Restoration Systems Inc.  
1605 Old Audubon Road  
Chaska, MN 55318

§ 8.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

N/A

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

| Document  | Title   | Date      | Pages |
|---|---|-----------|-------|
| ISD#709 ADDENDUM TO STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR | AMMENDMENTS TO AIA DOCUMENT A101-2007 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR | 1/14/2020 | 1-3   |
| ISD#709 AMENDMENTS TO AIA DOCUMENT A201-2007                                | GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION   | N/A       | 1-5   |

Init.

**§ 9.1.4 The Specifications:**  
*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

| Section        | Title  | Date              | Pages |
|----------------|--|-------------------|-------|
| PROJECT MANUAL | PROJECT MANUAL FOR 2020 CONGDON PARK<br>ELEMENTARY MASONRY RESTORATION PROJECT | DECEMBER 13, 2019 | 1-136 |

**§ 9.1.5 The Drawings:**  
*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

| Number | Title  | Date      |
|--------|--|-----------|
| 1-3    | 2020 MASONRY RESTORATION<br>CONGDON PARK ELEMENTARY<br>3116 E. SUPERIOR STREET<br>DULUTH, MN | 1/16/2020 |

**§ 9.1.6 The Addenda, if any:**

| Number      | Date             | Pages |
|-------------|------------------|-------|
| ADDENDUM #1 | FEBRUARY 3, 2020 | 1-2   |

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

**§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:**

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

N/A

- .2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

N/A

Init.

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

| Type of Insurance or Bond                          | Limit of Liability or Bond Amount (\$0.00) |
|--|--|
| INSURANCE AND BONDS AS SPECIFIED IN PROJECT MANUAL | AS SPECIFIED                               |

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

\_\_\_\_\_  
OWNER (Signature)

*Blate R. Dronen*

\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
(Printed name and title)

*Blate Dronen President*

\_\_\_\_\_  
(Printed name and title)

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

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# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## **General Conditions of the Contract for Construction**

### **for the following PROJECT:**

*(Name and location or address)*

2020 Congdon Park Elementary Masonry restoration Project BID#1281  
3116 East Superior Street  
Duluth, MN

### **THE OWNER:**

*(Name, legal status and address)*

Duluth Public Schools ISD#709  
215 North 1st Avenue East  
Duluth, MN 55802

### **THE ARCHITECT:**

*(Name, legal status and address)*

Restoration Systems Inc.  
1605 Old Audubon Road  
Chaska, MN 55318

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### **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.

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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 requirements.

#### **§ 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 and certify termination of the Agreement under Section 14.2.2.

### **§ 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 indicated results.

§ 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.

### § 1.5 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## 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 fifteen 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 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, 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.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a 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.

§ 2.2.4 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.

§ 2.2.5 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.

### § 2.3 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.

### § 2.4 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 ten-day period after receipt of written 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 deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## 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.

§ 3.1.3 The Contractor shall not be relieved of 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.

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### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 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.

**§ 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 information furnished by the Owner pursuant to Section 2.2.3, 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 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.

**§ 3.2.3** 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.

**§ 3.2.4** 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 make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner 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.

### **§ 3.3 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required 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.

### **§ 3.4 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 and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 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.

### § 3.5 WARRANTY

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.

### § 3.6 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.

§ 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 it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 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 21 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed 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.

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### § 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;
- .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. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent 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.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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, 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 the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 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 the way by which 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 approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval 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 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 written notice, the Architect's approval 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. 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 cause such services or certifications to be provided by a properly 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, accuracy and

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completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, 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. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 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, and 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 and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, 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 Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect 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 such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such 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 that would otherwise exist as to a party or person described in this Section 3.18.



§ 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.

#### **ARTICLE 4 ARCHITECT**

##### **§ 4.1 GENERAL**

§ 4.1.1 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.

§ 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.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall 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.

##### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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, 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. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform 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.

##### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations 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 authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such 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, material and equipment 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 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 while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals 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 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 review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval 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 authorize 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and 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.

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

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## § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 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.

§ 5.2.3 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 shall be increased or decreased by the difference, if any, 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.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, 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, which the Contractor, by these 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 similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 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 in writing; 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 such 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

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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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the 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.

**§ 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report 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, except as to defects not then 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.

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

**§ 6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 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, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **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; an order for a minor change in the Work may be issued by the Architect alone.

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

### **§ 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.

### **§ 7.3 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 7.3.7.

**§ 7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 7.3.5** 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.

**§ 7.3.6** 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.

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and 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

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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 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .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;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 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. 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 has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### 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.

§ 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" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 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.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 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 prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 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 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 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

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encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part 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 evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material 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 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 the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** 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 material or equipment suppliers 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 Architect will reflect such payment on the next Certificate for Payment.

#### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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§ 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.

§ 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 material and equipment 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 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, except as may otherwise be required by law.

§ 9.6.5 Contractor 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 and 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 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 seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written 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 shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 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.

§ 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. 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.

§ 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, 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 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 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 as required under Section 11.3.1.5 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 written 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 and, 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 on-site visits and inspections, the Work has been completed in accordance with terms and conditions of 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 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial 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 and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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. If such lien 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 such lien, 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 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 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; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material 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.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 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.

### § 10.2 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

- .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 or the Contractor's Subcontractors or Sub-subcontractors; 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 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 owners and users of adjacent sites and utilities.

§ 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, except damage or loss 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 damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 HAZARDOUS MATERIALS**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written 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 such material or substance or who are to perform the task of removal or safe containment of such 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 written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 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 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.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for 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 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.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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.

§ 10.3.6 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 indemnify the Contractor for all cost and expense thereby incurred.

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## § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, 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 LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

### § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### **§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** 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

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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, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

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, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, 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 covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. 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 in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 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.

## **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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. 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.

#### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, 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 an 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 after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner 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 2.4.

**§ 12.2.2.2** The one-year period for correction of Work 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 completion of that portion of the Work.

**§ 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.

**§ 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** 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 that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** 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 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 proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.



### **§ 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 except that, 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 such 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 such assignment.

### **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### **§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** 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.

**§ 13.4.2** 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 there under, except as may be specifically agreed in writing.

### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** 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 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. 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 such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** 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 13.5.1, 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 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 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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.

§ 13.5.4 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.

§ 13.5.5 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.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 13.7.

### 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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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' written 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 for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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 above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, 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' written 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 in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include 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 written 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.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## **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, 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.

#### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written 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 must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein 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.

**§ 15.1.5.2** 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.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .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
- .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.

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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, 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 arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no 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 Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) 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.

§ 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.

§ 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 such 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.

§ 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 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.

§ 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.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 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.

§ 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.

### § 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 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 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 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. 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 Either party, at its sole discretion, 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 Either party, at its sole discretion, 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 the Owner and Contractor under this Agreement.

## ***Additions and Deletions Report for AIA<sup>®</sup> Document A201<sup>™</sup> – 2007***

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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:26:33 on 02/27/2014.

Duluth Public Schools - Addendum to Standard Form of Agreement between Owner and Contractor Dated 1/14/2020 Pages 1-3 ATTACHED

Duluth Public Schools- Amendments to AIA Document A201-2007 General Conditions of the Contract for Construction Pages 1-5 ATTACHED

**ISD No. 709**  
**Duluth Public Schools**  
**Addendum to Standard Form of Agreement Between Owner and-Contractor**

**Amendments to AIA Document A101-2007 Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

- 3.3. Add:** “Any liquidated damages provided in the Addendum to AIA Document A201-2007 General Conditions shall apply to this Contract, in addition to any other provisions relating to liquidated damages in any of the other Contract documents. The Addendum to AIA Document A101- 2007 General Conditions is a part of this Contract, and this reference in this Article is made for the convenience of the Contractor in reviewing the Contract documents.”
- 5.1.6.5 Add:** “Unless otherwise specified, the retainage specified in 5.1.6 shall be ten percent (10%).”
- 5.1.8 Add:** “None.”
- 6.2 Add:** “The binding dispute resolution chosen pursuant to this Article is arbitration pursuant to Section 15.4 of the AIA Document A201-2007. Contractor does consent to joinder and consolidation for any arbitration, with any other arbitration involving the Owner or the Architect or other Contractors or subcontractors or other design professionals or manufacturers or material suppliers, and which involve this project.”
- 8.2 Add:** “If it is not otherwise specified in this Paragraph, the applicable rate of interest is six percent (6%) simple interest per year.”
- 8.6 Add:** “This Agreement is subject to the laws of the State of Minnesota as also provided in AIA Document A201-2007 and its Addenda. Any dispute resolution shall be located in the city where the project is located.”
- 9.1.2 Add:** “The Addendum to AIA Document A101-2007, General Conditions of the Contract for Construction, is also a part of the Contract documents.”



9.7. Add: “All bidding documents or Requests for Proposals are a part of this Contract. Those bidding documents or Requests for Proposals may include, but are not limited to the following:

- .1 Advertisement or Invitation to Bid;
- .2 Requests for Proposals;
- .3 Instructions to Bidders;
- .4 Supplementary Conditions & Insurance Requirements for Independent Contractors;
- .5 Sample Forms;
- .6 The Contractor’s Bid; and
- .7 Any other bid documents and Request for Proposal Documents.”

#### **ARTICLE 10**

Add: “In addition to any insurance or bond listed under this Article 10, the Contractor shall purchase and maintain insurance or bonds as set forth in the Supplementary Conditions & Insurance Requirements for Independent Contractors.”

#### **VERIFICATION OF FORM OF AIA STANDARD CONTRACT**

Contract Between – **RESTORATION SYSTEMS INC.** and ISD No. 709 BID#1281

The undersigned verifies that the noted Standard AIA Contracts have not been modified from the standard form contract, except as follows:

Names and addresses, etc. of parties  
Dollar Amounts  
Times inserted into blanks where blanks exist  
Highlighted, underlined or redlined changes  
Handwritten and initialed changes  
Addenda and Schedules

It is verified that the standard language has not been modified, except in the manner noted above. If changes have been made in the standard language, which are not identified in the manner noted above, the standard language shall govern and the changes shall be void.

The following AIA Forms are hereby verified:

**AIA Document A101 - 2007 Standard Form of Agreement Between Owner and Contractor with Standard Form of Contractor’s Services. The attached Addendum to Standard Form of Agreement Between Owner and Contractor is incorporated herein and does modify the 2007 Standard Form of Agreement form A101-2007.**

The undersigned has prepared these contract forms, or has reviewed them, for the purpose of this verification.

**Contractor - Architect**

Signed Blake R. Dronen  
Date 3/17/2020  
Name Blake Dronen  
Capacity President  
Company Restoration Systems Inc.  
Address 1605 Old Audubon Rd  
Chaska, MN 55318

**Owner**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
School Board Chair  
ISD No. 709  
215 North 1<sup>st</sup> Ave. East  
Duluth MN 55802

## **Amendments to AIA Document A201 - 2007 General Conditions of the Contract for Construction**

- 1.1.2 Add:** “This contract is made subject to all applicable law, statutes, codes, rules and regulations governing the owner and its rights, obligations, limitations and requirements pertaining to this contract and Project.”
- 1.5.1 Add:** “However, the Owner and its agents may use and reproduce such documents for additional work on the subject of the Project and for revision of the original work.”
- 2.2.3 Add:** “If Contractor becomes aware of material inaccuracies or changes in the information provided by the Owner and the Architect, then the Contractor shall notify the Owner of any inaccurate or changed information.”
- 3.2.4 Add at the end of last sentence:** “insofar as the Contractor has given notice of such specific errors, inconsistencies or omissions.”
- 3.4.3 Add:** “These obligations of Contractor also apply to subcontractors and other persons carrying out the work.”
- 3.5 Add:** “Contractor shall assign for the benefit of the Owner, any and all warranties from manufacturers or other entities or persons which may be applicable to equipment or materials or any other property that is a part of the work. This applies to work provided by the Contractor or subcontractors, or others doing the work directly or indirectly under the Contractor.”
- 3.6 Add:** “The Contractor shall endeavor and assure that the Owner receives the benefit of the exemptions of sales taxes or other taxes where the Owner may be entitled to such exemptions.”
- 3.12.10 Add:** “The Contractor agrees that all such professional design services or certifications which the Contractor causes to be provided, shall be for the benefit of the Owner. The Contractor shall be responsible for the adequacy, accuracy and completeness of such services, certifications and approvals performed or provided by such design professionals.”
- 3.18.1 Add:** “The obligation of the Contractor shall be to defend the Owner, as well as to indemnify and hold harmless the owner under this Paragraph, and also insofar as there may be other obligations to indemnify and hold the Owner harmless under the provisions of this Agreement.”
- 4.2.2 Delete portion:** The words “in general” shall be deleted in sentence (1); The words “exhaustive or” shall be deleted in sentence (2).
- 4.2.3 Add:** “However, the Architect shall notify the Owner and the Contractor of any defects or deficiencies in the Work which the architect is aware has not been completed in accordance with the contract documents.”

- 4.2.6 Delete:** The last sentence that the states that the architect has no obligation to the contractor, subcontractors or others doing work.
- 4.2.7 Add:** “If the architect is aware that the Contractor’s submittals do not conform with the plans and specifications and any other contract documents, the architect shall so inform the owner and the Contractor.”
- 9.6.7 Delete:** “shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this Provision.”
- 9.8.4 Add at the end:** “In the event that, after a Certificate of Substantial Completion has been signed, it is learned that there are defects in the work so that the Owner cannot occupy or utilize the work in full for its intended use, without substantial limitation, then the date of Substantial Completion and Certificate of Substantial Completion shall be amended to reflect the date that the Owner can occupy or utilize the work for its intended use without substantial limitation, after the necessary corrections have been made. Any dates for notice required after the Certificate of Substantial Completion, shall be changed to comply with the amended date of substantial completion and amended Certificate of Substantial Completion.”
- 9.10.4 Delete original language in its entirety:** (Waiver of claims by owner)
- 9.10.4 Add:** “The making of final payment, shall not constitute a waiver of any claims by the owner.”
- 10.2.5 Delete portion:** “(other than damage or loss insured under property insurance required by the Contract Documents)”
- 10.3.3 Add at the End of the Last Sentence:** “or the consultants or agents or employees of any of them.”
- 11.3.1 Delete portion:** Replace the word “Owner” with the word “Contractor” in the first sentence. (Builders Risk Insurance). **Add at the end:** “Any deductibles shall be subject to approval by the owner.”
- 11.3.1.2 Delete this paragraph in its entirety.**
- 11.3.2 Substitute:** “Contractor” for “Owner” as the second word in this Paragraph.
- 11.3.3 Delete second sentence:** (Waiver of claims against contractor for loss of use.)
- 11.3.5 Delete all:** (Waiver of claims if insured)
- 11.3.7 Delete all:** (Waiver of claims and subrogation if insured)
- 12.2.2. Replace:** Change “one-year” to “such period as is specified by law” for each occurrence in this section. This change applies to all of 12.2.2, including all subdivisions thereof.

**12.2.2.3 Delete the word “not”:** (Extension of correction period by correction)

**13.2 Add:** **“SIGNATURES AND NOTARIZATION.** The Parties shall be entitled to digitally sign documents pursuant to the then current law governing digital signatures. If a document provides for notarization, and if the Parties submitting the document do not have a signature notarized, then that party nonetheless confirms that the signature is accurate and authorized and is by the person from whom the signature purports to be, and that the signature is authorized, under penalty of perjury. Such signature shall still have the same force and effect as the signature if it had been properly notarized.”

**13.7 Delete portion:** (“but in any case not more than 10 years after the date of substantial completion of the work”)

**14.2.5** The remedies provided in this section 14.2 are in addition to, and not in place of, rights of the Owner under any applicable performance and payment bonds.

**15.1.2 Add at the end of the Current Paragraph:** “However, the owner shall be entitled to make claims after that twenty-one (21) day period if such claim can be made without substantial prejudice to the other party, resulting from that later notice after the twenty-one (21) day period.

**15.1.6 Delete all:** (Consequential damages waiver by owner and contractor) **Replace with: Claims for Consequential Damages.**

.1 The contractor waives claims against the Owner for 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.

.2 “Liquidated Damages. Owner shall be entitled to liquidated damages in the sum of \$ \_\_\_\_\_ per day for each day that the work is not completed beyond the stated contract time, and any extensions agreed to by the Owner. Time is of the essence in the performance of the Work. Such liquidated damages are in lieu of claims which Owner might otherwise make for damages for loss of use, interference with classes and scheduling and the use of other facilities (unless leased or purchased by Owner), employee time in making use or scheduling adjustments due to delay in completion, additional time in transferring equipment, materials and personnel and inconvenience as a result of such delays. The Owner retains the right to claim other additional actual damages not included in liquidated damages. The Owner retains the right to claim actual damages from the lease or purchase of other buildings, facilities or equipment as a result of delay in completion of the contract. The Owner may deduct and set off the liquidated damages from any sums, which are due to the contractor under the contract. The Contractor acknowledges that it is aware of these liquidated damages provisions, accepts this contract with those provisions and acknowledges that the liquidated damages provisions are reasonable and enforceable.

If there are no liquidated damages specified in this section 15.1.6.2 in excess of \$1, then the Owner is entitled to claim all other damages available to the Owner. If no liquidated damages are specified in this section 15.1.6.2 in excess of \$1, then the deletion of the Consequential Damages Waiver by Owner and Contractor is still effective, and that original paragraph 15.1.6 is still deleted, and the Owner is still entitled to all damages permitted by law without waiver of any of those damages. The Owner does specifically retain all claims for loss of use.”

**15.4.3 Add:** “Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all Discovery Methods delineated in the Minnesota Rules of Civil Procedure for the District Courts, to the same extent and subject to the same procedures and sanctions as therein set forth. Once selected, the arbitrator shall hear any disputes regarding discovery unless otherwise agreed by the parties.”

**15.4.4.4 Add: “Award of Attorney's Fees and Expert Witness Costs.** Notwithstanding any other conditions of the contracts, in any lawsuit or arbitration involving the subject matter of this Contract or its interpretation, the prevailing parties shall be entitled to attorney's fees and expert witness costs as provided herein. The awards detailed herein are in addition to, and not a substitute for, any other awards or remedies which the parties may have pursuant to the governing contract and the governing law.

These awards apply to the Owner, Architect, Contractor, Subcontractor, Suppliers, Materialmen and others subject to the governing contracts and subcontracts. The prevailing party shall be entitled to an award of the prevailing party's attorney's fees and costs without deduction for that party's share of any fault, if any. For the purposes of this Section, a party not required by the Arbitrator to make any of the compensatory adjustments demanded by the other parties in the dispute, shall be considered a Prevailing Party. In addition to this definition of a prevailing party, the arbitrator or other decision maker shall also be entitled to rule that a party is a prevailing party on other grounds.

The prevailing party shall be entitled to an award of attorney's fees from each of the other non-prevailing parties in an amount not greater than \$15,000 from each of those other non-prevailing parties. This award of attorney's fees includes reasonable attorney's fees, costs and disbursements incurred in the action, investigative costs, other legal research and other legal services and advice from the attorneys, including such services before the initiation of such arbitration or suit. The prevailing party shall also be entitled to an award in an amount not greater than \$3,500 from each of the other non-prevailing parties for expert witness fees and other expert services in investigating, giving opinions, research and planning, costs of the expert, the expert's fees in testifying and fees in providing other expert services in connection with the investigation of the subject matter, including preparing and investigating remedies, plans, and specifications relating to that matter.”



**VERIFICATION OF FORM OF AIA STANDARD CONTRACT**  
**Contract Between – Contractor’s Name and ISD No. 709**

The undersigned verifies that the noted Standard AIA Contracts have not been modified from the standard form contract, except as indicated by the amendments shown above and as follows:

- Names and addresses, etc. of parties
- Dollar Amounts
- Times inserted into blanks where blanks exist
- Highlighted, underlined or redlined changes
- Handwritten and initialed changes
- Addenda and Schedules

It is verified that the standard language has not been modified, except in the manner noted above. If changes have been made in the standard language, which are not identified in the manner noted above, the standard language shall govern and the changes shall be void.

The following AIA Forms are hereby verified:

**AIA Document A201 - 2007 General Conditions of the Contract for Construction**

The undersigned has prepared these contract forms, or has reviewed them, for the purpose of this verification.

**Contractor**

Signed Blake T. Dronen  
 Date 3/17/2020  
 Name Blake Dronen  
 Capacity President  
 Company Restoration Systems Inc.  
 Address 1605 Old Audubon Rd  
Cheska, MN 55318

**Owner**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 School Board Chair  
 ISD No. 709  
 215 North 1<sup>st</sup> Ave. East  
 Duluth, MN 44802

Make claims for loss of use.



## RESOLUTION

### Acceptance of Donations to Duluth Public Schools

WHEREAS, Minnesota Statute 465.03 requires a school district to accept donations by resolution expressed in the terms prescribed by the donor in full; and,

WHEREAS, acceptance of the donations in accordance with the donor's terms is in the best interest of the Duluth Public Schools:

NOW, THEREFORE, BE IT RESOLVED that the Duluth Public Schools does accept the below-described donations from said organizations in accordance with the terms set forth herein.

BE IT FURTHER RESOLVED that the Duluth Public Schools wishes to extend its grateful appreciation to these various individuals and organizations.

| SCHOOL               | DONOR                  | AMOUNT     | RESTRICTION   | COMMENTS   |
|----------------------|------------------------|------------|---|--|
| Area Learning Center | Narcotics Anonymous    | \$90.00    | ALC Students  |  |
| Area Learning Center | Wells Fargo Foundation | \$50.00    | ALC Students  | From the Educational of Matching Gifts Program   |
| District-wide        | Project Joy            | \$4,000.00 | Families in Transition Program                        |  |
| Homecroft            | Alvin F. Johnson       | \$200.00   | Unpaid Lunch Debt                                     |  |
| Lester Park          | Lester Park Foundation | \$3,800.00 | Classroom items                                       | They gave a \$100 gift card to each teacher with money earned from the Fun Run in September      |
| Lowell               | Cub Foods              | In Kind    | Community families during the COVID-19 school closure | A carload of non-perishables including a pallet of Macaroni & Cheese                             |
| Lowell               | Skyline Rotary         | In Kind    | School families during the COVID-19 school closure    | Food donations   |
| Stowe                | Mont Du Lac Ski Hill   | In Kind    | Stowe 3rd and 4th graders                             | Donated day pass and equipment for ski trips for third and fourth grade students and chaperones. |
| Stowe                | YourCause              | \$100.00   | None  | Wells Fargo Educational Matching Gift program  |



**RESOLUTION**

Authorized Bank Account Signer – April 2020

RESOLVED, by the School Board of Independent School District No. 709, St. Louis County, Minnesota, that it hereby authorizes the following:

| <b>District Building</b> | <b>Banking Institution</b> | <b>Account Number</b> | <b>Addition of Authorized Signer</b> | <b>Removal of Authorized Signer</b> |
|--------------------------|----------------------------|-----------------------|--------------------------------------|-------------------------------------|
| Headstart                | Harbor Pointe Credit Union | XXXX0                 |                                      | Thomas Quinn                        |
| Community Ed             | Harbor Pointe Credit Union | XXXX9                 |                                      | Sharie Blevins                      |
| Merritt Creek Academy    | Harbor Pointe Credit Union | XXXX0                 | Linda Moder-Pauna                    |                                     |
| Rockridge Academy        | Harbor Pointe Credit Union | XXXX1                 | Linda Moder-Pauna                    |                                     |
|                          |                            |                       |                                      |                                     |

**RESOLUTION**  
Release and Pledge of Collateral

BE IT RESOLVED, by the School Board of Independent School District No. 709, St. Louis County, Minnesota, that it hereby releases the \$250,000 par value FHLB note, CUSIP number XXXXXXW78, pledged as collateral by Harbor Pointe Credit Union.

BE IT FURTHER RESOLVED, By the School Board, that it accepts the pledge collateral of a \$250,000 par value FMNT note maturing 1/6/2025, CUSIP number XXXXXXF70 in exchange for the released collateral noted above.

**Expenditure Contracts Signed  
March 2020**

For your information, the Superintendent or the Executive Director of Business Services has signed the following expenditure contracts during the month of March 2020.

**\* Not to Exceed:** If asterisk is noted, then the contract has a guaranteed maximum price; District may not pay more than the dollar amount listed (this does not mean the vendor will invoice this amount and may invoice much less).

**\*\* Contract is paid via monies from:**

**DR** = Department Restricted (LTFM, Indian Education Funds, Compensatory, Achievement Integration)

**DU** = Department Unrestricted (General Fund)

**G** = Grant (external grants from foundations such as Northland, Duluth Superior Area Community)

**SAF** = Student Activity Funds (monies raised by students, gate fees, etc.)

| <b>Name</b>                   | <b>Amount*</b> | <b>Contract Source**</b>       | <b>Description</b>  |
|-------------------------------|----------------|--------------------------------|---|
| Jennie Kappenman              | \$1,000.00*    | American Indian Education (DR) | Cultural activities, skirt teachings  |
| Patricia Staine               | \$1,000.00*    | American Indian Education (DR) | Provide cultural teachings around Ojibwe beadwork                               |
| Jeremy Wilson                 | \$2,500.00*    | American Indian Education (DR) | Provide singing and drumming for cultural and community events                  |
| Peace United Church of Christ | \$175.00*      | Community Education (DR)       | Provide facility, childcare and dinner for Circle of Security Parenting Classes |
| Katelyn Rogers                | \$2,000.00*    | Curriculum (DR)                | River Quest field experience  |
| Thyssenkrupp Elevator         | \$45,750.00    | Facilities (DU/DR split)       | Bid 1286 Annual Elevator Inspection for 4/1/20 – 6/30/21                        |
| Wolf Ridge                    | \$15,000.00    | Homecroft (SAF)                | 5 <sup>th</sup> grade field trip (2021)   |
| North Shore Scenic Railroad   | \$610.00       | Lester Park (SAF)              | Field trip  |
| Doug Wood                     | \$1,600.00*    | Myers-Wilkins (DR)             | Author visits to discuss books and the craft of writing                         |

|                             |             |                                 |  |
|-----------------------------|-------------|---------------------------------|--|
| Zeitgeist                   | \$5,000.00* | Office of Education Equity (DR) | Original contract signed October 2019; Increase not to exceed amount from \$3,000 to \$5,000 |
| Creation Station Child Care | \$720.00*   | Special Services (DU)           | Preschool planning as required per IEP   |
| Happy Time Day Care Center  | \$1911.02*  | Special Services (DU)           | Preschool planning as required per IEP   |
| University of Minnesota     | \$11,835.84 | Special Services (DU)           | Licensee fee for audiological testing equipment and assessment                               |
|                             |             |                                 |  |
|                             |             |                                 |  |

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 10th day of February , 2020 , by and between Independent School District #709, a public corporation, hereinafter called District, and Jennie Kappenman , an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:** *(insert here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of March 1, 2020 and shall remain in effect until June 30, 2020 , unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** The Contractor will provide Cultural Activities/skirt teachings and making for the Duluth American Indian Education Program for Middle and High School students. 2-4 Sessions will be held during the contract period.

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$75.00 (Seventy Five dollars) hourly and \$ 1,000.00 (One thousand dollars) in total. Mileage will also be covered for travel from the Twin Cities at the federal rate of \$0.57.5.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN

will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

**8. Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

**10. Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn:Edye Washington, Office of American Indian Ed. , 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip)

8008 66<sup>th</sup> Ave N Brooklyn Park MN 55428

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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

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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from

operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

**18. Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**



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

Jennie Koppenman \_\_\_\_\_ 2-13-20  
 Contractor Signature SSN/Tax ID Number Date  
D. Ashington \_\_\_\_\_ 3-4-2020  
 Program Director Date

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either:**

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
| 01 | 605 | 005 | 320 | 340 | 130500 |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

\_\_\_\_\_ Check if the contract will be paid using Student Activity Funds

\_\_\_\_\_ Check if the contract is a no-cost contract such as a Memorandum of Understanding

Cathie Wilson \_\_\_\_\_ 3-5-20  
 CFO / Superintendent of Schools / Board Chair Date

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 10th day of February , 2020 , by and between Independent School District #709, a public corporation, hereinafter called District, and Patricia Staine , an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:** *(insert here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of March 1, 2020 and shall remain in effect until June 30, 2020 , unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** The Contractor will provide cultural teachings around Ojibwe beadwork and lead and teach beading to Middle and High school students. 2-4 Sessions will be held during the contract period.

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$75.00 (seventy-five dollars) hourly and \$1,000.00 (one-thousand dollars) in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. **Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail; ISD 709, Duluth Public Schools, Attn:Edye Washington, Office of Indian Education, 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip)

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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


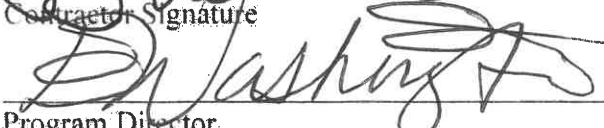
**Workers' Compensation Insurance:** Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

  
 Contractor Signature \_\_\_\_\_ SSN/Tax ID Number \_\_\_\_\_ Date 02/12/2020  
  
 Program Director \_\_\_\_\_ Date 2/13/2020

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either:**

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
| 01 | 605 | 005 | 320 | 340 | 130500 |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

\_\_\_\_\_ Check if the contract will be paid using Student Activity Funds

\_\_\_\_\_ Check if the contract is a no-cost contract such as a Memorandum of Understanding

  
 CFO / Superintendent of Schools / Board Chair \_\_\_\_\_ Date 3.5.20

## **AGREEMENT**

**THIS AGREEMENT**, made and entered into this 13th day of February , 2020 , by and between Independent School District #709, a public corporation, hereinafter called District, and Jeremy Wilson, an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:** *(insert here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of February 14, 2020 and shall remain in effect until June 30, 2020 , unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** The Contractor will be on contract with DPS American Indian Education Department to provide singing and drumming district wide for Cultural and Community events.

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$75.00 (seventy-five)/hour for teaching and \$300(three-hundred dollars) for cultural and community presentation. and \$ 2,500.00 (two-thousand five hundred dollars) in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

**8. Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

**10. Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn:Edye Washington, Office of Indian Education , 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.



All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip)  
1427 E 3rd St Apt C Duluth MN 55805

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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


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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

**18. Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

Contractor Signature \_\_\_\_\_ SSN/Tax ID Number \_\_\_\_\_ Date 02.20.20  
  
 Program Director \_\_\_\_\_ Date 2/26/2020

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

- This contract is funded by either:**
1. The following budget (include full 16 digit code); or
  2. will be paid using Student Activity Funds; or
  3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
| 01 | 605 | 005 | 320 | 340 | 130500 |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

\_\_\_\_\_ Check if the contract will be paid using Student Activity Funds

\_\_\_\_\_ Check if the contract is a no-cost contract such as a Memorandum of Understanding

Cathy Edzer \_\_\_\_\_ Date 3.5.20  
 CFO / Superintendent of Schools / Board Chair

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 1st day of January, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Peace United Church of Christ, Duluth, MN, an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:** *(insert here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of January 1, 2020 and shall remain in effect until June 8, 2020, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** *(insert or attach a list of programs/services to be performed by contractor)* Peace United Church of Christ located at 1111 North 11th Avenue, Duluth, MN, will provide the facility, childcare and dinner for the schedule sessions of the Circle of Security Parenting Class sponsored by ISD 709 Early Childhood Family Education (ECFE). During the term there will be one seven-week class. ISD 709 provides the teaching staff and program.

3. **Background Check.** *(applies to contractors working independent with students)* Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$25.00 per session or \$175.00 in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer

Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

**8. Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Early Childhood Community Education (ECFE), 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Peace United Church of Christ, 1111 North 11th Avenue, Duluth, MN.

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such

insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.


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

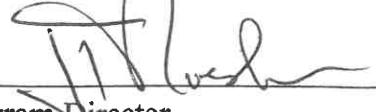
**Workers' Compensation Insurance:** Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

**18. Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

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

 2003228 2/13/20  
Contractor Signature SSN/Tax ID Number Date

 3/9/20  
Program Director Date

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either (1) the following budget (include full 16 digit code), (2) will be paid using Student Activity Funds or (3) is no cost contract (e.g. Memorandum of Understanding). Please check the appropriate line below:**

X Check if the contract will be paid using District funds and enter the budget code in the top line below:

04 580 005 325 000 130500

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

 3-10-20  
CFO/Superintendent of Schools/Board Chair Date



## AGREEMENT

**THIS AGREEMENT**, made and entered into this 26th day of February, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and, Katelyn Rogers an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:**

1. **Dates of Service.** This Agreement shall be deemed to be effective as of February 27, 2020 and shall remain in effect until June 1, 2020, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Contractor will provide curricular coordination for the River Quest field experience. River Quest is an event for area sixth graders where students learn about the St Louis River Estuary and its impact on the environment, the community, industry and the economy. The contractor's duties include but are not limited to attending meetings, distributing material, assisting in writing curriculum, and coordinating scheduling and organization of the event to be held May 11-14, 2020.

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$2000 in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN

will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

**8. Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

**10. Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Gail Netland, 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip) 4252 W Beyer Road Duluth, MN 55803.

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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

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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

Kathleen Rogers 3/3/2020  
 Contractor Signature SSN/Tax ID Number Date

[Signature] 3-30-20  
 Program Director Date

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either:**

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
| 01 | 610 | 005 | 317 | 000 | 130500 |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

Cathleen [Signature] 3-31-20  
 CFO / Superintendent of Schools / Board Chair Date

## AGREEMENT

**THIS AGREEMENT** made and entered into this 25th day of March, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Thyssenkrupp Elevator an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:**

1. **Dates of Service.** This Agreement shall be deemed to be effective as of April 1, 2020 and shall remain in effect until June 30, 2021, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Perform all work as specified in BID #1286 Annual Elevator Inspection and Service for the period of April 1, 2020 through June 30, 2021, with the option to renew for two (2) additional one-year periods if acceptable to both parties. This contract award is approximately \$45,750.00. Total Contract award amount to be determined through execution of this contract based upon service rates as defined in the contractor's bid.

This Contract consists of the following:

1. Printed Memorandum of Agreement and Title Sheet;
2. Contractor's response;
3. Contractor's Insurance Policy;
4. Any other documents identified by District.

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations at an annual rate of approximately \$45,750.00 based upon service rates as defined in contractor's bid.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice and all required backup documentation by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

**8. Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

**10. Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: David Spooner, 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Thyssenkrupp Elevator, 4511 W First Street, Suite 2, Duluth, MN 55807.

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

The Contractor recognizes that, to the extent that competitive vendor requirements apply to this Contract, those requirements apply to the award and performance of this Contract.

The Regulations of the District are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

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

16. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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



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

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

19. **Bonding.** Contractor shall provide such Payment and Performance Bonds as may be required, if any.

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

| <u>ISD 709 Employee</u> | <u>Position</u>                             |
|-------------------------|---|
| Cathy Erickson          | CFO/Executive Director of Business Services |

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

| <u>ISD 709 Employee</u> | <u>Position</u>       |
|-------------------------|-----------------------|
| David Spooner           | Manager of Facilities |

21. **Protection of District.** To the extent that work by the Contractor or others on behalf of ISD 709 is to be planned, conducted, supervised or reviewed by the Contractor, the Contractor shall advise ISD 709 if such work:

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;
- c. should be performed in a different manner and whether other work should be performed;
- d. requires ISD 709 to be advised of any other facts or opinions regarding that work.

In all respects, the Contractor shall represent the interests of ISD 709 and act to protect those interests and endeavor to guard ISD 709 against defects, deficiencies and omissions in the performance of the work.

22. **Negotiation, Mediation and Arbitration.** Any disputes between the parties shall first be negotiated. If the parties are not successful in negotiation, they then shall subject the dispute to mediation. If mediation is not successful, then any disputes between ISD 709 and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in

the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of ISD 709, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Contractor and any architects, contractors, subcontractors, material men and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedures for ISD 709 courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

**23. Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

DocuSigned by:  
Rick Hornick 62-1211267 4/1/2020  
 ThyssenKrupp Elevator SSN/Tax ID No. Date

DocuSigned by:  
David Spooner 4/2/2020  
 Program Director Date

**Please note:** All signatures *must* be obtained AND the following *must* be completed by Program Director before submission to the CFO for review and approval. This contract is funded by the following budget:

|       |         | Varies By Site<br>Receiving<br>Services |         |     |        |
|-------|---------|---|---------|-----|--------|
| 01/05 | 810/865 | 005                                     | 000/369 | 000 | 135003 |

DocuSigned by:  
Catherine A. Erickson 4/2/2020  
 CFO/Superintendent/Board Chair Date

The attached Amendment No. 1 shall be made a part of this Agreement.

<sup>DS</sup>  
RH

<sup>DS</sup>  
CAE

# Thyssenkrupp Elevator Corporation



RE: ISD 709 / Historic Old Central High / 215 N 1<sup>st</sup> Ave East  
Bid#1286

## AMENDMENT NO. 1

This Amendment No.1 shall be made a part of this Agreement, and in the event of conflict with other articles, terms, conditions or contract documents, this Amendment No.1 shall be final. In no event shall Thyssenkrupp Elevator Corporation (hereinafter referred to as "Contractor") be liable for any consequential, incidental, exemplary, special and/or liquidated damages.

6. Amend so any setoff must be agreed to in writing by both parties prior to becoming effective and be limited to this agreement.

7. Amend so any "work product" furnished to District by Contractor which Contractor reasonably deems proprietary in nature or otherwise essential to Contractor's business operations shall not be considered "works made for hire". Contractor hereby specifically reserves all rights related thereto, including but not limited to copyrights or other intellectual property rights. Any deviation from the foregoing reservation of Contractor's rights hereunder shall be evidenced only by separate written agreement of the parties, setting forth with all reasonable specificity the extent to which such reserved rights are relinquished to District.

9. Amend so Contractor's obligations to indemnify, defend and hold harmless shall be limited to Contractor's own acts and actions, and shall in no way include for the acts, actions, omissions, or neglects of a party indemnified hereunder, or for bare allegations.

16. Amend so only in the event of nonperformance on behalf of Contractor, the District may terminate this Agreement with thirty (30) day written notice, provided, however, Contractor is afforded thirty (30) days to remedy any alleged nonperformance. Contractor must be notified in writing of specific nonperformance. Amend so upon the termination and/or expiration of this Agreement, the guarantee will be null and void.

19. Amend so bonds, if requested in writing, shall be an add based on one percent (1%) of the contract value per annum, to be paid by District.

22. Amend to delete any reference to arbitration. Amend so Contractor retains all rights and remedies granted to it by operation of law, or in equity.

ThyssenKrupp Elevator Corporation

Independent School District NO. 709  
Duluth Public Schools

DocuSigned by:  
*Rick Horneck*  
Printed Name: Rick Horneck

DocuSigned by:  
*Catherine A. Erickson*  
Printed Name: Catherine A. Erickson

Title Branch Manager  
Date 4/1/2020

Title: CFO  
Date: 4/2/2020



# WOLF RIDGE<sup>SM</sup>

## ENVIRONMENTAL LEARNING CENTER

### Program Contract

#### School Groups

|   |   |
|---|---|
| <b>Chad Humphreys</b>   | chad.humphreys@isd709.org   |
| Homecroft Elementary<br>4784 Howard Gnesen Rd, Duluth MN 55803  | Is the Coordinator's name correct? If not, please correct below:<br>New Coordinator name:<br>Email Address: |
| <p><b>Deposit:</b> You have made a reservation to stay for March 8, 2021 - March 10, 2021 with 90 participants. To hold your reservation we require a deposit of \$1,350.00. <b>This contract is valid for 30 days after receipt.</b></p> <p><b>Cancellation Policy:</b> Cancellations require 60 days' notice prior to your scheduled arrival date to receive a full deposit refund. <i>*Notify us immediately if you need to cancel this reservation.</i></p> |   |

By signing below, I agree to the terms listed above:

|  |   |             |
|--|---|-------------|
| <b>Printed Name:</b>   | <b>Title:</b>   |             |
| <b>Signed Name</b>   | <b>Date</b>   |             |
| <b>Billing Contact:</b><br><b>Billing email address:</b>               | <b>Billing Address:</b>                                 |             |
| <b>Cardholders Name: [ ] same as billing contact</b>                   | <b>Cardholders address: [ ] same as billing address</b> |             |
| <b>Credit Card #</b>   | <b>Exp Date:</b>  | <b>CVV:</b> |
| <b>If unable to pay at this time, when can we expect your deposit?</b> |   |             |

Catherine Erickson, CFO

**Return to: 6282 Cranberry Rd - Finland, MN 55603 or fax to: 218-353-7762**

**Today's Date: March 11, 2020**



Duluth & North Shore Railway, Inc.  
 d.b.a. North Shore Scenic Railroad  
 506 West Michigan Street Duluth, MN 55802  
 (800)423-1273 (218)722-1273  
 Fax (218)733-7596  
 E-mail [trains@northshorescenicrailroad.org](mailto:trains@northshorescenicrailroad.org)

**2020 RAIL CHARTER CONTRACT**

This contract is made between the DULUTH & NORTH SHORE RAILWAY, Inc d.b.a. NORTH SHORE SCENIC RAILROAD (NSSR) (hereafter called Operator) and **Lester Park Elementary** (hereafter called Chartering Party). The Chartering Party's authorized representative is Barb Westerberg, 343-8378, [Barbara.westerberg@isd709.org](mailto:Barbara.westerberg@isd709.org)

**TERMS OF CHARTER**

In consideration of payments made and performance herein specified on the part of the Chartering Party, the Operator shall provide rolling stock and crew for the benefit of the Chartering Party excursion. The Conductor shall be responsible for the operation of the rolling stock that the Operator warrants to be rail worthy.

On **June 1st, 2020 at 10:30am** the Operator will provide an excursion for the Chartering Party. The rolling stock (train) will be used exclusively for the transportation of passengers on a pleasure excursion on the Lake Front Line. Planned excursion schedule: **pickup from 54<sup>th</sup> Avenue East with a 10:30am departure, followed by a return trip to 54<sup>th</sup> at 1pm (departure) from the Duluth Depot.**

The total number of passengers is estimated to be **100 students and 30 chaperones** and will be finalized by date 10 business days prior to excursion dates.

**FEES**

The Chartering Party agrees to pay the total sum of **\$5 per person, with 1 free chaperone per 10 students**. Estimated total is: \$610 and may vary depending on final numbers due 10 days prior.

This cost includes a **roundtrip** excursion from 54<sup>th</sup> Ave East to Duluth Depot, and back.

**DEPOSIT & PAYMENTS**

A signed copy of this contract must be returned within 30 days of its issue, with a \$50 non-refundable booking fee, put towards the total listed above. A deposit of **\$305** (1/2 total costs) is due within 1 month of the scheduled charter event. The remaining amount is due upon arrival prior to departure. Failure by the Chartering Party to return a signed copy of this agreement and the deposit by the due date will result in the cancellation of the reservation date at the sole discretion of the Operator without notification to the Chartering Party.

Total fees as indicated above are due and payable in full before boarding will begin unless prior arrangements are made and approved in writing by the Business Manager of the North Shore Scenic Railroad. There can be no more than 10 payment transactions

**CANCELLATION & REFUNDS**

The Chartering Party must cancel the reserved excursion at least 10 business days prior to departure to receive ninety percent reimbursement of deposit. Any cancellation made after 10 business days prior to departure will result in forfeiture of the entire deposit. Full refund of the initial deposit plus any additional payments will be made on account of equipment breakdown, lay up for repairs or any other occurrence which causes the Operator to cancel the excursion. The Chartering Party releases the Operator from any damage resulting from such cancellation. In the case of difficulty the Operator reserves the option to furnish the Chartering Party with substitute equipment and/or rolling stock. If a damage deposit is required, it will be refunded by mail within 10 days of the charter date providing no damage occurred to the rolling stock or other equipment by the Chartering Party, its members or guests. Damage in excess of the damage deposit will be the responsibility of the Chartering Party. The \$50 booking fee, is a non-refundable fee applied to the total expenses.

**CONDITIONS**

The Chartering Party assumes responsibility for the maintenance of order and the conduct of passengers aboard the rolling stock during the terms of this excursion and shall not engage in or permit guests brought aboard the rolling stock by the Chartering Party to engage in any unlawful acts or to cause damage to any of the Operator's equipment. The Chartering Party agrees to indemnify and hold the Operator harmless from any loss or claim of loss or damage which the Operator might incur as a result of failure by the Chartering Party to observe the conditions of this agreement.

Any violation of this Charter Agreement by the Chartering Party shall enable the Operator to terminate this agreement. If such a violation occurs while the rolling stock is underway, the Operator may proceed immediately to the station and all passengers will disembark. A termination of this agreement while underway shall result in the forfeiture of the Charter fee and in some cases results in additional penalty fees for broken or damaged equipment.

Any extension of the Charter period, once the excursion is underway, shall be made only with the consent of the Business and Operations Managers.

This excursion, sponsored by the Chartering Party is adhered to all Policies of the Operator, including Alcohol Policies, requiring all passengers over the age of 21 to have a valid ID. No outside alcohol is allowed on the train, no illegal substances, and no weapons are allowed on the train. Passengers are subject to search prior to boarding, and we reserve the right to search any bags or carry-ons. Any Marketing for the event will need to include this information to assure all passengers are compliant with the policies of the Operator. The Operator reserves the right to require security personnel to be hired.

In the event that the Chartering Party causes a delay to the operation of a scheduled train, without having given Operator adequate prior notice of such delay, Operator shall have the sole right to assess a penalty fee of \$900 for any delay in excess of 20 minutes to a scheduled train departure. Further penalties may be assessed depending upon additional delay, per 20 minute period. Chartering Party shall have passengers available for boarding not less than 10 minutes prior to scheduled train departure. Any such penalty shall be paid by the Chartering Party within 5 days of the operating date

*Catherine Erickson*

CHARTERING PARTY AGENT signature

*Catherine Erickson, CFO*

CHARTERING PARTY AGENT print name

Date: 03/10/20

*Josh Miller*

NORTH SHORE SCENIC RAILROAD AGENT

Josh Miller, Station Manager

NSSR AGENT print name

Date: 3/9/2020

Please SIGN & RETURN a copy of this contract within 10 business days.

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 24TH day of FEBRUARY, 2020 , by and between Independent School District #709, a public corporation, hereinafter called District, and DOUG WOOD , an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:** *(insert here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of MARCH 4 and shall remain in effect until MARCH 5 , unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** *Author Visit. K-2 large group program, 3-5 large group program (discussing books and craft of writing), 4 classroom writing workshops. (60 minutes each)*

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$ 1600.00 in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. **Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: AMY WORDEN - MYERS-WILKINS , 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip)

Douglas Wood 3835 Pine Point Rd Sirkell MN 56377



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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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



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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

  
 Contractor Signature \_\_\_\_\_ SSN/Tax ID Number \_\_\_\_\_ Date March 2, 2020  
 M-W Principal \_\_\_\_\_ 3/2/2020  
 Program Director \_\_\_\_\_ Date

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either:**

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
| 01 | 203 | 540 | 317 | 000 | 13500  |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

  
 CFO / Superintendent of Schools / Board Chair \_\_\_\_\_ 3-2-20  
 Date



# Douglas Wood

## Agreement

Between Douglas Wood and Myers-Wilkins Elementary

For the professional services of Douglas Wood according to the following terms:

Type of engagement 2-Day Author Visit

Dates and times of engagement(s) March 4-5, 2020. 3 Programs  
per day, 45 minutes each. Times TBD

Contact person Michelle Bowker

Agreed compensation \$1600

Payment (made out to Douglas Wood) due on the day of performance

Any other stipulations \_\_\_\_\_

\_\_\_\_\_  
Purchaser's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

[Signature]  
Performer's signature  
Oct. 3 2019  
Date

**Copy and return to:**  
Douglas Wood  
3835 Pine Point Road  
Sartell, MN 56377  
  
Phone: 320-253-8211  
Email: doug@douglaswood.com  
Website: www.douglaswood.com

*When returning this agreement please include travel directions to the program site.*

## CONTRACT ADDENDUM

THIS CONTRACT ADDENDUM dated this 10<sup>th</sup> day of March, 2020

### BETWEEN:

Independent School District No. 709

OF THE FIRST PART

- AND -

Zeitgeist Center for Arts & Community

OF THE SECOND PART

### Background:

- A. Independent School District No. 709 and Zeitgeist Center for Arts & Community (the "Parties") entered into the contract (the "Contract") dated September 10, 2019, for the purpose of *ARE Youth Poetry/Spoken Word Programming*.
- B. The Parties desire to amend the Contract on the terms and conditions set forth in this Contract Addendum (the "Agreement").
- C. This Agreement is the first amendment to the Contract.

**IN CONSIDERATION OF** the Parties agreeing to amend their obligations in the existing Contract, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to keep, perform, and fulfill the promises, conditions and agreements below:

### Amendments

1. The Contract is amended as follows:
  - a. Reimbursement. Original reimbursement was not to exceed \$3,000.00. This amendment would increase the not to exceed amount to \$5,000.00.

### No Other Change

2. Except as otherwise expressly provided in this Agreement, all of the terms and conditions of the Contract remain unchanged and in full force and effect.

### Miscellaneous Terms

3. Capitalized terms not otherwise defined in this Agreement will have the meanings ascribed to them in the Contract. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine include the

feminine and vice versa. No regard for gender is intended by the language in this Agreement.

**Governing Law**

- 4. Subject to the terms of the Contract, it is the intention of the Parties that this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Minnesota, without regard to the jurisdiction in which any action or special proceeding may be instituted.

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

[Signature] 20-6424699 3/12/20  
Contractor Signature SSN or EIN Date

[Signature] 3/12/2020  
Program Director Date

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either (1) the following budget (include full 16 digit code), (2) will be paid using Student Activity Funds or (3) is no cost contract (e.g. Memorandum of Understanding). Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
|    |     |     |     |     |        |
| 01 | 605 | 005 | 313 | 311 | 130500 |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

Catherine Elson 3-17-20  
CFO/Superintendent of Schools/Board Chair Date

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 25th day of February, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Creation Station Child Care, an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:**

1. **Dates of Service.** This Agreement shall be deemed to be effective as of February 27, 2020 and shall remain in effect until May 28, 2020, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** WHEREAS, THE SCHOOL DISTRICT has determined that it is necessary to retain the services of a qualified agency to meet needs documented in Individualized Education Program (IEP).

Whereas the AGENCY is duly qualified to perform these services for an integrated preschool program as determined by the student's IEP team.

NOW THEREFORE, the parties agree as follows:

The AGENCY shall provide the following services: Preschool programming daily (2 days per week) Monday and Thursday.

The AGENCY shall perform these services at: **2101 Trinity Road, Duluth, MN 55811.**

The approximate date the service will begin is, **February 27, 2020** and shall not extend beyond **May 28, 2020**; the contract not to exceed a total of **24 Days** (attending 2 Days per Week - Monday and Thursday. The District will pay 2 days per week @ \$30.00 per day).

The SCHOOL DISTRICT shall monitor the services of the AGENCY provided as follows: Supervision will be provided by the Special Education Director located in the Special Services Department. Student attendance will be provided to the Early Childhood Special Education (ECSE) program at Historical Old Central High School (HOCHS) 215 North 1st Avenue East, Duluth, MN 55802, on the 15<sup>th</sup> of each month for the preceding month.

**3. Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

**4. Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$30.00 per day and **\$720.00** in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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



**8. Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

**10. Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Jason Crane , 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Creation Station Child Care, 2101 Trinity Road, Duluth, MN 55811.

---

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

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

**13. Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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


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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District’s website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

|   |                   |         |
|---|-------------------|---------|
| Contractor Signature  | SSN/Tax ID Number | Date    |
|  |                   | 2/26/20 |
| Program Director  |                   | Date    |

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either:**

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
| 01 | 211 | 005 | 000 | 000 | 139300 |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

|   |        |
|---|--------|
|  | 3.5.20 |
| CFO / Superintendent of Schools / Board Chair                                       | Date   |

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 24th day of February, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Happy Time Day Care Center, an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:**

1. **Dates of Service.** This Agreement shall be deemed to be effective as of February 24, 2020 and shall remain in effect until May 29, 2020, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** WHEREAS, THE SCHOOL DISTRICT has determined that it is necessary to retain the services of a qualified agency to meet needs documented in Individualized Education Program (IEP).

Whereas the AGENCY is duly qualified to perform these services for an integrated preschool program as determined by the student's IEP team.

NOW THEREFORE, the parties agree as follows:

The AGENCY shall provide the following services: Preschool programming for 3 hours (180 minutes) Monday, Thursday, and Friday, approximately from 8:30 a.m. - 11:30 a.m. Actual pick-up and drop-off times are to be determined by the parents and the site.

The AGENCY shall perform these services at: **203 N 25th Ave W, Duluth, MN 55806.**

The approximate date the service will begin is, **February 24, 2020** and shall not extend beyond **May 29, 2020**; the contract not to exceed a total of **38 Days** (attending 3 Days per Week - Monday, Thursday, Friday. The District will pay 3 days per week @ \$50.29 per day).

The SCHOOL DISTRICT shall monitor the services of the AGENCY provided as follows: Supervision will be provided by the Special Education Director located in the Special Services Department. Student attendance will be provided to the Early Childhood Special Education (ECSE) program at Historical Old Central High School (HOCHS) 215 North 1st Avenue East, Duluth, MN 55802, on the 1st and 15<sup>th</sup> of each month for the preceding two weeks.

**3. Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

**4. Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed **\$1,911.02** in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Jason Crane , 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Happy Time Day Care Center, 203 N 25th Ave W, Duluth, MN 55806

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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

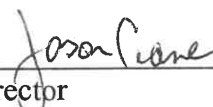
**Workers’ Compensation Insurance:** Contractor must provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers’ Compensation insurance in accordance with the statutory requirements of the State of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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District’s website.

**THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

|   |                   |        |
|---|-------------------|--------|
| Contractor Signature  | SSN/Tax ID Number | Date   |
|  |                   | 3-4-20 |
| Program Director  |                   | Date   |

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either:**

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
| 01 | 211 | 005 | 000 | 000 | 139300 |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

|   |        |
|---|--------|
|  | 3-5-20 |
| CFO / Superintendent of Schools / Board Chair                                       | Date   |



# UNIVERSITY OF MINNESOTA

## SIXTH AMENDMENT TO USE AND SERVICES AGREEMENT

**THIS SIXTH AMENDMENT TO USE AND SERVICES AGREEMENT** (the “**Amendment**”) is entered into as of the date of last signature below by and between Regents of the University of Minnesota, a Minnesota constitutional corporation (the “**University**”), and Duluth Public Schools ISD 709, a Minnesota public school district (“**Licensee**”).

**WHEREAS**, University and Licensee entered into a Use and Services Agreement dated September 3, 2014, as amended by a First Amendment dated March 30, 2015, a Second Amendment dated March 22, 2016, a Third Amendment dated February 27, 2017, a Fourth Amendment dated March 26, 2018, and a Fifth Amendment dated March 26, 2019 (the “**Agreement**”), providing for Licensee’s use of the Robert F. Pierce Speech-Language-Hearing Clinic (the “**Clinic**”) on the Duluth campus for the sole purpose of conducting audiological testing and assessments of Licensee’s clients; and

**WHEREAS**, University and Licensee desire to further amend the Agreement in accordance with the terms and conditions of this Amendment.

**NOW, THEREFORE**, the parties agree as follows:

1. The above recitals are incorporated into and are a part of this Amendment. All capitalized terms not defined in this Amendment will have the meaning given them in the Agreement.
2. Pursuant to Section 3.2 of the Agreement, Licensee desires to renew this Agreement for the annual term beginning July 1, 2020 and ending June 30, 2021, and University consents to such renewal.
3. University shall continue to have the right at each annual renewal to increase the License Fee and the fees for calibration services, secretarial services, photocopying services and the \$2.00 charge for each of Licensee’s clients served in the Clinic. University shall provide the amount of any increased fee to Licensee upon acceptance of Licensee’s request to renew.
4. The License Fee for the annual renewal beginning July 1, 2020 will be \$134.01 per month and the Calibration Fee will be \$295.91 per month. The Fee for Secretarial Services \$556.40 per month. All other fees remain unchanged.
5. The University will provide limited or no secretarial services when the clinic secretary is ill or on vacation, or during University scheduled holidays or breaks.

6. Licensee's use of the Clinic and services provided by University continues to be subject to all applicable University policies, procedures, rules and regulations, including the Safety of Minors policy.

7. Except as modified by this Amendment, all terms and conditions of the Agreement will remain in full force and effect.

**IN WITNESS WHEREOF**, University and Licensee hereby execute this Amendment on the day and year written below.

**Regents of the University of Minnesota**

**Duluth Public Schools ISD 709**

By: \_\_\_\_\_

By: Catherine Erickson

Name: Leslie Krueger  
Title: AVP of Planning, Space and Real Estate

Name: Catherine Erickson  
Title: CFO

Date: \_\_\_\_\_

Date: 3-10-20

01-400-005-000-000-1370.01

**No Cost Contracts Signed  
March 2020**

For your information, the Superintendent or the Executive Director of Business Services has signed the following no cost contracts during the month of March 2020:

| <b>Name</b>                                | <b>Contract Source</b> | <b>Description</b>  |
|--|------------------------|---|
| East Side Neighborhood Development Company | Head Start             | Lead testing for preschool students, sibling, parents, ECFE student and neighborhood children age six and under |
| Americorps Reading & Math, Inc.            | Homecroft              | Tutor program   |
| Western Governors University               | Human Resources        | Student teaching  |
| Americorps Reading & Math, Inc.            | Laura MacArthur        | Tutor program   |
| SMDC Medical Center                        | Special Services       | Education services for Amberwing students   |
| City of Duluth Public Library              | Superintendent         | Virtual library card program  |
|  |                        |   |
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|  |                        |   |
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## AGREEMENT

**THIS AGREEMENT**, made and entered into this 5<sup>th</sup> day of February, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and East Side Neighborhood Development Company, an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:** *(insert here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of January 27<sup>th</sup>, 2020 and shall remain in effect until May 29<sup>th</sup>, 2020, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Contractor will provide blood lead testing at elementary school sites for Duluth Preschool students, siblings, parents, ECFE students and neighborhood children age six and under. A trained staff member performs a finger stick blood draw, collects two drops of blood on a sample card, and brings the samples to a laboratory in St. Paul for processing. Results are provided directly to the parents by mail and to Duluth Preschool nurse by e-mail.

3. **Background Check.** *(applies to contractors working independent with students)*

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$0 (zero) hourly and \$0 (zero) in total.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

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

**8. Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

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

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

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

**10. Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Tom Quinn & Kelly Piette , 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip) Attn: Laura Clouser, East Side Neighborhood Development Company, 925 Payne Ave #201, St. Paul, MN 55130.

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

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

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

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

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

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

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

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

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

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

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

Anne DeJoy, E.-D. EAST SIDE NEIGHBORHOOD DEV. CO- 2/5/20  
 Contractor Signature SSN/Tax ID Number Date

Laura Clouser 41-136 75 03 2/6/20  
 Program Director SSN/Tax ID Number Date

Sherry Williams 2/13/20

**Please note:** All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

**This contract is funded by either (1) the following budget (include full 16 digit code), (2) will be paid using Student Activity Funds or (3) is no cost contract (e.g. Memorandum of Understanding). Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below.

|    |     |     |     |     |        |
|----|-----|-----|-----|-----|--------|
|    |     |     |     |     |        |
| XX | XXX | XXX | XXX | XXX | XXXXXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

Barbara Elson 3-10-20  
 CFO/Superintendent of Schools/Board Chair

# Site Agreement

READING & MATH, INC.



The purpose of this agreement is to establish the basic parameters of the Service Site's participation in AmeriCorps with Reading & Math, Inc. for the 2020-2021 program year. Reading & Math, Inc. administers AmeriCorps programs that provide AmeriCorps members as a resource.

A. **AmeriCorps programs:** Reading Corps, Math Corps, Opportunity Corps, and Recovery Corps, hereafter referred to collectively as "Program," are AmeriCorps programs. AmeriCorps is a national service program that engages people in a year-long commitment to service in meeting needs in their local communities. For more information, visit [www.americorps.gov](http://www.americorps.gov).

B. **Parties to this agreement:**

1324 - Homecroft Elementary, Duluth, Minnesota 55803

hereafter referred to collectively as "Service Site"

Reading & Math, Inc., hereafter referred to as "RMI", 1200 S Washington Ave, Ste 210B, Minneapolis MN 55415



**C. Definitions:**

1. **AmeriCorps Member.** Individual who makes a commitment to serve for one term through the Program in a specific Program position, as listed in addendum. AmeriCorps members are not employees or volunteers; they are completing service and should be referred to as a member.
2. **Service Site.** This is the location where an AmeriCorps member is placed and performs their daily service.
3. **Internal Coach and/or Site Supervisor.** Employee of the partnering Service Site who provides daily on site supervision to ensure Program objectives are met and AmeriCorps regulations are upheld.
4. **Program Staff.** Employee of RMI who provides oversight and management to the Program including, member recruitment/management, site management, and compliance to AmeriCorps regulations.
5. **CNCS.** Corporation for National and Community Service; federal agency for all AmeriCorps programs. Referred to as the "Corporation".

**D. Early termination:** At RMI's discretion, the Service Site's failure to comply with the terms and conditions of this Agreement may result in forfeiting of the Service Site's awarded members for the current program year.

## SERVICE SITE RESPONSIBILITIES

A. **Commitment to the Program Objectives and Model:** The Service Site agrees to commit Program objectives and Program Model, as articulated in the addendum.

### B. AmeriCorps Service Environment

1. **Safe and inclusive environment:** Provide the AmeriCorps member with a safe and welcoming service environment. Treat members as part of the staff team, including inviting them to participate in staff activities or workshops, including in staff communication (e.g., adding to a staff email list) listing in staff directory, providing a name badge if needed, etc.
2. **Program and member introduction:** Introduce member at a staff meeting or similar setting. Educate all staff about the purpose of the member position and Program. Leadership at the Service Site should be strong advocates for Program to garner staff support and buy-in.
3. **AmeriCorps signage:** Post an AmeriCorps sign provided by Program in a visible location, preferably in the front office, to identify the organization as an AmeriCorps site.
4. **Prohibited Activities:** Post the full list of Prohibited Activities provided by Program in the member's workspace.
5. **Non-displacement:** Ensure an AmeriCorps member is not used to displace an employee or paid position (see "Federal Policies" section of this agreement). Examples of inappropriate indirect service may include filling in for paid staff while on leave, office photocopying, answering phones, running errands, etc.
6. **Accessibility:** Ensure the Service Site is accessible to people with disabilities.
7. **Reasonable accommodations:** Work with Program Staff if a member requests reasonable accommodations to perform the essential functions of the AmeriCorps position.
8. **Workspace and computer access:** Provide members with a reasonable workspace, including:
  - i. Access to a phone and computer with Word, Excel, and Internet for Program-related purposes (i.e., completing time sheets, entering participant data in an online database, checking Program email, etc.). The computer used by the member must have a modern web browser (Chrome, Firefox, or Safari) installed in either the browser's current or next most recent version, and should operate at a speed at least on par with computers used by staff. Any firewall software in use must permit unhindered and unrestricted access to all websites necessary for completing required Program-related tasks and reviewing online Program support and training materials (e.g., viewing training videos posted to Vimeo).

- ii. Locked drawer to store confidential participant data.
  - iii. Issuing an accessible email address if common email providers are blocked at the Service Site.
  - iv. Reasonable and quiet space for members to work with individuals.
9. **Grievance Procedure:** Inform the Program, in writing, of any instance in which the Service Site wishes to initiate the grievance procedure that is maintained by RMI and the Program. The specific grievance must be cited to initiate the process. Concerns should be reported as early as possible. Formal grievances must be presented in writing within one year of the date of the disputed events. In the case of a grievance that alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation of Community and National Service Inspector General at <https://www.cncsoig.gov/hotline> or by calling 1-800-452-8210.
10. **Drug-Free Workplace Act:** Pursuant to the Drug-Free Workplace Act of 1988, the Program is committed to maintaining a drug and alcohol-free environment. Members are prohibited from the illegal use, manufacture, sale, dispensation, distribution, or possession of illegal drugs, controlled substances, narcotics, or alcoholic beverages on Program premises, Service Sites, or while traveling in an official capacity. Service is conditioned upon compliance with this policy. The Program requires that each member engaged in the performance of a federal grant shall, as a condition of service under the grant, abide by the terms of this policy and shall notify Program Staff in writing of any criminal drug charge, arrest, or conviction occurring during service no later than five (5) days after such charge, arrest, or conviction. Upon receiving notice or otherwise learning about the charge, arrest, or conviction the Program will notify appropriate Federal-contracting agency within ten (10) days. Within 30 days of receiving such notice, the Program will (1) take disciplinary action up to and including exit for cause consistent with CNCS rules regarding termination and suspension of service, or (2) require the member to satisfactorily participate in an approved drug treatment program. The Program shall make a good faith effort to continue to maintain a drug-free workplace through implementation of this policy. [Reference: 41 U.S.C. § 701 et seq.]
- C. **Internal Coach and/or Site Supervisor:** The Service Site must designate a staff person(s) to be the Internal Coach and/or Site Supervisor, who will provide programmatic support and supervision to the AmeriCorps member(s). **This individual must be designated before a member can be placed at the site.**

The Service Site must allow sufficient time for Internal Coach/Site Supervisors to fulfill their Program responsibilities, including attending required Program training and scheduled meetings. The time commitment is approximately 6-9 hours per month to support each member, plus required training.

If the designated Internal Coach/Site Supervisor is not able to complete the program year (e.g., they take a leave of absence from their position at the site), the Service Site is required to designate someone to be the Internal Coach/Site Supervisor for the remainder of the program year.

The duties of the Internal Coach and/or Site Supervisor include:

1. **On-site orientation:** Provide an on-site orientation for the AmeriCorps member. This will include a tour of the building(s), explanation of site policies (including dress code, safety procedures, and data confidentiality), site expectations for the member, etc. This orientation should include setting a schedule for weekly check-in meetings with each member.
2. **Member Safety:** In the event of a localized disaster or emergency that requires the closure of the service site (i.e. bomb threat, fire, blizzard, burst water pipe, teacher strike, etc.), the Internal Coach/Site Supervisor is responsible for notifying Program Staff immediately so that Program can enact an alternative service plan for the AmeriCorps member.
3. **Member time sheet approval:** Establish a sign-in and sign-out procedure on-site to verify hours served by the member. Approve member time sheets every two weeks by the deadline. If a member's time sheet is not approved by the deadline for the pay period, the member's living allowance will be delayed until the following pay period and the time sheet is approved.
4. **Set member schedule:** Develop a schedule with the member that includes:
  - i. The ability to serve a minimum weekly number of hours that aligns with the member's commitment as stated in their Member Service Agreement. (See Program-specific Addendum for details.)
  - ii. A full caseload of participants as defined by Program.
  - iii. Adequate time for data entry and meeting time with the Internal Coach/Site Supervisor.
  - iv. Time to attend all required training and/or events.
5. **Data checks:** Review data collected by members on a monthly basis to ensure accuracy and complete reporting of services provided. Internal Coaches/Site Supervisors can determine the most convenient method for themselves to monitor data collection.
6. **Performance management:** Set clear expectations for the member at the beginning of the year, provide ongoing feedback on their performance, and immediately communicate any performance concerns to Program Staff.

Work closely with Program Staff and Service Site administrators (if applicable) if disciplinary action is needed. Members are expected to adhere to site policies regarding issues such as confidentiality, safety, dress code, attendance, etc. The Service Site does not have the authority to terminate a member but does have the authority to enact the Program performance management procedure as outlined in the Program handbook given to Internal Coaches/Site Supervisors, which includes providing documentation required for the member's personnel file.

7. **Training attendance:** Attend required training as scheduled by Program.
8. **Program site visits:** Participate, as required or requested, in on-site visits by Program.
9. **In-Kind time reports:** Report, as required or requested, time spent dedicated to Program through a monthly in-kind report.

#### D. Member Recruitment and Selection

The Service Site will work in collaboration with Program Staff to recruit and fill its positions by the deadline set by Program.

1. **Recruitment:** The Service Site will utilize recruitment materials provided by Program to recruit individuals to serve in their site. Individuals should be directed to apply on Program's website.
2. **Interview:** The Service Site will have the option of participating in interviews alongside Program Staff to select the member(s) best suited for the Service Site. Program Staff will provide interview questions to ensure a fair and equitable process; completed interview questions must be on file before an offer can be made.
3. **Selection:** The Service Site will not extend an official offer to any applicant; it will, however, give its recommendation to Program Staff who are responsible for making an offer.

Program Staff reserve the right to make the final decision regarding the selection of members to enforce a fair and equitable hiring process. RMI will not discriminate for or against any AmeriCorps service member or applicant on the basis of race, color, national origin, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, familial status, military service, or any other category protected by law.

4. **Background checks:** Member service is contingent upon successful completion of a three-part federally mandated background check (FBI, state repository, and sex offender registry checks). RMI will conduct and pay for a thorough background check on each applicant prior to their official acceptance into the Program. RMI will notify Service Sites if the applicant did not clear the background check according to the RMI and AmeriCorps policy. Actual results of the background check will not be shared with sites without written permission from the applicant. Service Sites must notify Program Staff if it intends to conduct its own additional background check. A member may not asked to pay for the cost of a background check.

Members may need to be accompanied while their FBI Fingerprint check is pending. An individual is accompanied when they are in the physical presence of a personnel cleared for access to vulnerable populations. The site is responsible for verifying and documenting accompaniment during this person.

5. **Replacing members:** In most cases, the site may not replace a member who exits the Program early. However, sites are allowed to replace a member who terminates service before completing 30 percent of the term.
6. **Transferring members:** The Program reserves the right to transfer members from one partner organization to another partner organization in circumstances in which Program requirements are not being fulfilled. Other situations may arise which will require the Program to transfer a member on a case-by-case basis.
7. **Unfilled positions:** Positions awarded, but not filled by the deadline, may be re-awarded by the Program to another Service Site.
8. **Prohibition on member employment at Service Site:** Members should not obtain paid employment at their Service Site while simultaneously enrolled as an AmeriCorps member (excluding Educator Corps). If your member expresses interest in onsite employment opportunities, or is already employed by your site, please speak with your Program Staff to ensure compliance with federal guidance (AmeriCorps State and National Policy FAQs C.38).

Additionally, the site may not hire its member (or a member currently serving at another Service Site) as a staff person during their term of service as it would require a member to cease their service with AmeriCorps. Every reasonable effort should be made by the site to support a member in the successful completion of their Program commitment.

- E. **On-Site Training and/or Staff Meetings:** The Service Site will include members in relevant on-site training and/or staff meetings as part of their AmeriCorps service. Any expenses related to this training (e.g. food) are paid for by the Service Site.
- F. **Participant Data:** The Service Site will support members in collecting data for participants who receive services from the Program, as detailed in the addendum. Data is maintained online in a secure, data-privacy-compliant system. Service Sites are responsible for attending data management system training and monitoring their members' reports to ensure data is submitted regularly and accurately.
- G. **Data Privacy:** RMI is required by law to protect the confidentiality of Personally Identifiable Information (PII) that is collected.

PII is defined as any information, physical or electronic, about an individual that can be used to distinguish or trace a person's identity, including but not limited to: name, social security number, date and place of birth, mother's maiden name, education, financial transactions, medical, criminal and employment history, biometric records, and any other personal information that is linked or linkable to an individual.

Protecting PII includes establishing procedures to prepare for and respond to a breach of confidentiality.

“Breach” is defined as: loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar situation where persons other than authorized users and for other than authorized purpose have access or potential access to PII.

RMI protects the confidentiality of PII by:

- Designating a PII Security Coordinator;
- Identifying the types of PII that we collect, the places where its is stored, and the service providers with whom it is shared;
- Documenting policies and procedures in place to protect PII, regardless of where it is stored;
- Identifying and documenting realistic risks to the security, confidentiality, and integrity of PII; and,
- Following those procedures in the event of a breach.

RMI Program Staff must be notified immediately if any representative of the Service Site suspects a breach of confidentiality related to the execution of the activities outlined in this agreement.

- H. **Site Fees:** Some Programs require that Service Sites pay a site fee for the Program. Please see Program-specific addendum for amount and payment requirements.
- I. **In-Kind Contributions:** Report, as required or requested, the Service Site’s non-monetary contribution that is required for Program to operate and includes the value of the following items: 1) building operating costs, including electricity, heat, trash removal, janitorial costs, office supplies, etc., 2) internal coach/site supervisor annual salary and fringe, 3) principal annual salary and fringe (if applicable). The Service Site’s finance department or business office should complete the form annually, as requested. Principal time will be tracked by Program and will need to be verified by the principal on a regular basis.

## READING & MATH, INC. RESPONSIBILITIES

Program Staff are employees of Reading & Math, Inc. They are responsible for providing oversight to the Program, including member recruitment/management and site management, and compliance with state and federal AmeriCorps regulations.

### A. Member Recruitment and Selection:

1. **Recruitment:** Program Staff will work in collaboration with the Service Site to recruit members. Program Staff will provide recruitment materials to the Service Site. Program Staff implement recruitment plans.
2. **Interviewing:** Program Staff will screen all applications and conduct a phone interview. Program Staff will support sites in conducting a final interview or will conduct the interview by themselves if the site is unable.
3. **Selection:** Program Staff will work together with the site to make selection decisions. Program Staff have the responsibility and authority to extend an offer for a position to an applicant. RMI reserves the right to make final selection decisions. Program Staff will assist the site in filling all positions by the deadline.
4. **Background checks:** RMI conducts all required background checks, as noted in a previous section of this Site Agreement. RMI will not conduct background checks on volunteers recruited by members to assist with Service Site events.

### B. Member Management:

1. **Member training:** Program Staff will coordinate the logistics and schedule the member and Internal Coach/Site Supervisor trainings that occur throughout the year.
2. **Data management systems:** RMI will provide a secure, online data management system for tracking participant information and progress. RMI provides the training for members and supervisors.
3. **Content experts:** RMI supports services sites and members by providing content experts that support the implementation of the Program model at Service Sites. (See Program-specific addendum for details.)
4. **Member site visits:** Program Staff will conduct site visits, as needed, during the year with each member and Internal Coach/Site Supervisor.
5. **Monitoring program requirements:** Program Staff will track and monitor each member's progress in completing Program requirements and provide timely updates to the Internal Coach/Site Supervisor to ensure members will complete required service hours by the end of their term of service.



6. **Member personnel file:** RMI is responsible for completing and maintaining a personnel file for each member, which includes all required documents (member eligibility documentation, time sheets, disciplinary action, performance evaluations, etc.).
7. **Member benefits:** RMI is responsible for administering and overseeing the member benefits (as applicable), including living allowance, education award, health insurance, federal student loan forbearance, child care reimbursement, and housing and/or transportation assistance if the member qualifies.
8. **Conflict resolution:** Program Staff work together with the Internal Coach/Site Supervisor in resolving any member issues. The Program Staff, not the Service Site, has the authority to terminate a member.

## FEDERAL POLICY: PROHIBITED ACTIVITIES FOR AMERICORPS MEMBERS

AmeriCorps members may not engage in the below activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed below per 45 CFR 2520.65.

- A. While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation, staff and members may not engage in the following activities:
1. Attempting to influence legislation;
  2. Organizing or engaging in protests, petitions, boycotts, or strikes;
  3. Assisting, promoting, or deterring union organizing;
  4. Impairing existing contracts for services or collective bargaining agreements;
  5. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
  6. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
  7. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
  8. Providing a direct benefit to:
    - i. A business organized for profit;
    - ii. A labor union;
    - iii. A partisan political organization;
    - iv. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative;
    - v. An organization engaged in the religious activities described in paragraph (7) of this section, unless Corporation funds are not used to support the religious activities; and
  9. Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
  10. Providing abortion services or referrals for receipt of such services;
  11. Such other activities as the Corporation may prohibit.
- B. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

## **FEDERAL POLICIES: SUPPLANTATION, NON-DUPLICATION AND NON-DISPLACEMENT POLICY**

These policies outline restrictions that govern the use of Corporation for National and Community Service (CNCS) assistance.

### **A. Supplantation:**

Corporation assistance may not be used to replace State and local public funds that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal public expenditure for that Program in the fiscal year that support is to be provided is not less than the previous fiscal year. [45 CFR 2540.100 (a)]

### **B. Non-Duplication:**

Corporation assistance may not be used to duplicate an activity that is already available in the locality of a Program. And, unless the requirements of the 'Non-displacement' paragraph of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides. [45 CFR 2540.100 (e)]

### **C. Non-Displacement:**

1. An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.
2. An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.
3. A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.
4. A participant in a program receiving Corporation assistance may not perform any services or duties, or engage in activities, that would otherwise be performed by an employee as part of the assigned duties of such employee.
5. A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that-
  - I. Will supplant the hiring of employed workers; or
  - II. Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.
6. A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any-
  - I. Presently employed worker;
  - II. Employee who recently resigned or was discharged;
  - III. Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
7. Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
8. Employee who is on strike or being locked out.

[45 CFR 2540.100 (f)]

## FEDERAL POLICY: NON-DISCRIMINATION POLICY

RMI does not discriminate in Program admission on the basis of race, color, national origin, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, familial status, military service, or any other category protected by law.

Member selection is based solely on an applicant's ability to perform the essential functions of the position in the opinion of RMI.

It is unlawful to retaliate against any person who, or organization that, files a complaint about such discrimination. In addition to filing a complaint with local and state agencies that are responsible for resolving discrimination complaints, you may bring a complaint to the attention of the Corporation. If you believe that you or others have been discriminated against, or if you want more information, contact:

**Reading & Math, Inc.**

1200 S. Washington Ave, Ste 210B, Minneapolis, MN 55415  
humanresources@servetogrow.org or (612) 206-3030

**Equal Opportunity Program (EOP)**

Corporation for National and Community Service  
1201 New York Ave NW, Washington, DC 20525  
Voice: (202) 606-7503; TTY: (202) 565-2799; Email: eo@cns.gov

RMI make every effort to ensure that its partner agencies have similar non-discrimination policies. Members with questions or concerns about any type of discrimination in their placement workplace are encouraged to bring these issues to the attention of their Internal Coach/Site Supervisor, site contact, and/or RMI Program Staff. If the partner agency is found to be engaging in such activities, removal of the current member(s) and denial of future members at that agency may result.

Discrimination on the part of AmeriCorps members will also not be tolerated. Anyone found to be engaging in any type of unlawful or harassing discrimination will be subject to disciplinary action, up to and including dismissal from the Program. RMI will not tolerate harassment of any kind.

Harassment includes threatening or insinuating that the refusal to submit to sexual advances will adversely affect admission or Program benefits. Harassment may also include conduct such as unwanted sexual flirtation or touches; abusive or degrading language; graphic or suggestive comments; or displaying inappropriate objects or pictures.

Any member who believes that he or she has been subject to harassment of any kind, or who has knowledge about harassment of others, should report the harassment to an immediate supervisor, superior, and/or RMI Program Staff.

**Note to Service Sites:** In any case of discrimination related to an AmeriCorps member, the Service Site must contact RMI Program Staff before taking action.

Full text of the CNCS Civil Rights and Non-Harassment Policy can be found in the AmeriCorps Program Manual provided to AmeriCorps members and Internal Coaches/Site Supervisors at the beginning of each program year.

## DIVERSITY, EQUITY AND INCLUSION

Reading & Math, Inc.'s Diversity, Equity and Inclusion Statement:

*Relationships are the containers in which meaningful change occurs. We invest in relationships. We work to ensure that all humans are seen, heard and valued. To achieve this, we commit to acknowledging the power we hold and stewarding that power in ways that dismantle systemic and individual injustice.*

RMI values the diversity of our staff, members, site partners, and participants we serve. We value both the visible and invisible diversity present without our Program. RMI believes that we all must strive to create and nurture an environment that demands, engages, celebrates, and cultivates diversity. By agreeing to be a Service Site, you are committing to join our Program in this continuous process to cultivate an environment that is inclusive and respectful to those from all backgrounds and experiences. Any decisions or actions made by RMI or its partner organizations that is not consistent with an environment of inclusivity will be seen as a breach of this Site Agreement and any further relationship between RMI and the Service Site could be terminated.

## CERTIFICATION

This Site Agreement and attached program-specific addendum(s) serve as an agreement between the Service Site and the Program for the stated program year. The terms of this agreement will end on July 31, 2021 . Amendments to this agreement shall be done in writing.

The Parties will mutually agree to specific Programs to be provided by RMI and attach them to this Agreement in the Addendum(s).

### Member Award

Homecroft Elementary (K3): Elementary Literacy Tutor - 2 Full-Time

Homecroft Elementary (K3): Kindergarten-Focused Literacy Tutor - 1 Full-Time


This award may be changed by request of the Service Site or Program or through the enforcement of the terms of this agreement. Changes will be negotiated, approved, and confirmed exclusively via email communication.

### Signature

You must complete the electronic version in its entirety to certify that you have read and understand the agreement prior to a member being placed at your Service Site.

By signing this agreement, I acknowledge that I have read, understand, and agree to all terms and conditions of this agreement.

|  |                           |
|--|---------------------------|
| <b>Service Site Staff Name</b><br>Thomas Cawcutt | <b>Title</b><br>Principal |
| <b>Service Site Staff Signature</b>              | <b>Date</b>               |

  
 Catherine A Erickson, CFB

# K3 Reading Corps Addendum

READING & MATH, INC.



The purpose of this addendum is to establish the basic parameters of the Service Site's participation in Minnesota K3 Reading Corps for the 2020-2021 program year. Reading Corps is an AmeriCorps program that provides AmeriCorps members as a resource.

**Parties to this agreement:**

1324 - Homecroft Elementary, Duluth, Minnesota 55803

hereafter referred to collectively as "Service Site".

Reading & Math, Inc., hereafter referred to as "RMI", 1200 S Washington Ave, Ste 210B, Minneapolis MN 55415

**A. Program Model**

**1. Member Position**

- i. Elementary Literacy Tutor: Tutors are trained to provide targeted reading skill practice, commonly called intervention, primarily in the areas of phonemic awareness, phonics, and fluency. Tutors deliver daily twenty-minute intervention sessions with Kindergarten through third grade students.

**2. Interventions and Assessments**

- i. Reading Corps tutors are responsible for administering the assessments; Internal Coaches are responsible for observing the tutor for assessment reliability.
- ii. Reading Corps tutors are responsible for entering benchmarking and progress monitoring data into the Reading Corps data management system.
  - 1. Reading Corps tutors collect benchmark data three times throughout the year during the specified assessment windows set by RMI. Students

tested include all students who have been served by Reading Corps in previous years, and any students the site would like to screen for eligibility for Reading Corps services.

- iii. Reading Corps tutors are responsible for delivering interventions to a full caseload of students for 20 minutes per student per day.

### 3. Content Expert Role

- i. An RMI-designated Master Coach meets with the Internal Coach and Reading Corps tutor - as needed, but can be as often as monthly - to review student graphs, select appropriate interventions and ensure fidelity to the program.

## B. Member Schedules

1. **Member Types/Hours Expectations:** The Internal Coach will develop a daily schedule with the tutor that maximizes student service and includes:

- i. Adequate time to complete the required hours of service per day/week for the school year:
  1. Full-time tutor serves 35 hours per week
  2. Part-time tutor serves 25 hours per week
  3. Reduced part-time tutor serves 18 hours per week
- ii. Sufficient time to complete data entry and respond to email (using a computer at the school)
- iii. Sufficient time to meet with the Internal Coach and prepare for tutoring sessions

## C. Data Privacy

### 1. FERPA Expectations

- i. The service site understands that it is making available to RMI some legally protected student data solely for the purpose of implementing the Reading Corps program, including for research for the purposes of improving educational outcomes for students.
- ii. Tutors and Coaches that implement the Reading Corps program will collect and record additional protected data as they implement the Reading Corps model. RMI requires that the service site take all necessary steps to protect student data as required by law.
- iii. Some of these data are protected by state and federal laws, particularly the federal Family Educational Rights and Privacy Act (FERPA). The obligations agreed to under this agreement extend to all data protected by state and federal law, including any personally identifiable data supplied by Service Site to RMI.
- iv. **Service Sites must designate RMI/Reading Corps as a school official in their FERPA policy.**
- v. RMI reserves the right to request proof that Service Site is following all required FERPA and State laws related to data privacy, including requesting a copy of the Service Site's annual FERPA notice of rights to eligible students and/or parents.



2. **Data required from Service Site:** The Site will ensure all requested student data are provided to Reading Corps in a timely manner, and that all students served by Reading Corps complete assessments administered by the member(s).
3. **Data collected by members:** Reading Corps tutors and/or coaches collect the following data throughout the school year:
  - i. Student assessment data
    1. Reading Corps uses standardized, individually administered measures that are reliable and valid indicators of literacy skills.
  - ii. Tutor log data
    1. Reading Corps tutors will maintain a tutor log to document the number of minutes and the number of sessions each student receives of Reading Corps services each week. Reading Corps tutors will be responsible for entering this data into the Reading Corps data management system weekly.
  - iii. Fidelity data
    1. Internal Coaches and Master Coaches will be responsible for using the Benchmark Integrity checklists to observe tutors administering and scoring student assessments prior to each benchmark window (fall, winter, and spring) to ensure reliability. Internal Coaches and Master Coaches will also be responsible for using Intervention Integrity Observation Checklists to observe tutors using the prescribed interventions to ensure fidelity. Internal Coaches will observe tutors twice per month to collect intervention fidelity data.

## CERTIFICATION


This program specific addendum serves as an agreement between the Service Site and the Program for the stated program year as a part of the Site Agreement signed for 2020-2021. The terms of this agreement will end on July 31, 2021 . Amendments to this agreement shall be done in writing.

### Signature

By signing this agreement, I acknowledge that I have read, understand, and agree to all terms and conditions of this agreement, including but not limited to:

- Protect all PII per FERPA and other applicable Federal and local laws
- Designate RMI/Reading Corps as a School Official in site's FERPA policy

|  |                           |
|--|---------------------------|
| <b>Service Site Staff Name</b><br>Thomas Cawcutt | <b>Title</b><br>Principal |
| <b>Service Site Staff Signature</b>              | <b>Date</b>               |

  
\_\_\_\_\_  
Catherine Erickson, CFO

## Certificate Of Completion

Envelope Id: 151C2762D85F48DD8BA6BD27F306283E  
 Subject: Reading Corps Site Agreement 2020-2021 -- Due by April 2, 2020  
 Source Envelope:  
 Document Pages: 19  
 Certificate Pages: 1  
 AutoNav: Disabled  
 Envelopeld Stamping: Enabled  
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Delivered

Envelope Originator:  
 Reading & Math, Inc.  
 1200 Washington Ave S  
 Minneapolis, MN 55415  
 docusign@servetogrow.org  
 IP Address: 34.226.132.221

## Record Tracking

Status: Original  
 3/26/2020 2:24:00 PM

Holder: Reading & Math, Inc.  
 docusign@servetogrow.org

Location: DocuSign

## Signer Events

Thomas Cawcutt  
 thomas.cawcutt@isd709.org  
 X

## Signature

## Timestamp

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 Viewed: 3/27/2020 10:24:27 AM

Security Level: Email, Account Authentication  
 (None)

**Electronic Record and Signature Disclosure:**  
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## Signature

## Timestamp

## Editor Delivery Events

## Status

## Timestamp

## Agent Delivery Events

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## Timestamp

## Intermediary Delivery Events

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## Timestamp

## Carbon Copy Events

## Status

## Timestamp

## Witness Events

## Signature

## Timestamp

## Notary Events

## Signature

## Timestamp

## Envelope Summary Events

## Status

## Timestamps

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3/26/2020 2:24:00 PM  
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## Payment Events

## Status

## Timestamps



# Western Governors University

4001 South 700 East, Suite 700, SLC, UT 84107

## STUDENT TEACHING LETTER OF AGREEMENT

### Tier 1: Primary Partner

This Student Teaching Letter of Agreement (Agreement) is made between Western Governors University, a Utah nonprofit corporation (WGU), and Duluth Public Schools/ ISD 709 ("District"), and is effective as of the date of the last signature below ("Effective Date").

Thank you for working with Western Governors University (WGU) for the placement of student teachers. Our goal is to establish a relationship of collaboration that benefits your district/school and WGU Teacher Candidates, and that allows us to work together for continuous improvement. We look forward to working together for the benefit of your future educators.

WGU is regionally accredited by the Northwest Commission on Colleges and Universities (NWCCU), and the WGU Teacher Education programs are further accredited by the Council for the Accreditation of Educator Preparation (CAEP). WGU represents that each Teacher Candidate assigned to the District for Student Teaching is validly enrolled in an approved WGU credentialing program and meets the District's background requirements.

#### A. Mutual Expectations

A Primary Partner is a district/school where WGU places Teacher Candidates for a Field Experience with Cooperating Teachers, with an aim to co-construct a mutually beneficial arrangement for clinical preparation and the continuous improvement of Teacher Candidates, and to share accountability for Teacher Candidate outcomes. The school administrator and Cooperating Teacher will have the opportunity to provide critical feedback to inform program improvement through surveys at the end of each cohort and will receive an invitation to participate in an annual focus group.

#### B. Definitions

For the purposes of this Agreement, capitalized terms will have the following meanings:

- Teacher Candidate refers to a student enrolled in a WGU program leading to an education credential.
- Cooperating Teacher (or host teacher) refers to a district employee who is the teacher-of-record in the classroom where the Teacher Candidate is assigned. A Cooperating Teacher may or may not be a Clinical Supervisor.
- Clinical Supervisor refers to a present or former employee of District, retired educator, or any other individual meeting the criteria of "supervisor" established by WGU for this position, and engaged by WGU or District, to supervise a Teacher Candidate's progress during a minimum of six observations. WGU shall be responsible for the selection, assignment, training, and compensation of Clinical Supervisors. WGU welcomes nominations of Clinical Supervisors by the District/school.
- Preclinical Experience refers to the active participation by a Teacher Candidate in a wide range of in-classroom experiences in order to develop the skills and confidence necessary to be an effective teacher and prepare for Student Teaching. Students reflect on and document at least 75 hours of in-classroom observations (15 hours of which must involve direct engagement with students in a classroom) leading up to Student Teaching.
- Student Teaching (or demonstration teaching) refers to the greater of the then-current WGU full-time and continuous requirement of 12 weeks (16 weeks for special education) or the State's and/or District's minimum requirement for Student Teaching. Student Teaching shall satisfy all applicable WGU and State requirements.
- Field Experience refers collectively to the Preclinical Experience and Student Teaching.

### **C. Cooperating Teacher Standards**

District, with the input of WGU, will provide the Teacher Candidate with a Student Teaching assignment in a school and classes of District under the direct supervision and instruction of a Cooperating Teacher that meets the following minimum requirements:

- Holds a teaching credential or license for the subject area and/or grade level being taught;
- Has a minimum of 3 years of teaching experience with strong evaluations;
- Demonstrates a positive impact on student learning in the classroom;
- Demonstrates ability to serve as a positive role model and mentor;
- Demonstrates actions related to leadership qualities and collaborating with others;
- Has successfully and with positive impact mentored teacher candidates, colleagues, and/or adults;
- Uses a computer to correspond with WGU staff and complete online evaluation forms; and
- Models consistently the dispositions and ethical considerations expected of WGU Teacher Candidates:
  - caring and considerate
  - affirming of diversity and cross-culturally competent
  - reflective practitioner
  - equitable and fair
  - committed to the belief that all students can learn
  - collaborative
  - technologically proficient
  - professional in leadership

### **D. WGU Responsibilities**

WGU will:

- Select qualified Teacher Candidates who have been prepared with the appropriate educational background, knowledge, skills, and professional disposition to participate in Field Experiences.
- Pay an honorarium per Teacher Candidate, either directly to the Cooperating Teacher or to the District, for the Cooperating Teacher's services. The Cooperating Teacher may also receive professional development hours connected to the successful completion of WGU Cooperating Teacher training.
- Require Teacher Candidates to have completed a background check acceptable to District prior to participating in Field Experience activities.
- Provide opportunities for feedback regarding improvement of WGU Teacher Candidate preparation.
- Provide professional development training to Cooperating Teachers regarding WGU processes and procedures.
- Maintain an online site for support, resources, and training for Cooperating Teachers.
- Facilitate a Cohort Seminar in which Teacher Candidates will participate with a community of peers to receive support during Student Teaching and the final performance assessment.

### **E. District Responsibilities**

District, or school administrator, will:

- Nominate one or more qualified Cooperating Teacher(s) by providing a completed copy of the Student Teacher Acceptance Form to the WGU Field Placement Team.
- Allow the Clinical Supervisor access to the host school and classroom for the specific purpose of observing Teacher Candidates.

- Provide Teacher Candidates with any District policies and procedures to which they are expected to adhere to during the Field Experience and while on District premises.
- Through the involvement of the Cooperating Teacher, participate with the Clinical Supervisor and Teacher Candidates in two evaluations: one mid-way through Student Teaching, and a Final Evaluation at the end of Student Teaching. WGU shall be responsible for the format of the evaluations.
- Provide Teacher Candidates opportunities to observe, assist, tutor, instruct, implement effective teaching strategies, and conduct research, as appropriate, during the Field Experience.
- Provide, when possible, opportunities for Teacher Candidates to use technology to enhance student learning and monitor student progress and growth.
- Provide, when possible, opportunities for Teacher Candidates to experience working with diverse student populations including English Language Learners and Students with Exceptional Learning Needs.
- Encourage Cooperating Teachers to participate in WGU's training, held for each cohort (Fall or Spring) when a new Teacher Candidate is assigned, to understand WGU's policies, processes, procedures, and how to mentor adult learners.
- Encourage Cooperating Teachers to participate annually in WGU's Evaluation Form Calibration.
- Encourage administrators and Cooperating Teachers to participate in WGU's Feedback Surveys (offered at the end of the Spring and Fall Cohorts) to report on Teacher Candidate quality and preparation and to provide program feedback to WGU for continuous improvement.

#### F. Additional Terms

- **Term.** This Agreement shall commence on the Effective Date and shall continue for three (3) years from the Effective Date, or until such time as either party gives the other party thirty (30) days advance written notice of its intent to terminate the Agreement; provided, however, that all Teacher Candidates at District as of the date of such notice shall be permitted to complete their Student Teaching.
- **Points of Contact.** Each party shall designate a point of contact between the parties for communication and coordination of Student Teaching. Contact information is set forth following the signature block.
- **Education Records.**
  - District acknowledges that the education records of assigned Teacher Candidates are protected by the Family Educational Rights and Privacy Act (FERPA), and agrees to comply with FERPA and limit access to those employees or agents with a need to know. Pursuant to FERPA, and for the purposes of this Agreement, WGU hereby designates District as a "school official" with a legitimate educational interest in such records.
  - WGU shall instruct Teacher Candidates of the necessity of maintaining the confidentiality of all District student records. District shall not grant Teacher Candidates or WGU employees access to individually identifiable student information unless the affected student's parent or guardian has first given written consent using a form approved by District that complies with FERPA and other applicable law.
- **Video Recordings.** During Student Teaching, Teacher Candidates may be required to submit video recordings of their classroom teaching performance (recordings). Such recordings are designed to assist Teacher Candidates in improving their instruction and allow WGU to evaluate Teacher Candidate performance. Although student images may appear in the recordings, the primary focus is on the instruction and not the students or other adults in the classroom. The recordings will not be made public and will be uploaded to a secure site to be scored by WGU evaluators. WGU will instruct Teacher Candidates: (i) on appropriate protocol to submit recordings for evaluation; (ii) that no part of the recordings should be used for any personal or professional purposes outside of performance evaluation; and (iii) that recordings be destroyed once the evaluation is completed. District understands that Teacher Candidates are not employees or agents of WGU and that any further precautions regarding the privacy of District's students should be agreed directly between the District and Teacher Candidates.

- **Right to Accept or Terminate a Placement.** District may refuse to accept for placement, or may terminate the placement, of any Teacher Candidate based upon its good faith determination that the Teacher Candidate is not meeting performance standards or is otherwise deemed unacceptable to District. In such cases, District shall notify WGU in writing and shall state the reasons for such decision.
- **WGU Insurance.** WGU warrants and represents that it provides and maintains general liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate and, upon District's request, shall provide a certificate of insurance as evidence of coverage. WGU shall maintain, at its sole expense, workers' compensation insurance as required by law.
- **Professional Liability Insurance.** Teacher Candidates will be responsible for procuring and maintaining, at their own expense, professional liability insurance for the duration of the Field Experience with limits of at least \$1,000,000 per occurrence and \$3,000,000 annual aggregate.
- **Status of Parties.** Nothing in this Agreement is intended to or shall be construed to constitute an agency, employer/employee, partnership, or fiduciary relationship between the parties; and neither party shall have the right or authority or shall hold itself out to have the right or authority to bind the other party, nor shall either party be responsible for the acts or omissions of the other except as provided specifically to the contrary herein.
- **Non-Discrimination.** Both parties agree to fully comply with all applicable non-discrimination laws of District's state and municipality, and of the United States. Both parties will accept, assign, supervise and evaluate qualified Teacher Candidates regardless of race, sex, sexual orientation, creed, national origin, age, disability, Vietnam-era veteran status, or any other basis protected by law.
- **Entire Agreement.** This Agreement represents the entire understanding between the parties and supersedes all prior oral or written agreements, and no modification shall be valid unless in writing and signed by both parties. No Teacher Candidate or other third party shall be a beneficiary of, or have any right to enforce the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**WGU**

**DISTRICT**

By: Stacey Ludwig Johnson

By: Carrie Olson

Title: VP, Academic Operations

Title: CEO

Date: 3-10-20

**Point of Contact:**

**Point of Contact:**

Email: [fieldplacement@wgu.edu](mailto:fieldplacement@wgu.edu)

Email:

Phone: 866-889-0132 (Option 1)

Phone:

For notice purposes, contact:

For notice purposes, contact:

General Counsel

Western Governors University

4001 South 700 East, Suite 700

Salt Lake City, UT 84107-2533

# Site Agreement

READING & MATH, INC.



The purpose of this agreement is to establish the basic parameters of the Service Site's participation in AmeriCorps with Reading & Math, Inc. for the 2020-2021 program year. Reading & Math, Inc. administers AmeriCorps programs that provide AmeriCorps members as a resource.

A. **AmeriCorps programs:** Reading Corps, Math Corps, Opportunity Corps, and Recovery Corps, hereafter referred to collectively as "Program," are AmeriCorps programs. AmeriCorps is a national service program that engages people in a year-long commitment to service in meeting needs in their local communities. For more information, visit [www.americorps.gov](http://www.americorps.gov).

B. **Parties to this agreement:**

1895 - Laura MacArthur Elementary, Duluth, Minnesota 55807

hereafter referred to collectively as "Service Site"

Reading & Math, Inc., hereafter referred to as "RMI", 1200 S Washington Ave, Ste 210B, Minneapolis MN 55415



**C. Definitions:**

1. **AmeriCorps Member.** Individual who makes a commitment to serve for one term through the Program in a specific Program position, as listed in addendum. AmeriCorps members are not employees or volunteers; they are completing service and should be referred to as a member.
2. **Service Site.** This is the location where an AmeriCorps member is placed and performs their daily service.
3. **Internal Coach and/or Site Supervisor.** Employee of the partnering Service Site who provides daily on site supervision to ensure Program objectives are met and AmeriCorps regulations are upheld.
4. **Program Staff.** Employee of RMI who provides oversight and management to the Program including, member recruitment/management, site management, and compliance to AmeriCorps regulations.
5. **CNCS.** Corporation for National and Community Service; federal agency for all AmeriCorps programs. Referred to as the "Corporation".

**D. Early termination:** At RMI's discretion, the Service Site's failure to comply with the terms and conditions of this Agreement may result in forfeiting of the Service Site's awarded members for the current program year.

## SERVICE SITE RESPONSIBILITIES

A. **Commitment to the Program Objectives and Model:** The Service Site agrees to commit Program objectives and Program Model, as articulated in the addendum.

B. **AmeriCorps Service Environment**

1. **Safe and inclusive environment:** Provide the AmeriCorps member with a safe and welcoming service environment. Treat members as part of the staff team, including inviting them to participate in staff activities or workshops, including in staff communication (e.g., adding to a staff email list) listing in staff directory, providing a name badge if needed, etc.
2. **Program and member introduction:** Introduce member at a staff meeting or similar setting. Educate all staff about the purpose of the member position and Program. Leadership at the Service Site should be strong advocates for Program to garner staff support and buy-in.
3. **AmeriCorps signage:** Post an AmeriCorps sign provided by Program in a visible location, preferably in the front office, to identify the organization as an AmeriCorps site.
4. **Prohibited Activities:** Post the full list of Prohibited Activities provided by Program in the member's workspace.
5. **Non-displacement:** Ensure an AmeriCorps member is not used to displace an employee or paid position (see "Federal Policies" section of this agreement). Examples of inappropriate indirect service may include filling in for paid staff while on leave, office photocopying, answering phones, running errands, etc.
6. **Accessibility:** Ensure the Service Site is accessible to people with disabilities.
7. **Reasonable accommodations:** Work with Program Staff if a member requests reasonable accommodations to perform the essential functions of the AmeriCorps position.
8. **Workspace and computer access:** Provide members with a reasonable workspace, including:
  - i. Access to a phone and computer with Word, Excel, and Internet for Program-related purposes (i.e., completing time sheets, entering participant data in an online database, checking Program email, etc.). The computer used by the member must have a modern web browser (Chrome, Firefox, or Safari) installed in either the browser's current or next most recent version, and should operate at a speed at least on par with computers used by staff. Any firewall software in use must permit unhindered and unrestricted access to all websites necessary for completing required Program-related tasks and reviewing online Program support and training materials (e.g., viewing training videos posted to Vimeo).

- ii. Locked drawer to store confidential participant data.
  - iii. Issuing an accessible email address if common email providers are blocked at the Service Site.
  - iv. Reasonable and quiet space for members to work with individuals.
9. **Grievance Procedure:** Inform the Program, in writing, of any instance in which the Service Site wishes to initiate the grievance procedure that is maintained by RMI and the Program. The specific grievance must be cited to initiate the process. Concerns should be reported as early as possible. Formal grievances must be presented in writing within one year of the date of the disputed events. In the case of a grievance that alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation of Community and National Service Inspector General at <https://www.cncsoig.gov/hotline> or by calling 1-800-452-8210.
10. **Drug-Free Workplace Act:** Pursuant to the Drug-Free Workplace Act of 1988, the Program is committed to maintaining a drug and alcohol-free environment. Members are prohibited from the illegal use, manufacture, sale, dispensation, distribution, or possession of illegal drugs, controlled substances, narcotics, or alcoholic beverages on Program premises, Service Sites, or while traveling in an official capacity. Service is conditioned upon compliance with this policy. The Program requires that each member engaged in the performance of a federal grant shall, as a condition of service under the grant, abide by the terms of this policy and shall notify Program Staff in writing of any criminal drug charge, arrest, or conviction occurring during service no later than five (5) days after such charge, arrest, or conviction. Upon receiving notice or otherwise learning about the charge, arrest, or conviction the Program will notify appropriate Federal-contracting agency within ten (10) days. Within 30 days of receiving such notice, the Program will (1) take disciplinary action up to and including exit for cause consistent with CNCS rules regarding termination and suspension of service, or (2) require the member to satisfactorily participate in an approved drug treatment program. The Program shall make a good faith effort to continue to maintain a drug-free workplace through implementation of this policy. [Reference: 41 U.S.C. § 701 et seq.]
- C. **Internal Coach and/or Site Supervisor:** The Service Site must designate a staff person(s) to be the Internal Coach and/or Site Supervisor, who will provide programmatic support and supervision to the AmeriCorps member(s). **This individual must be designated before a member can be placed at the site.**

The Service Site must allow sufficient time for Internal Coach/Site Supervisors to fulfill their Program responsibilities, including attending required Program training and scheduled meetings. The time commitment is approximately 6-9 hours per month to support each member, plus required training.

If the designated Internal Coach/Site Supervisor is not able to complete the program year (e.g., they take a leave of absence from their position at the site), the Service Site is required to designate someone to be the Internal Coach/Site Supervisor for the remainder of the program year.

The duties of the Internal Coach and/or Site Supervisor include:

1. **On-site orientation:** Provide an on-site orientation for the AmeriCorps member. This will include a tour of the building(s), explanation of site policies (including dress code, safety procedures, and data confidentiality), site expectations for the member, etc. This orientation should include setting a schedule for weekly check-in meetings with each member.
2. **Member Safety:** In the event of a localized disaster or emergency that requires the closure of the service site (i.e. bomb threat, fire, blizzard, burst water pipe, teacher strike, etc.), the Internal Coach/Site Supervisor is responsible for notifying Program Staff immediately so that Program can enact an alternative service plan for the AmeriCorps member.
3. **Member time sheet approval:** Establish a sign-in and sign-out procedure on-site to verify hours served by the member. Approve member time sheets every two weeks by the deadline. If a member's time sheet is not approved by the deadline for the pay period, the member's living allowance will be delayed until the following pay period and the time sheet is approved.
4. **Set member schedule:** Develop a schedule with the member that includes:
  - i. The ability to serve a minimum weekly number of hours that aligns with the member's commitment as stated in their Member Service Agreement. (See Program-specific Addendum for details.)
  - ii. A full caseload of participants as defined by Program.
  - iii. Adequate time for data entry and meeting time with the Internal Coach/Site Supervisor.
  - iv. Time to attend all required training and/or events.
5. **Data checks:** Review data collected by members on a monthly basis to ensure accuracy and complete reporting of services provided. Internal Coaches/Site Supervisors can determine the most convenient method for themselves to monitor data collection.
6. **Performance management:** Set clear expectations for the member at the beginning of the year, provide ongoing feedback on their performance, and immediately communicate any performance concerns to Program Staff.

Work closely with Program Staff and Service Site administrators (if applicable) if disciplinary action is needed. Members are expected to adhere to site policies regarding issues such as confidentiality, safety, dress code, attendance, etc. The Service Site does not have the authority to terminate a member but does have the authority to enact the Program performance management procedure as outlined in the Program handbook given to Internal Coaches/Site Supervisors, which includes providing documentation required for the member's personnel file.

7. **Training attendance:** Attend required training as scheduled by Program.
8. **Program site visits:** Participate, as required or requested, in on-site visits by Program.
9. **In-Kind time reports:** Report, as required or requested, time spent dedicated to Program through a monthly in-kind report.

#### D. Member Recruitment and Selection

The Service Site will work in collaboration with Program Staff to recruit and fill its positions by the deadline set by Program.

1. **Recruitment:** The Service Site will utilize recruitment materials provided by Program to recruit individuals to serve in their site. Individuals should be directed to apply on Program's website.
2. **Interview:** The Service Site will have the option of participating in interviews alongside Program Staff to select the member(s) best suited for the Service Site. Program Staff will provide interview questions to ensure a fair and equitable process; completed interview questions must be on file before an offer can be made.
3. **Selection:** The Service Site will not extend an official offer to any applicant; it will, however, give its recommendation to Program Staff who are responsible for making an offer.

Program Staff reserve the right to make the final decision regarding the selection of members to enforce a fair and equitable hiring process. RMI will not discriminate for or against any AmeriCorps service member or applicant on the basis of race, color, national origin, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, familial status, military service, or any other category protected by law.

4. **Background checks:** Member service is contingent upon successful completion of a three-part federally mandated background check (FBI, state repository, and sex offender registry checks). RMI will conduct and pay for a thorough background check on each applicant prior to their official acceptance into the Program. RMI will notify Service Sites if the applicant did not clear the background check according to the RMI and AmeriCorps policy. Actual results of the background check will not be shared with sites without written permission from the applicant. Service Sites must notify Program Staff if it intends to conduct its own additional background check. A member may not be asked to pay for the cost of a background check.

Members may need to be accompanied while their FBI Fingerprint check is pending. An individual is accompanied when they are in the physical presence of a personnel cleared for access to vulnerable populations. The site is responsible for verifying and documenting accompaniment during this person.

5. **Replacing members:** In most cases, the site may not replace a member who exits the Program early. However, sites are allowed to replace a member who terminates service before completing 30 percent of the term.
6. **Transferring members:** The Program reserves the right to transfer members from one partner organization to another partner organization in circumstances in which Program requirements are not being fulfilled. Other situations may arise which will require the Program to transfer a member on a case-by-case basis.
7. **Unfilled positions:** Positions awarded, but not filled by the deadline, may be re-awarded by the Program to another Service Site.
8. **Prohibition on member employment at Service Site:** Members should not obtain paid employment at their Service Site while simultaneously enrolled as an AmeriCorps member (excluding Educator Corps). If your member expresses interest in onsite employment opportunities, or is already employed by your site, please speak with your Program Staff to ensure compliance with federal guidance (AmeriCorps State and National Policy FAQs C.38).

Additionally, the site may not hire its member (or a member currently serving at another Service Site) as a staff person during their term of service as it would require a member to cease their service with AmeriCorps. Every reasonable effort should be made by the site to support a member in the successful completion of their Program commitment.

- E. **On-Site Training and/or Staff Meetings:** The Service Site will include members in relevant on-site training and/or staff meetings as part of their AmeriCorps service. Any expenses related to this training (e.g. food) are paid for by the Service Site.
- F. **Participant Data:** The Service Site will support members in collecting data for participants who receive services from the Program, as detailed in the addendum. Data is maintained online in a secure, data-privacy-compliant system. Service Sites are responsible for attending data management system training and monitoring their members' reports to ensure data is submitted regularly and accurately.
- G. **Data Privacy:** RMI is required by law to protect the confidentiality of Personally Identifiable Information (PII) that is collected.

PII is defined as any information, physical or electronic, about an individual that can be used to distinguish or trace a person's identity, including but not limited to: name, social security number, date and place of birth, mother's maiden name, education, financial transactions, medical, criminal and employment history, biometric records, and any other personal information that is linked or linkable to an individual.

Protecting PII includes establishing procedures to prepare for and respond to a breach of confidentiality.

“Breach” is defined as: loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar situation where persons other than authorized users and for other than authorized purpose have access or potential access to PII.

RMI protects the confidentiality of PII by:

- Designating a PII Security Coordinator;
- Identifying the types of PII that we collect, the places where its is stored, and the service providers with whom it is shared;
- Documenting policies and procedures in place to protect PII, regardless of where it is stored;
- Identifying and documenting realistic risks to the security, confidentiality, and integrity of PII; and,
- Following those procedures in the event of a breach.

RMI Program Staff must be notified immediately if any representative of the Service Site suspects a breach of confidentiality related to the execution of the activities outlined in this agreement.

- H. **Site Fees:** Some Programs require that Service Sites pay a site fee for the Program. Please see Program-specific addendum for amount and payment requirements.
- I. **In-Kind Contributions:** Report, as required or requested, the Service Site’s non-monetary contribution that is required for Program to operate and includes the value of the following items: 1) building operating costs, including electricity, heat, trash removal, janitorial costs, office supplies, etc., 2) internal coach/site supervisor annual salary and fringe, 3) principal annual salary and fringe (if applicable). The Service Site’s finance department or business office should complete the form annually, as requested. Principal time will be tracked by Program and will need to be verified by the principal on a regular basis.

## READING & MATH, INC. RESPONSIBILITIES

Program Staff are employees of Reading & Math, Inc. They are responsible for providing oversight to the Program, including member recruitment/management and site management, and compliance with state and federal AmeriCorps regulations.

### A. Member Recruitment and Selection:

1. **Recruitment:** Program Staff will work in collaboration with the Service Site to recruit members. Program Staff will provide recruitment materials to the Service Site. Program Staff implement recruitment plans.
2. **Interviewing:** Program Staff will screen all applications and conduct a phone interview. Program Staff will support sites in conducting a final interview or will conduct the interview by themselves if the site is unable.
3. **Selection:** Program Staff will work together with the site to make selection decisions. Program Staff have the responsibility and authority to extend an offer for a position to an applicant. RMI reserves the right to make final selection decisions. Program Staff will assist the site in filling all positions by the deadline.
4. **Background checks:** RMI conducts all required background checks, as noted in a previous section of this Site Agreement. RMI will not conduct background checks on volunteers recruited by members to assist with Service Site events.

### B. Member Management:

1. **Member training:** Program Staff will coordinate the logistics and schedule the member and Internal Coach/Site Supervisor trainings that occur throughout the year.
2. **Data management systems:** RMI will provide a secure, online data management system for tracking participant information and progress. RMI provides the training for members and supervisors.
3. **Content experts:** RMI supports services sites and members by providing content experts that support the implementation of the Program model at Service Sites. (See Program-specific addendum for details.)
4. **Member site visits:** Program Staff will conduct site visits, as needed, during the year with each member and Internal Coach/Site Supervisor.
5. **Monitoring program requirements:** Program Staff will track and monitor each member's progress in completing Program requirements and provide timely updates to the Internal Coach/Site Supervisor to ensure members will complete required service hours by the end of their term of service.



6. **Member personnel file:** RMI is responsible for completing and maintaining a personnel file for each member, which includes all required documents (member eligibility documentation, time sheets, disciplinary action, performance evaluations, etc.).
7. **Member benefits:** RMI is responsible for administering and overseeing the member benefits (as applicable), including living allowance, education award, health insurance, federal student loan forbearance, child care reimbursement, and housing and/or transportation assistance if the member qualifies.
8. **Conflict resolution:** Program Staff work together with the Internal Coach/Site Supervisor in resolving any member issues. The Program Staff, not the Service Site, has the authority to terminate a member.

## FEDERAL POLICY: PROHIBITED ACTIVITIES FOR AMERICORPS MEMBERS

AmeriCorps members may not engage in the below activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed below per 45 CFR 2520.65.

- A. While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation, staff and members may not engage in the following activities:
1. Attempting to influence legislation;
  2. Organizing or engaging in protests, petitions, boycotts, or strikes;
  3. Assisting, promoting, or deterring union organizing;
  4. Impairing existing contracts for services or collective bargaining agreements;
  5. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
  6. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
  7. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
  8. Providing a direct benefit to:
    - i. A business organized for profit;
    - ii. A labor union;
    - iii. A partisan political organization;
    - iv. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative;
    - v. An organization engaged in the religious activities described in paragraph (7) of this section, unless Corporation funds are not used to support the religious activities; and
  9. Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
  10. Providing abortion services or referrals for receipt of such services;
  11. Such other activities as the Corporation may prohibit.
- B. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

## **FEDERAL POLICIES: SUPPLANTATION, NON-DUPLICATION AND NON-DISPLACEMENT POLICY**

These policies outline restrictions that govern the use of Corporation for National and Community Service (CNCS) assistance.

### **A. Supplantation:**

Corporation assistance may not be used to replace State and local public funds that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal public expenditure for that Program in the fiscal year that support is to be provided is not less than the previous fiscal year. [45 CFR 2540.100 (a)]

### **B. Non-Duplication:**

Corporation assistance may not be used to duplicate an activity that is already available in the locality of a Program. And, unless the requirements of the 'Non-displacement' paragraph of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides. [45 CFR 2540.100 (e)]

### **C. Non-Displacement:**

1. An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.
2. An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.
3. A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.
4. A participant in a program receiving Corporation assistance may not perform any services or duties, or engage in activities, that would otherwise be performed by an employee as part of the assigned duties of such employee.
5. A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that-
  - I. Will supplant the hiring of employed workers; or
  - II. Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.
6. A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any-
  - I. Presently employed worker;
  - II. Employee who recently resigned or was discharged;
  - III. Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
7. Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
8. Employee who is on strike or being locked out.

[45 CFR 2540.100 (f)]

## **FEDERAL POLICY: NON-DISCRIMINATION POLICY**

RMI does not discriminate in Program admission on the basis of race, color, national origin, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, familial status, military service, or any other category protected by law.

Member selection is based solely on an applicant's ability to perform the essential functions of the position in the opinion of RMI.

It is unlawful to retaliate against any person who, or organization that, files a complaint about such discrimination. In addition to filing a complaint with local and state agencies that are responsible for resolving discrimination complaints, you may bring a complaint to the attention of the Corporation. If you believe that you or others have been discriminated against, or if you want more information, contact:

### **Reading & Math, Inc.**

1200 S. Washington Ave, Ste 210B, Minneapolis, MN 55415  
humanresources@servetogrow.org or (612) 206-3030

### **Equal Opportunity Program (EOP)**

Corporation for National and Community Service  
1201 New York Ave NW, Washington, DC 20525  
Voice: (202) 606-7503; TTY: (202) 565-2799; Email: eo@cns.gov

RMI make every effort to ensure that its partner agencies have similar non-discrimination policies. Members with questions or concerns about any type of discrimination in their placement workplace are encouraged to bring these issues to the attention of their Internal Coach/Site Supervisor, site contact, and/or RMI Program Staff. If the partner agency is found to be engaging in such activities, removal of the current member(s) and denial of future members at that agency may result.

Discrimination on the part of AmeriCorps members will also not be tolerated. Anyone found to be engaging in any type of unlawful or harassing discrimination will be subject to disciplinary action, up to and including dismissal from the Program. RMI will not tolerate harassment of any kind.

Harassment includes threatening or insinuating that the refusal to submit to sexual advances will adversely affect admission or Program benefits. Harassment may also include conduct such as unwanted sexual flirtation or touches; abusive or degrading language; graphic or suggestive comments; or displaying inappropriate objects or pictures.

Any member who believes that he or she has been subject to harassment of any kind, or who has knowledge about harassment of others, should report the harassment to an immediate supervisor, superior, and/or RMI Program Staff.

**Note to Service Sites:** In any case of discrimination related to an AmeriCorps member, the Service Site must contact RMI Program Staff before taking action.

Full text of the CNCS Civil Rights and Non-Harassment Policy can be found in the AmeriCorps Program Manual provided to AmeriCorps members and Internal Coaches/Site Supervisors at the beginning of each program year.

## DIVERSITY, EQUITY AND INCLUSION

Reading & Math, Inc.'s Diversity, Equity and Inclusion Statement:

*Relationships are the containers in which meaningful change occurs. We invest in relationships. We work to ensure that all humans are seen, heard and valued. To achieve this, we commit to acknowledging the power we hold and stewarding that power in ways that dismantle systemic and individual injustice.*

RMI values the diversity of our staff, members, site partners, and participants we serve. We value both the visible and invisible diversity present without our Program. RMI believes that we all must strive to create and nurture an environment that demands, engages, celebrates, and cultivates diversity. By agreeing to be a Service Site, you are committing to join our Program in this continuous process to cultivate an environment that is inclusive and respectful to those from all backgrounds and experiences. Any decisions or actions made by RMI or its partner organizations that is not consistent with an environment of inclusivity will be seen as a breach of this Site Agreement and any further relationship between RMI and the Service Site could be terminated.

### CERTIFICATION

This Site Agreement and attached program-specific addendum(s) serve as an agreement between the Service Site and the Program for the stated program year. The terms of this agreement will end on July 31, 2021 . Amendments to this agreement shall be done in writing.

The Parties will mutually agree to specific Programs to be provided by RMI and attach them to this Agreement in the Addendum(s).

#### Member Award

Laura MacArthur Elementary (K3): Elementary Literacy Tutor - 1 Full-Time, 2 Part-Time

Laura MacArthur Elementary (K3): Kindergarten-Focused Literacy Tutor - 1 Full-Time

Laura MacArthur Elementary (Math): Math Enrichment Tutor - 1 Full-Time


This award may be changed by request of the Service Site or Program or through the enforcement of the terms of this agreement. Changes will be negotiated, approved, and confirmed exclusively via email communication.

#### Signature

You must complete the electronic version in its entirety to certify that you have read and understand the agreement prior to a member being placed at your Service Site.

By signing this agreement, I acknowledge that I have read, understand, and agree to all terms and conditions of this agreement.

|  |                           |
|--|---------------------------|
| <b>Service Site Staff Name</b><br>James Erickson | <b>Title</b><br>Principal |
| <b>Service Site Staff Signature</b>              | <b>Date</b>               |

  
 \_\_\_\_\_  
 Cathy Erickson, CEO

# K3 Reading Corps Addendum

READING & MATH, INC.



The purpose of this addendum is to establish the basic parameters of the Service Site's participation in Minnesota K3 Reading Corps for the 2020-2021 program year. Reading Corps is an AmeriCorps program that provides AmeriCorps members as a resource.

## **Parties to this agreement:**

1895 - Laura MacArthur Elementary, Duluth, Minnesota 55807

hereafter referred to collectively as "Service Site".

Reading & Math, Inc., hereafter referred to as "RMI", 1200 S Washington Ave, Ste 210B, Minneapolis MN 55415

## **A. Program Model**

### **1. Member Position**

- i. Elementary Literacy Tutor: Tutors are trained to provide targeted reading skill practice, commonly called intervention, primarily in the areas of phonemic awareness, phonics, and fluency. Tutors deliver daily twenty-minute intervention sessions with Kindergarten through third grade students.

### **2. Interventions and Assessments**

- i. Reading Corps tutors are responsible for administering the assessments; Internal Coaches are responsible for observing the tutor for assessment reliability.
- ii. Reading Corps tutors are responsible for entering benchmarking and progress monitoring data into the Reading Corps data management system.
  1. Reading Corps tutors collect benchmark data three times throughout the year during the specified assessment windows set by RMI. Students

tested include all students who have been served by Reading Corps in previous years, and any students the site would like to screen for eligibility for Reading Corps services.

- iii. Reading Corps tutors are responsible for delivering interventions to a full caseload of students for 20 minutes per student per day.

### 3. Content Expert Role

- i. An RMI-designated Master Coach meets with the Internal Coach and Reading Corps tutor - as needed, but can be as often as monthly - to review student graphs, select appropriate interventions and ensure fidelity to the program.

## B. Member Schedules

1. **Member Types/Hours Expectations:** The Internal Coach will develop a daily schedule with the tutor that maximizes student service and includes:
  - i. Adequate time to complete the required hours of service per day/week for the school year:
    1. Full-time tutor serves 35 hours per week
    2. Part-time tutor serves 25 hours per week
    3. Reduced part-time tutor serves 18 hours per week
  - ii. Sufficient time to complete data entry and respond to email (using a computer at the school)
  - iii. Sufficient time to meet with the Internal Coach and prepare for tutoring sessions

## C. Data Privacy

### 1. FERPA Expectations

- i. The service site understands that it is making available to RMI some legally protected student data solely for the purpose of implementing the Reading Corps program, including for research for the purposes of improving educational outcomes for students.
- ii. Tutors and Coaches that implement the Reading Corps program will collect and record additional protected data as they implement the Reading Corps model. RMI requires that the service site take all necessary steps to protect student data as required by law.
- iii. Some of these data are protected by state and federal laws, particularly the federal Family Educational Rights and Privacy Act (FERPA). The obligations agreed to under this agreement extend to all data protected by state and federal law, including any personally identifiable data supplied by Service Site to RMI.
- iv. **Service Sites must designate RMI/Reading Corps as a school official in their FERPA policy.**
- v. RMI reserves the right to request proof that Service Site is following all required FERPA and State laws related to data privacy, including requesting a copy of the Service Site's annual FERPA notice of rights to eligible students and/or parents.



2. **Data required from Service Site:** The Site will ensure all requested student data are provided to Reading Corps in a timely manner, and that all students served by Reading Corps complete assessments administered by the member(s).
3. **Data collected by members:** Reading Corps tutors and/or coaches collect the following data throughout the school year:
  - i. Student assessment data
    1. Reading Corps uses standardized, individually administered measures that are reliable and valid indicators of literacy skills.
  - ii. Tutor log data
    1. Reading Corps tutors will maintain a tutor log to document the number of minutes and the number of sessions each student receives of Reading Corps services each week. Reading Corps tutors will be responsible for entering this data into the Reading Corps data management system weekly.
  - iii. Fidelity data
    1. Internal Coaches and Master Coaches will be responsible for using the Benchmark Integrity checklists to observe tutors administering and scoring student assessments prior to each benchmark window (fall, winter, and spring) to ensure reliability. Internal Coaches and Master Coaches will also be responsible for using Intervention Integrity Observation Checklists to observe tutors using the prescribed interventions to ensure fidelity. Internal Coaches will observe tutors twice per month to collect intervention fidelity data.

### CERTIFICATION

This program specific addendum serves as an agreement between the Service Site and the Program for the stated program year as a part of the Site Agreement signed for 2020-2021. The terms of this agreement will end on July 31, 2021. Amendments to this agreement shall be done in writing.

#### Signature

By signing this agreement, I acknowledge that I have read, understand, and agree to all terms and conditions of this agreement, including but not limited to:

- Protect all PII per FERPA and other applicable Federal and local laws
- Designate RMI/Reading Corps as a School Official in site's FERPA policy

|  |                           |
|--|---------------------------|
| <b>Service Site Staff Name</b><br>James Erickson | <b>Title</b><br>Principal |
| <b>Service Site Staff Signature</b>              | <b>Date</b>               |



Cathy Erickson, CFD

# Math Corps Addendum

READING & MATH, INC.



The purpose of this addendum is to establish the basic parameters of the Service Site's participation in Minnesota Math Corps for the 2020-2021 program year. Math Corps is an AmeriCorps program that provides AmeriCorps members as a resource.

## Parties to this agreement:

1895 - Laura MacArthur Elementary, Duluth, Minnesota 55807

hereafter referred to collectively as "Service Site"

Reading & Math, Inc., hereafter referred to as "RMI", 1200 S Washington Ave, Ste 210B, Minneapolis MN 55415

## A. Program Model

### 1. Member Position

- i. Math Enrichment Tutor: Math tutors are AmeriCorps members trained to provide 90 minutes of weekly tutoring to 4<sup>th</sup> – 8<sup>th</sup> grade students in small groups to improve foundational math skills required for algebra readiness. Math Corps interventions are evidence-based and aligned with Common Core State Standards.

### 2. Interventions and Assessments

- i. Math Corps tutors are responsible for administering a Benchmark assessment three times per year. All students identified as eligible for Math Corps services are assessed three times per year. Students who scored below proficiency on the previous year's state accountability test can be assessed to determine eligibility for Math Corps services.

- ii. Math Corps tutors are responsible for entering benchmarking and progress monitoring data into the Math Corps data management system. Math Corps tutors collect benchmark data three times throughout the year during specified assessment windows selected by RMI. Active Math Corps students are administered a progress check two times during the year in addition to the three benchmarks. Math Corps tutors are responsible for delivering intervention to a full caseload of students for 90 min per week per student group.

### 3. Content Expert Role

- i. Approximately five times per year, an RMI-designated Master Coach meets with the Internal Coach and Math Corps tutor to review student progress, observe tutoring, and ensure tutor fidelity to interventions.

## B. Member Schedules

1. **Member Types/Hours Expectations:** The Internal Coach will develop a daily schedule with the tutor that maximizes student service and includes:
  - i. Adequate time to complete the required hours of service per day/week for the school year:
    1. Full-time tutor serves 35 hours per week
    2. Part-time tutor serves 25 hours per week
    3. Reduced part-time tutor serves 18 hours per week
  - ii. Sufficient time to complete data entry and respond to email (using a computer at the school)
  - iii. Sufficient time to meet with the Internal Coach and prepare for tutoring sessions

## C. Data Privacy

### 1. FERPA Expectations

- i. The service site understands that it is making available to RMI some legally protected student data solely for the purpose of implementing the Math Corps program, including for research for the purposes of improving educational outcomes for students.
- ii. Tutors and Coaches that implement the Math Corps program will collect and record additional protected data as they implement the Math Corps model. RMI requires that the service site take all necessary steps to protect student data as required by law.
- iii. Some of these data are protected by state and federal laws, particularly the federal Family Educational Rights and Privacy Act (FERPA). The obligations agreed to under this agreement extend to all data protected by state and federal law, including any personally identifiable data supplied by Service Site to RMI.
- iv. **Service Sites must designate RMI/Math Corps as a school official in their FERPA policy.**
- v. RMI reserves the right to request proof that Service Site is following all required FERPA and State laws related to data privacy, including requesting a copy of the

Service Site's annual FERPA notice of rights to eligible students and/or parents.

2. **Data required from Service Site:** The Site will ensure all requested student data are provided to Math Corps in a timely manner, and that all students served by Math Corps complete assessments administered by the member(s).
3. **Data collected by members:** Math Corps tutors and/or coaches collect the following data throughout the school year:
  - i. Student assessment data
    1. Math Corps uses a standardized computer-based adaptive assessment called STAR Math to determine eligibility and monitor student progress.
  - ii. Tutor log data
    1. Math Corps tutors maintain a tutor log to document the number of minutes and sessions each student receives of Math Corps services each week. Math Corps tutors are responsible for entering these data into the Math Corps data management system weekly.
  - iii. Fidelity data
    1. Internal Coaches and Master Coaches are responsible for using Intervention Integrity Observation Checklists to observe tutors using the prescribed interventions to ensure fidelity.

#### D. Site Fees

1. **Amount:**
  - i. The fee for each full-time (FT) tutor that starts service at the service site prior to December 2020 serving 7 hours a day at site is \$1,800 and for each part-time (PT) or reduced part-time (RPT) tutor serving 5-6 hours per day while at the site is \$1,000.
  - ii. For each member that starts service at the service site in January 2021, the site fee will be \$1,000 regardless of member schedule.
2. **Service Year Tutors:**
  - i. Sites that request and are awarded Service Year Tutor positions (non-AmeriCorps tutors) may be required to pay Service Year Tutor Site Fee of \$5,000.
3. **Invoice & Payment:**
  - i. All payments are due within 30 days of receiving an invoice.
  - ii. Invoices for Service Year Tutors are generated prior to the start of the program year before a Service Year Tutor is placed at the Service Site.
  - iii. Invoices for AmeriCorps member(s) are generated after the member(s) begins service at the service site.
4. **Adjustments:**
  - i. Any adjustments to site fees - including scholarships awarded - will be agreed upon in writing by both Reading & Math, Inc. and the site.

### CERTIFICATION

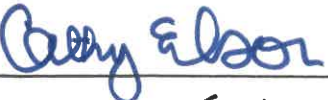
This program specific addendum serves as an agreement between the Service Site and the Program for the stated program year as a part of the Site Agreement signed for 2020-2021. The terms of this agreement will end on July 31, 2021 . Amendments to this agreement shall be done in writing.

#### Signature

By signing this agreement, I acknowledge that I have read, understand, and agree to all terms and conditions of this agreement, including but not limited to:

- Protect all PII per FERPA and other applicable Federal and local laws
- Designate RMI/Math Corps as a School Official in site's FERPA policy

|   |                    |
|---|--------------------|
| Service Site Staff Name<br>James Erickson | Title<br>Principal |
| Service Site Staff Signature              | Date               |

  
\_\_\_\_\_  
Cathy Erickson, CFO

## Certificate Of Completion

Envelope Id: 206F042F4CA5404B9631BE7B019109B5

Status: Delivered

Subject: Math Corps and Reading Corps Site Agreement 2020-2021 -- Due by April 2, 2020

Source Envelope:

Document Pages: 23

Signatures: 0

Envelope Originator:

Certificate Pages: 1

Initials: 0

Reading & Math, Inc.

AutoNav: Disabled

1200 Washington Ave S

Envelope Stamping: Enabled

Minneapolis, MN 55415

Time Zone: (UTC-06:00) Central Time (US & Canada)

docusign@servetogrow.org

IP Address: 34.226.132.221

## Record Tracking

Status: Original

Holder: Reading & Math, Inc.

Location: DocuSign

3/26/2020 2:18:27 PM

docusign@servetogrow.org

## Signer Events

### Signature

### Timestamp

James Erickson

Sent: 3/26/2020 2:18:27 PM

james.erickson@isd709.org

Viewed: 3/27/2020 10:22:03 AM

Laura MacArthur Elementary School

Security Level: Email, Account Authentication  
(None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

## In Person Signer Events

### Signature

### Timestamp

## Editor Delivery Events

### Status

### Timestamp

## Agent Delivery Events

### Status

### Timestamp

## Intermediary Delivery Events

### Status

### Timestamp

## Certified Delivery Events

### Status

### Timestamp

## Carbon Copy Events

### Status

### Timestamp

## Witness Events

### Signature

### Timestamp

## Notary Events

### Signature

### Timestamp

## Envelope Summary Events

### Status

### Timestamps

Envelope Sent

Hashed/Encrypted

3/26/2020 2:18:27 PM

Certified Delivered

Security Checked

3/27/2020 10:22:03 AM

## Payment Events

### Status

### Timestamps

**Memorandum of Understanding**  
**Between SMDC Medical Center and Duluth Public School District #709**

**BACKGROUND AND INTENT**

This Memorandum of Understanding (“MOU”) is between **SMDC Medical Center (“SMDC”)** and **Duluth School District, Independent School District #709 (“District”)**.

WHEREAS, SMDC is a Minnesota non-profit corporation and operates an outpatient mental health and chemical dependency program to service principally children, adolescents, young adults and such program is called the Amberwing Partial Hospitalization Program (“Program”) located at 615 Pecan Avenue, Duluth, MN 55811.

WHEREAS, certain of the patients in the Program are enrolled in school in grades K-12 (“Students”).

WHEREAS, while enrolled in the Program, Students would be unable to attend classes at their applicable school.

WHEREAS, continuing of the Student’s education is not a requirement of the Program, however SMDC and District wish to work cooperatively to facilitate Students’ maintaining the Students’ educational curriculum while enrolled in the Program.

Therefore, the District and SMDC wish to enter into this Memorandum of Understanding.

**ROLES AND RESPONSIBILITIES**

Roles of District

- a. District shall provide up to two teachers (the “Teachers”), at District’s expense, to be at Amberwing full time during regular school hours and days during the term to Teach the Students.
- b. Teachers shall facilitate the maintenance of educational curriculum of the Students which shall include assistance with homework, educational testing and assessment and group and individual instruction appropriate to grade and achievement levels (“Teach”)
- c. District shall ensure, and shall provide such written confirmation to SMDC upon SMDC’s request, that the Teachers’ are fully qualified to perform the Teaching duties, including being licensed and credentialed in the state of Minnesota as applicable, have successfully passed District and SMDC required background checks and verification of education or employment, and have obtain all immunizations as may be required by SMDC and/or the Program.
- d. District shall cause the Teachers to adhere to SMDC’s and the Program’s applicable policies and procedures while at Amberwing as long as there are no conflicts with the District’s Teacher Bargaining Unit contract. If there is a conflict, this Agreement may be terminated by either party as set forth in General Terms below.
- e. District shall obtain all consents and releases as may be necessary to Teach the Students



- including without limitation, parent and/or guardian consents and releases of information.
- f. District shall be responsible to comply with all applicable laws, rules and regulations including without limitation, FERPA.

#### Roles of SMDC

- a. SMDC shall make two rooms available at Amberwing to Teachers to serve as classrooms for Teaching ("Classrooms") during regular school hours and days during the term. District understands and acknowledges that District will not have exclusive use of the Classrooms during the term, and SMDC may be using that space when it is not being used for Teaching.
- b. SMDC shall make available for Teachers for Teaching in the Classrooms the standard equipment and furniture available in the rooms, including smartboards.
- c. SMDC shall orient Teachers to applicable SMDC and Program policies and requirements.
- d. SMDC shall be responsible to comply with all applicable laws, rules and regulations including without limitation, HIPAA.

#### General Terms

- a. Term/Termination: This MOU shall be effective on the date last signed below and shall continue until July 1, 2021 at which time it will terminate. . This MOU may be terminated at any time by either party by giving thirty (30) days prior written notice to the other party. Either party may terminate this MOU immediately upon notice if it deems it to be in the best interests of or for the safety of the Students.
- b. The parties are independent contractors and this Memorandum of Understanding is not intended to create a joint venture, partnership or any other employer – employee relationship. The Teachers are employees of District, and are not employees of SMDC for any purpose, and are not entitled to any benefits provided by SMDC to its employees. District is responsible for the payment of all wages, benefits and taxes for Teachers.
- c. Confidentiality: Both parties agree to not disclose confidential information of the other party without the prior written consent of the other party unless such disclosure is authorized by law.
- d. Each party will obtain and maintain general liability and as applicable professional liability insurance, with limits not less than \$1,500,000 per occurrence and \$3,000,000 in the aggregate.
- e. Hold Harmless and Indemnification: The parties are each responsible for their own acts and omissions, and are not liable for the acts or omissions of, or the costs of defending, others. Nothing in this section shall preclude a finding of liability on the part of either party based on the doctrines of equitable indemnity, comparative negligence, contribution, or other statutory or common law basis for liability.
- f. Each party has in place a compliance program ("Program"), the goal of which is to ensure that all federal, state and local laws and regulations are followed. Each party's Program includes a commitment to uphold a high standard of ethical and legal business practices to prevent misconduct. Through the implementation of this Agreement, each party acknowledges its commitment to corporate compliance and agrees to conduct all transactions which occur pursuant to this Agreement in accordance with all applicable laws, rules and regulations and with the underlying philosophy and objectives of each party's Program. By signing this Agreement, each party represents and warrants that it is not, and has not been, excluded from participation in any federally and/or state funded health care programs, including Medicare and

Medicaid. In the event that a party is excluded from participation in any federally and/or state funded health care programs during the term of this Agreement, such party agrees to notify the other within five (5) business days or less of the exclusion.

Agreed to:

**Duluth Public School District #709**

Signed: Catherine Erickson  
Name: Catherine Erickson  
Title: CFO

Date: 3-27-20

**SMDC Medical Center**

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**AGREEMENT BY AND BETWEEN THE CITY OF DULUTH,  
THROUGH THE DULUTH PUBLIC LIBRARY,  
AND INDEPENDENT SCHOOL DISTRICT NO. 709**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), by and between the City of Duluth through the Duluth Public Library ("Library") and Independent School District 709 ("ISD 709").

WHEREAS, on June 20, 2018, the Library and ISD 709 entered into an agreement, City Contract No. 23485, ("2018 Agreement"), establishing a virtual library card program for students and educators called the Library Port Program; and

WHEREAS, the Library Port Program benefits the Duluth community by facilitating student engagement with the library, particularly that of under-resourced students; and

WHEREAS, through the Library Port Program the Library is able to provide library materials and access to e-resources to students who did not have access to conventional library cards for reasons beyond their control; and

WHEREAS, the parties wish to enter into a new agreement outlining the terms and conditions of the Library Port Program; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

**I. ISD 709 Obligations.**

A. ISD 709 agrees to provide the Library Port Program information provided by the Library to staff annually;

B. ISD 709 agrees to create an opt-in process for parents to authorize ISD 709 to share information with the City and to participate in the Library Port Program consistent with federal and state law;

C. ISD 709 agrees to include the opt-in form in school registration packets and to make the opt-in form available electronically when possible;

D. ISD 709 agrees to accept and process completed opt-in forms collected from parents and students at the Library's three locations and at library events;

E. After receipt of the opt-in form from a student's parent(s) or legal guardian(s), ISD 709 agrees to provide the following information on participating students to the Library: Student Lunch ID Number, Name, School Email, and Date of Birth;

**F. ISD 709 agrees to maintain the following processes for transferring student data to the Library for the purpose of creating virtual library cards:**

1. Run queries from ISD 709 student system (e.g. Infinite Campus), to create a tab delimited text file that includes student lunch ID number, name, school email, and date of birth.
2. Transfer tab delimited text file via Library's secure FTP site on a regular basis;

**G. ISD 709 agrees to promote Library Port Program internally to ensure that Library Port Program is a resource to enrich students' curriculum and the library is part of students' community;**

**H. ISD 709 agrees to promote Library Port Program externally to parents and the general public in partnership with the Library; and**

**I. ISD 709 agrees to designate a contact person, either the Superintendent or designee, for Library to work with on an ongoing basis.**

## **II. Library Obligation.**

**A. Library will allow ISD 709 students to check out digital materials and up to five physical items without overdue fines. Fresh Start, a read-down or do-down process, will be provided for students to eliminate any monetary fees for lost or damaged materials at no cost;**

**B. Library agrees to provide staff of ISD 709, including those that live outside the City of Duluth, with a digital access card allowing access to Library Port Program electronic materials; and**

**C. Library agrees to promote Library Port Program externally to the general public in partnership with the ISD 709.**

## **III. General Terms and Conditions.**

**A. Data Practices.** Each party will abide by the provisions of Minn. Stat. Chapter 13, the Minnesota Data Practices Act, as well as the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99 in the handling and disclosure of data.

**B. Contract Period.** Notwithstanding the date of execution, the term of this Agreement shall commence on the Effective date and shall continue until June 30, 2022, unless terminated earlier as provided for herein. Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement without cause.

**C. Non-Discrimination.** Parties shall not discriminate against any person in granting or denying access to Library Port because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance.

**D. Hold Harmless.** Each party shall be responsible for its own acts and omissions in carrying out the obligations of this Agreement.

**E. Notices.** Notice to the Library or ISD 709 provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

**City Duluth Public Library**  
Attn: Library Manager  
520 West Superior Street  
Duluth, MN 55802

**ISD 709 Duluth Public Schools**  
Attn: Superintendent  
215 N. 1st Ave E.  
Duluth, MN 55802

**F. Laws, Rules and Regulations.** Parties agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

**G. Applicable Law.** This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

**H. Severability.** In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

**I. Entire Agreement.** It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in

writing and shall be executed by the same parties who executed the original agreement or their successors in office. This Agreement supersedes the parties' prior agreement relating to the Library Port Program dated June 20, 2018.

**J. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

**IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date shown below.**

**CITY OF DULUTH**

By: [Signature]  
Mayor

ISD 709

By: [Signature]  
Superintendent

ATTEST:

[Signature]  
City Clerk  
Date: 3/27/2020



Approved as to form:

[Signature]  
City Attorney

Countersigned:

[Signature]  
City Auditor



230 East Superior Street • Duluth, MN 55802 • 218.310.0013 • [gregfollmer@gmail.com](mailto:gregfollmer@gmail.com)

March 31, 2020

William Gronseth  
Superintendent of Schools

David J. Spooner, C.P.E.  
Manger of Facilities

Cathy Erickson  
CFO/Executive Director of Business Services

Duluth Public Schools  
215 N 1<sup>st</sup> Ave E  
Duluth, MN 55802

RE: Marketing Update  
800 E Central Entrance "Central High School Property"  
"Hartley Lots"

#### **Hartley Residential Lots**

- Under Contract.
- Amendment executed extending closing to on or before May 31, 2020.

#### **800 E. Central Entrance "Central High School Property"**

- Ongoing follow up and discussion with several developers and potential purchasers.
- Networking with developers and brokers is ongoing.
- LOI under review and negotiations. Counter proposal presented to potential purchaser, no response as of today's date.
- Continued strong recent activity.

#### **215 N 1<sup>st</sup> Ave E "Historic Old Central High School"**

- Developers are actively researching and investigating redevelopment costs and potential uses for development.
- Activity, inquiries and interest continues to be strong.
- 3/2/2020 -Tour
- 3/26/2020 - Tour



**230 East Superior Street • Duluth, MN 55802 • 218.310.0013 • [gregfollmer@gmail.com](mailto:gregfollmer@gmail.com)**

### **Website Advertising**

- Loopnet – visible to CoStar members
- MNCAR – Minnesota Association of Commercial Realtors – membership data base
- GregFollmer.com
- Crexi.com – publicly accessible site
- Social Media Sites Facebook, Twitter, Instagram

Respectfully,

Greg Follmer  
Broker



# Facilities Management & Capital Project Status Report

## March 2020

### Facilities Management – Maintenance and Operations - General

- In the past month the Facilities maintenance crews have completed 289 work orders and are currently working on 237 open work orders.
- Discussions are occurring with the City of Duluth to update our Joint Power Use and lease Agreements.
- Gender neutral signage at specific locations are now installed at all secondary sites but OEMS. A meeting at OEMS was conducted and those signs will be installed.
- Discussions are occurring frequently related to property sale decisions and opportunities to explore.
- I am working with both local and state level Historic Preservation groups as related to the listing of HOCHS. Specifically, the City of Duluth Historic Preservation Commission, Duluth Preservation Alliance, and the State Historic Preservation Environmental Review Program Manager.

### Employee News

- Interviews were conducted, and Heather Ashbaugh accepted the job offer for Supervisor of Operations. She has many years of experience in this field, and will be a huge asset for the District. Please welcome her when you see her; brief introduction below.
- Jason Barsness, Coordinator of Health and Safety, resigned to take a similar position at WLSSD. Jason was with us for 7 years. We are currently advertising for his replacement.

### Capital Construction

- Federal COPS grant work for 12 sites is proceeding. I anticipate access control work to be complete by mid-April 2020. Site visits to meet with principals and clerical staff are ongoing as related to new hardware and features that our new systems will provide.
- The LTFM approved roof replacement project at Rockridge is starting this week.
- Contracts are being signed and required documents collected for the summer start of Congdon Parks masonry work.

### Building Operations – New Supervisor of Operations

- *Hello, my name is Heather Ashbaugh and I have spent the last 17 years working in higher education, at both UMD and the College of St. Scholastica. My experiences with the Facilities departments at both colleges will be beneficial as I begin my new position with Duluth Public Schools. In my spare time, I love to hike and garden, as well as spend time with my family and my dogs.*

## **Health, Safety & Environmental Management**

### Environmental/Health/Safety

- Assisted with facilities department Covid-19 response

### Emergency Response

- Assisted in District Wide Emergency Response Communications Drill

### Workers' Compensation Activities

- March
  - 14 First report of incidents
  - 0 OSHA recordable incidents

### 2020 YTD Incidents

- 55 First report of incidents received
- 8 OSHA recordable incidents
- 81 Days away from work
- 208 Days of restricted work

## **Business & HR Committee - Legislative Update ~ April 14, 2020**

HF 3992 / SF3722

Representative Mary Murphy and Senator Erik Simonson are the chief authors of a bill to allow for extended use of the Long-Term Facilities Maintenance (LTFM) revenue authority to build or purchase sites that would allow for the sale of Historic Old Central High School and the relocation from our transportation building to better use limited financial resources.

Our bill was heard in the House Education Policy Committee on March 11, and referred to House Education Finance. Much work was done to prepare to gain support for our bill, but things changed quickly with the emergence of Covid-19. On March 18 & 19, we were able to share information about our bill via conference calls with several legislators, focusing on the critical timing element of our bill. All of the meetings were positive and I think everyone we talked with now has a good understanding of our needs.

We are hearing that the Legislature plans to come back into session, or may have been in session between the time I'm writing this and presenting this. Our intention is to keep connecting with our regional legislative delegation and key committee leaders through our lobbyists to make sure our bill might be considered for inclusion into a supplemental bill that has support in both legislative bodies and carries bi-partisan support within both the House and Senate.

# Duluth Public Schools #709

## Revenue Budget Summary - Fiscal Year 2021 (FY21)

### General Fund

**Overview/Definitions:**

**General Fund** includes General (01), Transportation (03), and Operating Capital (05).

Within the General and Operating Capital funds, certain revenues will have reserve requirements.

Revenues originate from Federal, State, or Local Sources. Some Federal revenues are allocated to states who, in turn, distribute those revenues to eligible school districts, charter schools, or other programs.

Revenue that is equalized, or has a tax levy component in the formula, will have the levy portion identified as local revenue. This may be state mandated, district opted, or voter approved.

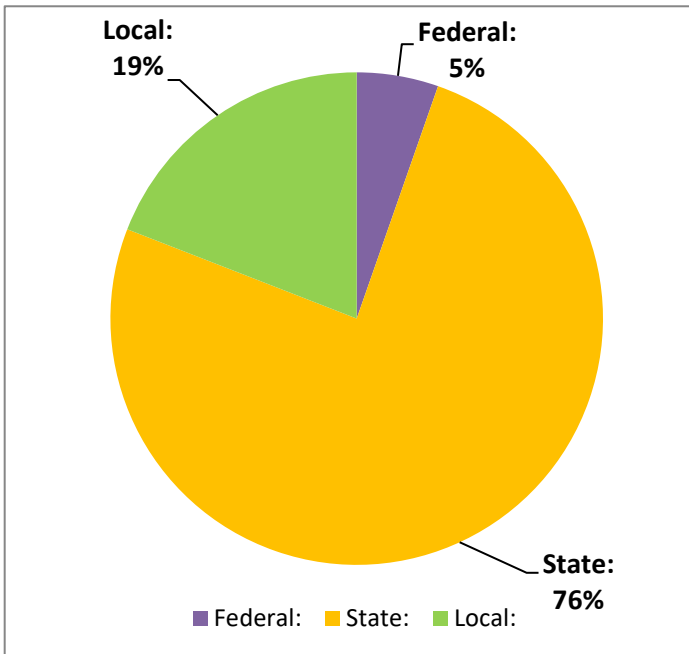
Other local revenues include grants, gifts & donations, tuition billing, fees, gate receipts, and interest. The sale proceeds for properties may be identified separately from regular local revenue.

State revenue may be a component of statewide funding formulas, categorical aids in which a district must qualify, or state grants with specific scope and requirements.

The process for General Fund Revenue budgeting will include projecting and analyzing current Federal, State, and Local revenues along with forecasting legislative or local district changes to revenues.

**Current estimated INITIAL GENERAL FUND Revenues for FY21:**

|                 |           |                       |
|-----------------|-----------|-----------------------|
| <b>Federal:</b> | \$        | 6,048,509.00          |
| <b>State:</b>   | \$        | 85,275,966.19         |
| <b>Local:</b>   | \$        | 21,550,166.05         |
|                 | <b>\$</b> | <b>112,874,641.24</b> |



**Initial Budget Assumptions:**

Basic Formula Allowance Increases 2% from FY20 per legislative increase.

Pupil Counts are projected very similar to FY20 for the FY21 budget, projected at 8,180 Adjusted Average Daily Membership (ADM) - this is a revised estimate from February when initial projections were 8,150.

Categorical Revenues are estimated at FY20 levels unless other information is known.

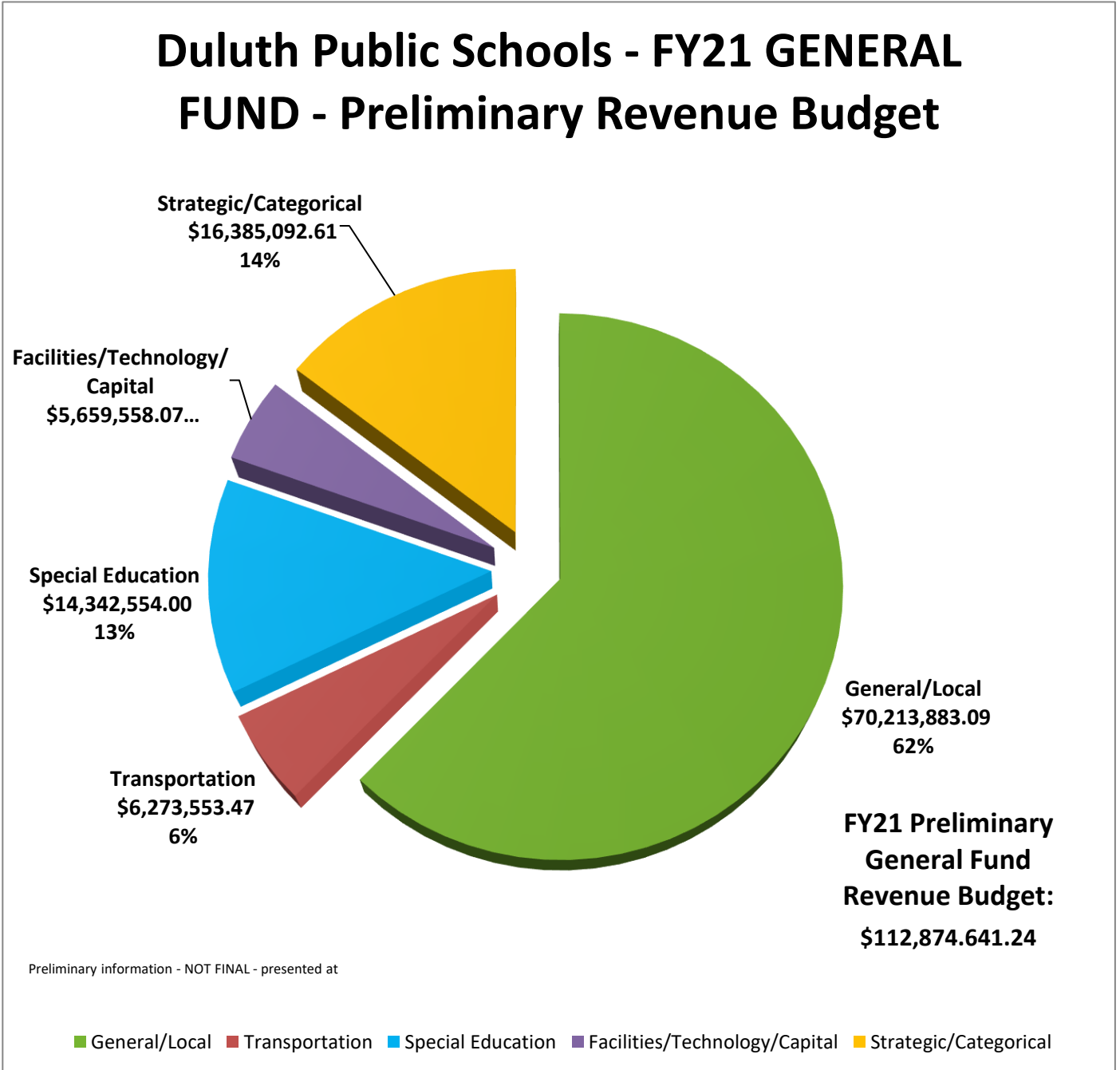
Federal Title program revenue estimates are projected to be stable by measuring Free & Reduced lunch counts.

Other local revenues are estimated by prior year funding amounts.

**Duluth Public Schools #709**  
**Revenue Budget Summary - Fiscal Year 2021 (FY21)**  
**General Fund**

These same revenue estimates can also be viewed in relation to what program areas they support. In each of these categories there may be further detail or distributions related to statute, policy, or district priorities.

Some revenues are considered entitlements and others are reimbursements.



**Strategic/Categorical:**

Funding includes revenues that may apply to certain programs or District strategies.

**Facilities/Technology/Capital:**

Funding includes revenues designated for State directed or District directed foundational costs.

**Special Education:**

Funding includes estimated state reimbursement revenue for programs and Federal allocations.

**Transportation:**

Funding includes identified revenues attributable to regular and special transportation.

**Duluth Public Schools #709**  
**Revenue Budget Summary - Fiscal Year 2021 (FY21)**  
**General Fund**

|                            |    |                |
|----------------------------|----|----------------|
| <b>Unrestricted:</b>       | \$ | 94,252,388.56  |
| <b>Restricted:</b>         |    |                |
| Staff Development          | \$ | 1,173,742.24   |
| Operating Capital          | \$ | 1,936,734.12   |
| Basic Skills               | \$ | 6,601,978.24   |
| Gifted & Talented          | \$ | 116,187.76     |
| Learning & Dev.            | \$ | 1,827,226.00   |
| Alt. Learning Ctr.         | \$ | 1,742,347.00   |
| LT Fac. Maint.             | \$ | 3,256,796.03   |
| Achiev. & Integrat.        | \$ | 1,641,213.37   |
| Safe Schools               | \$ | 326,027.92     |
| <b>Total Restricted:</b>   | \$ | 18,622,252.68  |
| <b>Total General Fund:</b> | \$ | 112,874,641.24 |

**Restricted Revenues** require a reserved fund balance if funding is not all spent in the allocated fiscal year. Most restricted revenues are intended to be spent in full in the allocated fiscal year.

Some **Unrestricted Revenues** may have defined uses but do not require a designated set aside balance to reserve.

**Restricted Revenues** come from state and local sources (aid and levy).

**Unrestricted Revenues** come from federal, state, and local sources.

Federal Sources are often reimbursements and have allowable carryover provisions to subsequent fiscal years. Use of Federal funds have limitations.

**Revenue Considerations:**

\*Due to Covid-19, right now we are not anticipating any additional revenue

\$ -

|   |
|---|
| \$ - <b>Administrative Recommendation</b> |
|---|

**Revised General Fund Revenue**

**Budget:** \$ **112,874,641.24**

**Revenue Budget Comparison:**

|                 | Preliminary Estimated<br>FY21 | <b>Estimated<br/>FY20</b>            | Budgeted<br>FY19         | Final<br>FY18            |
|-----------------|-------------------------------|--------------------------------------|--------------------------|--------------------------|
| <b>Federal:</b> | \$ 6,048,509.00               | \$ 5,869,509.00                      | \$ 6,065,644.00          | \$ 5,840,535.27          |
| <b>State:</b>   | \$ 85,275,966.19              | \$ 83,132,044.47                     | \$ 83,668,996.33         | \$ 81,532,066.00         |
| <b>Local:</b>   | \$ 21,550,166.05              | \$ 21,991,408.25                     | \$ 16,142,180.00         | \$ 17,555,245.60         |
|                 | <b>\$ 112,874,641.24</b>      | <b>\$ 110,992,961.72</b>             | <b>\$ 105,876,820.33</b> | <b>\$ 104,927,846.87</b> |
|                 | \$ -                          |                                      |                          |                          |
|                 | \$ -                          |                                      |                          |                          |
|                 | <b>\$ 112,874,641.24</b>      |                                      |                          |                          |
|                 | \$ 1,881,679.52               | Increase/(Decrease) compared to FY20 |                          |                          |

**Revenue Notes:**

|   |    |              |
|---|----|--------------|
| 2% Revenue increase in basic allowance: | \$ | 1,055,000.00 |
| LTFM Revenue Decrease (Restricted):     | \$ | (455,678.00) |
| Additional Special Education Revenue:   | \$ | 935,523.00   |
| General Levy Increases:                 | \$ | 460,000.00   |
| General Fund Local Revenue reductions:  | \$ | (225,000.00) |
|   | \$ | 1,769,845.00 |

# Duluth Public Schools #709

## Expense Budget Summary - Fiscal Year 2021 (FY21)

### General Fund

#### Overview/Definitions:

General Fund expenses encompass a wide range of categories and are identified through coding to represent programming areas and use of funds.

Expenses may be funded through unrestricted, restricted, or fund balances. If a fund balance is being used, revenues and expenses may not tie out.

An overall surplus or deficit is the combination of all available funding sources.

Staffing for FY21 is currently an estimate. The District will continue to analyze programs and pupil trends to determine base needs. Staff funded by entitlement revenues may need to be adjusted based on funding.

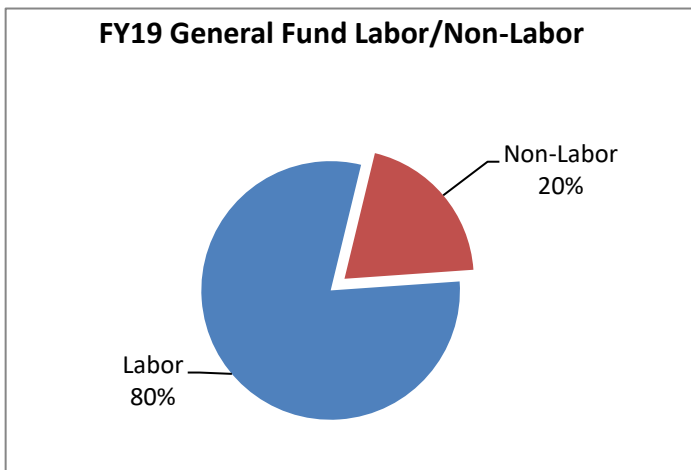
Consideration for effective use of funds will be the baseline to appropriately budget expenses in programs that best represent any restricted guidelines.

FY21 expense considerations may be the result of impacts from prior year budget or levy consequences.

Revenues that may become available through legislation or other sources not currently budgeted may trigger changes in expenses.

More meetings with building and program administration will be needed to determine any specific changes needed due to revenue adjustments, program reductions, or district priorities.

#### Labor/Non-Labor Summary



The majority of General Fund expenses are tied to salaries, wages, and benefits.

This pie chart shows the district's breakdown of Labor and Non-Labor expenses in the General Fund for Fiscal Year 2019.

It is expected that FY21 will have a similar result in relation to funding.

This will be reviewed and updated for FY20 after meetings with sites and programs.

\* Of the 80% Labor, 72% is Salaries and Wages and 28% is Benefits

# Duluth Public Schools #709

## Expense Budget Summary - Fiscal Year 2021 (FY21)

### General Fund

The preliminary expense budget was created using Fiscal Year 2019 (FY19) as a baseline and adjusting for a number of factors, including impacts from revenue.

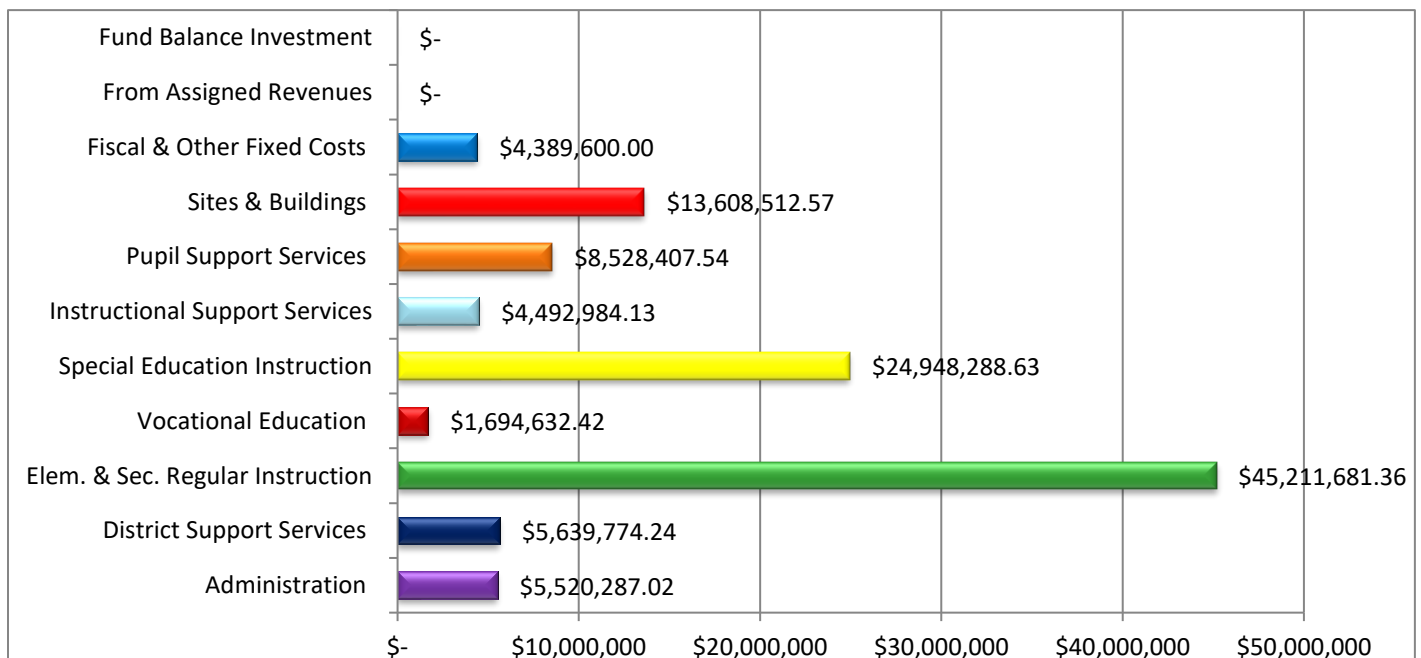
The program areas below are defined by the Minnesota Department of Education (MDE).  
Program areas may include expenses using restricted or unrestricted revenues.

Fund Balance is not a program area, but it is noted here as a budget component in relation to use of revenue as a budget priority.

### Expenses by Program Area - General Fund

| PRO                                      | FY21 Budget<br>Expense | FY20 Budget<br>Expense | Change          |
|--|------------------------|------------------------|-----------------|
| 000-099 Administration                   | \$ 5,520,287.02        | \$ 5,242,342.00        | \$ 277,945.02   |
| 100-199 District Support Services        | \$ 5,639,774.24        | \$ 5,473,471.00        | \$ 166,303.24   |
| 200-299 Elem. & Sec. Regular Instruction | \$ 45,211,681.36       | \$ 44,931,667.00       | \$ 280,014.36   |
| 300-399 Vocational Education             | \$ 1,694,632.42        | \$ 1,779,831.00        | \$ (85,198.58)  |
| 400-499 Special Education Instruction    | \$ 24,948,288.63       | \$ 23,355,926.00       | \$ 1,592,362.63 |
| 600-699 Instructional Support Services   | \$ 4,492,984.13        | \$ 4,278,448.00        | \$ 214,536.13   |
| 700-799 Pupil Support Services           | \$ 8,528,407.54        | \$ 8,163,695.00        | \$ 364,712.54   |
| 800-899 Sites & Buildings                | \$ 13,608,512.57       | \$ 13,879,468.00       | \$ (270,955.44) |
| 900-999 Fiscal & Other Fixed Costs       | \$ 4,389,600.00        | \$ 2,663,554.00        | \$ 1,726,046.00 |
| FD BAL From Assigned Revenues            |                        | \$ 600,000.00          | \$ (600,000.00) |
| FD BAL Fund Balance Investment           |                        | \$ 500,000.00          | \$ (500,000.00) |

**Total Expenses General Fund: \$ 114,034,167.89 \$ 110,868,402.00 \$ 3,165,765.89**





# Duluth Public Schools #709

## Expense Budget Summary - Fiscal Year 2021 (FY21)

### General Fund

#### Preliminary Budget Considerations - Expenses

Salaries, Wages, and Benefits were adjusted based on average contractual increases and projected FY21 staffing changes (retirements) currently known.

The FY21 budget includes an increase of over \$1.1 million for increase in contractual benefit contributions.

A \$1.5 million transfer from General to LTFM was done in FY20 to balance the General Fund. Original use of LTFM funds is for building and facilities improvements. This will continue in FY21.

A school bus is added to the transportation budget. The current replacement schedule is behind by at least 3 vehicles.

Any potential property sales are not included in this budget. Should there be a sale, statute requires a deposit into the operating capital reserve. This would be dedicated to facilities equipment and technology.

This budget includes the continued investment in Special Education that started in FY20, but may adjust.

Projected Compensatory revenue did not increase for FY21. Budget stability will be our goal. Any staffing/supply budget changes will be determined with input from site administration.

Budget includes an expense transfer reduction for bond payment obligations and increases in other program categories based on Series 2019A bond restructuring.

Special Education funding is still being reviewed, with consideration for impacts of tuition billing.

This budget is PRELIMINARY and subject to change. Reductions may be required.

## Revenue & Expense Budget Summary - Fiscal Year 2021 (FY21)

### General Fund

|                          |           |                       |
|--------------------------|-----------|-----------------------|
| <b>Initial Revenues:</b> | \$        | 112,874,641.24        |
| <b>Basic Allowance:</b>  | \$        | -                     |
| <b>Assigned Revenue:</b> | \$        | -                     |
| <b>Preliminary</b>       |           |                       |
| <b>FY21 Revenue:</b>     | <b>\$</b> | <b>112,874,641.24</b> |
| <b>Initial Expenses:</b> | <b>\$</b> | <b>114,034,167.89</b> |

**Final Notes:**

- All budget line items are still under review.
- More detail work will be done analyzing restricted revenues and expenses.
- This report is only in relation to the General Fund, which includes General, Transportation, and Capital Funds.
- This budget comparison includes all reserved and unreserved fund balances in the general fund and a final balance will not reflect a complete financial position of the district at this time.

**Projected surplus/ (deficit): \$ (1,159,526.65)** Will require additional budget adjustments.