

## Regular Business Meeting

Tuesday, October 8, 2024 5:30 PM

Board Assembly Room, 1250 West Broadway Avenue, Minneapolis, Minnesota 55411

1) **Call to Order and Roll Call**

2) **Adoption of the Agenda**

3) **Acceptance of Minutes**

3)a. September 10, 2024 Regular Business Meeting

4) **Public Comments**

5) **Recess**

6) **Reports and Recommendations from the Superintendent of Schools**

6)a. Presentations and Updates

7) **Action Items by the Board of Education**

7)a. Approval of the Consent Agenda

7)a.1. Personnel Items

7)a.1.a. Approval of List A personnel matters  
(2024-10-ER-A)

7)a.1.b. Approval of List B personnel matters  
(2024-10-ER-B)

7)a.2. Contracts

7)a.2.a. Amendment to contract 2024-13853 with  
Braun Intertec

7)a.2.b. Contract with EPS Operations, LLC 2024-  
4400002657

7)a.2.c. Contract with Johnson Litho Graphics  
(2024-4400002643)

7)a.2.d. Contract with Kognity 2024-4400002658

7)a.2.e. Amendment to contract 2024-4400002406  
with Matrix Communications, Inc

7)a.2.f. Contract with N2Y, LLC (2025-4400002612)

7)a.2.g. Contract with Parallel Technologies, Inc  
(2024-4400002641)

7)a.2.h. Amendment to contract 4400002343 with PYC

7)a.2.i. Contract with Trane U.S. Inc (2024-  
4400002647)

7)a.2.j. Contract with Tyler Technologies (2024-  
4400002651)

7)a.2.k. Contract with School Specialty (2025-  
4400002670)

7)a.2.l. Contract with Vitality Group, LLC (2025-  
4400002652)

- 7)a.2.m. Amendment to contract 4400002371-2024 with Wilson Language Training Corp
- 7)b. Resolution Repealing Policy 6524 and Adopting Policy 6255 (2024-0048)
- 7)c. Approving a purchase agreement with The Link for MPS real estate property (former Gordon and Willard Schools) (2024-0046)
- 7)d. Resolution Appointing Members to a Spanish Dual Immersion Task Force (2024-0052)
- 7)e. Resolution Approving the 2023-2024 Collective Bargaining Agreement between Special School District No. 1 and Association of Minneapolis District Professional Employees (2024-10-ER-CBA-AMP)
- 7)f. Resolution Approving the 2023-2024 Collective Bargaining Agreement between Special School District No. 1 and Minneapolis Association of Administrators and Supervisors (2024-10-ER-CBA-MAAS)
- 7)g. Resolution Approving the 2023-2024 Collective Bargaining Agreement between Special School District No. 1 and Minneapolis Association of Confidential Administrators (2024-10-ER-CBA-MACA)
- 7)h. Resolution Approving the 2024-2026 Collective Bargaining Agreement between Special School District No. 1 and Minnesota Teamsters Public and Law Enforcement Employees, Local 320 Transportation Employees (2024-10-ER-CBA-DRIVERS)

8) **New Business**

9) **Reports from Board of Education Directors**

10) **Adjournment**

**OFFICIAL MINUTES  
MINNEAPOLIS BOARD OF EDUCATION (SPECIAL SCHOOL DISTRICT NO. 1)**

**REGULAR BUSINESS MEETING  
SEPTEMBER 10, 2024**

**CALL TO ORDER**

In accordance with applicable requirements, notice was provided to each member of the Board of Education and to the public not less than three days prior to the meeting. Board members met in a regular meeting in the assembly room at the John B. Davis Educational Services Center (1250 West Broadway Ave. Minneapolis, MN) on September 10, 2024.

Chair Collin Beachy called the meeting to order at 5:30 p.m., a quorum being present.

**ROLL CALL**

Present: Directors Abdul Abdi, Adriana Cerrillo, Lori Norvell, Ira Jourdain, Collin Beachy, Kim Ellison, Joyner Emerick (7); Ex Officio members Superintendent Dr. Lisa Sayles-Adams, Student Representative Peralta (2)

Absent: Directors Faheema Feerayarre, Sharon El-Amin, Student Representative Rounds (3)

**APPROVAL OF AGENDA**

Ellison moved to approve the agenda.

Emerick moved to amend the agenda to include a discussion item on the process of school walk-throughs.

On a roll call vote, the motion to amend the agenda was not adopted with the following result:

Aye: Abdi, Cerrillo, Emerick (3)  
Nay: Norvell, Jourdain, Beachy, Ellison (4)  
Abstain: (0)  
Absent: El-Amin, Feerayarre (2)

On a voice vote, the motion to approve the agenda was adopted with the following result:

Aye: Abdi, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick (7)  
Nay: (0)  
Abstain: (0)  
Absent: El-Amin, Feerayarre (2)

## ACCEPTANCE OF MINUTES

Norvell moved to approve the minutes from the August 6, 2024 Regular Business Meeting and the August 16, 2024 Special Meeting.

On a voice vote, the motion to approve the minutes was adopted with the following result:

Aye: Abdi, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick (7)

Nay: (0)

Abstain: (0)

Absent: El-Amin, Feerayarre (2)

## PUBLIC COMMENTS

Comments were heard from members of the public.

## RECESS

A 10-minute recess was taken.

## REPORTS AND RECOMMENDATIONS FROM THE SUPERINTENDENT OF SCHOOLS

Superintendent Sayles-Adams and staff provided presentations on the following topics:

- a. Presentation and Updates
  - Superintendent's Update

No votes or action was taken on these informational items.

## ACTION ITEMS BY THE BOARD OF EDUCATION

### Approval of the Consent Agenda

Abdi moved to approve the consent agenda, which included the following items:

1. Personnel Items
  - a. Approval of List A personnel matters (2024-9-ER-A)
  - b. Approval of List B personnel matters (2024-9-ER-B)
2. Contracts
  - a. Contract with Apple Ford (2024-4400002580)
  - b. Contract with Augsburg University Minnesota Urban Debate League (2024-4400002581)
  - c. Contract with Construction Results Corporation (2024-4400002570)
  - d. Amendment to contract 2024-4400002226 with English Learning Center
  - e. Amendment to contract 2024-13770 with DLR Group
  - f. Amendment to Contract 2024-4400002325 with Goodheart-Willcox Company Inc.

- g. Amendment to contract 2024-1489 with Greiner Construction
- h. Amendment to contract 2024-4400001766 with International Baccalaureate
- i. Amendment to contract 2024-4400002232 with Learning in Style
- j. Contract with Interstate Power Systems (2024-1000242223)
- k. Amendment to Contract 2024-4400002225 with Riverside Plaza Tenants Association
- l. Contract with Rochon Corporation (2024-4400002571)
- m. Contract with Samsara (2024-4400002471)
- n. Contract with SAP (2024-4400002579)
- o. Amendment to contract 2024-4400002230 with Somali Success School
- p. Contract with Total Filtration Services (2024-4400002503)
- q. Contract with Trane (2024-4400002572)

On a voice vote, the motion to approve the agenda was adopted with the following result:

Aye: Abdi, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick (7)  
Nay: (0)  
Abstain: (0)  
Absent: El-Amin, Feerayarre (2)

#### **Resolution Approving Property Tax Levy Pre-Certification (2024-0045)**

Abdi moved to approve Resolution 2024-0045, Approving Property Tax Levy Pre-Certification.

On a voice vote the motion was adopted with the following result:

Aye: Abdi, Cerrillo, Norvell, Jourdain, Beachy, Ellison, Emerick (7)  
Nay: (0)  
Abstain: (0)  
Absent: El-Amin, Feerayarre (2)

#### **REPORTS FROM BOARD OF EDUCATION DIRECTORS**

The following directors and student representatives provided reports:

- Abdi
- Norvell
- Jourdain
- Emerick
- Cerrillo
- Beachy
- Peralta

#### **ADJOURNMENT**

Without objection, Chair Beachy adjourned the meeting at 6:54 p.m.

**Secretary Notations:**

- Minutes submitted by Ryan Strack, Assistant to the Superintendent and Board
- Meeting materials:
- Minutes approved: October 8, 2024

**Attachments:** *(added upon approval of minutes)*

- Resolution 2024-0045, Approving Property Tax Levy Pre-Certification

**Approvals:**

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Collin Beachy, Chair

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Lori Norvell, Clerk

DRAFT

## Minneapolis Public Schools

### List A: All Employees: Tuesday, October 8, 2024

#### Hiring - Licensed

Julissa Ballon Olivos	Ella Baker PK-8	Teacher, World Languages (Spanish)	9/23/2024
Corinne Bellot	Bryn Mawr Elementary	Teacher, Music Therapist	9/17/2024
Khari Broadway	Jenny Lind Elementary	Teacher, Special Education	9/17/2024
Shelly Chermack	MPS Online 6-12	Teacher, Science	9/24/2024
Michelle Christenson	Career and Technical Education	Teacher, District Program Facilitator	9/16/2024
Jessica Dawn	Pillsbury Elementary	Teacher, Music	9/3/2024
Gabriela De Souza Ramos	Franklin Middle	Teacher, Social Studies	9/10/2024
Ayan Derie	South High	Teacher, Social Worker	8/11/2024
Brenda Gregg	Southwest High	Teacher, Special Education	9/9/2024
Nasir Hassan	Nellie Stone Johnson Elementary	Teacher, Special Education	9/30/2024
Jana Hilleren	Multilingual & Magnet Programs	Teacher, English Second Language	9/13/2024
Karen Hudson	Early Childhood Special Education	Teacher, Special Education	9/11/2024
Ayan Ibrahim	Southwest High	Teacher, Social Worker	9/9/2024
Dillon Jepkema	Camden High	Teacher, Music	9/30/2024
Antiquika Jones	South High	Teacher, English	9/6/2024
Rachel Jungmann	Jenny Lind Elementary	Teacher, Elementary	9/10/2024
Patrick Karr	Nellie Stone Johnson Elementary	Teacher, Special Education	9/17/2024
Martha Kirby	Hmong International Academy Elementary	Teacher, Advanced Learner	9/9/2024
Elsa Koriath	Green Central Elementary	Teacher, Music Therapist	7/1/2024
Deborah Martel	Hmong International Academy Elementary	Teacher, TOSA General	9/9/2024
Jessica Matson	Roosevelt High	Teacher, Special Education	9/10/2024

## Minneapolis Public Schools

### List A: All Employees: Tuesday, October 8, 2024

#### Hiring - Licensed

Thomas Matuseski	Stadium View	Teacher, Math	9/16/2024
Benjamin Ojika	Olson Middle	Teacher, Special Education	9/23/2024
Nina Roberson	Early Childhood Education Program 1	Teacher, ECFE	8/11/2024
Peter Sage	Dowling Elementary	Teacher, TOSA Instructional Specialist	9/19/2024
Jade Sklar	Kenwood Elementary	Teacher, Elementary	10/7/2024
Adam Spear	Anthony Middle	Teacher, Special Education	9/4/2024
Andrea Stolhanske	Jenny Lind Elementary	Teacher, TOSA Instructional Specialist	8/22/2024
Carmen Villa	Las Estrellas Elementary	Teacher, B/B (Spanish) Elementary	9/23/2024
Dexter Yee Yick	Bethune Elementary	Teacher, Special Education	8/12/2024

#### Hiring - Non Licensed

Waris Aden	CWS, Site Group 6 - Southeast	Food Service Assistant	9/9/2024
Mariam Ali	Andersen Middle	Special Education Assistant	8/29/2024
Nimo Ali	Washburn High	Special Education Assistant	9/16/2024
Nicole Amaris	Cityview Elementary	Special Education Assistant	9/9/2024
Anna Bauman Smith	Core Instruction (K-12)	K-12 Content Lead	9/16/2024
Mackenzie Bergemann	Sanford Middle	Special Education Assistant	9/23/2024
Holger Bermello Quijije	Bryn Mawr Elementary	Bilingual Program Assistant	9/23/2024
Mohamednoor Bore	Andersen Middle	Special Education Assistant	8/29/2024
Caitlin Bovis	Hale Elementary	Health Services Assistant	9/23/2024
Davarus Branigan	Sanford Middle	Associate Educator	9/13/2024
Daniela Brito	Early Childhood Education	Office Specialist	9/23/2024

## Minneapolis Public Schools

### List A: All Employees: Tuesday, October 8, 2024

#### Hiring - Non Licensed

Izahnaya Brooks	MPS Online K-5	School Secretary	9/9/2024
Bienvendida Brown	Windom Elementary	Associate Educator	9/9/2024
Sonja Buckner	Anwatin Middle	Special Education Assistant	9/6/2024
Mary Cannon	Check and Connect	Student Support Specialist	9/19/2024
Alaisha Chamberlain	Pratt Elementary	Associate Educator	9/11/2024
Mercy Chaves Moya	Las Estrellas Elementary	Special Education Assistant	8/26/2024
Benjamin Conrad	Sanford Middle	Special Education Assistant	9/23/2024
Kayshla Diaz Torres	Camden High	Health Services Assistant	9/18/2024
Donyae Dillon	Andersen Middle	Special Education Assistant	9/16/2024
Falon Flippin	Minneapolis Kids	Child Care Assistant	9/18/2024
Mareae Franklin	River Bend Education Center	Special Education Assistant	8/26/2024
Marveae Franklin	River Bend Education Center	Special Education Assistant	8/26/2024
Katherine Frye	Youth & Adult Enrichment	Associate Educator	9/11/2024
Aniyah Garner	Pratt Elementary	Special Education Assistant	9/10/2024
Catarina Gomez Alvarado	Minneapolis Kids	Child Care Assistant	9/16/2024
Henry Hansen	Bryn Mawr Elementary	Special Education Assistant	9/3/2024
Diante Harrison	Harrison Education Center	Special Education Assistant	10/22/2024
Vinh Huynh	Edison High	Special Education Assistant	9/25/2024
David Irwin	Youth & Adult Enrichment	Coordinator, Youth & Adult Programs	9/23/2024
Kyle Johnson	Loring Elementary	Family & Community Liaison (ESP)	9/19/2024
Carlos Juarez	Olson Middle	Associate Educator	9/11/2024

# Minneapolis Public Schools

## List A: All Employees: Tuesday, October 8, 2024

### Hiring - Non Licensed

Semira Kedir	CWS, Site Group 5 - Southwest	Food Service Assistant	9/3/2024
Mitchell Kowitz	CWS, Site Group 2 - Northeast	School Cook	9/3/2024
Amy Larsen	Kenwood Elementary	Special Education Assistant	9/16/2024
Dariyanna Mapp	River Bend Education Center	Special Education Assistant	8/26/2024
Astrid Martinez	Office of Latine Achievement	Coordinator, Educational Equity	9/16/2024
Chepree Massey	CWS, Production	CWS Production Assistant	9/11/2024
Kachay Massey	Transportation, Regular Ed Transp.	Bus Aide	9/23/2024
Kevon Mathis	River Bend Education Center	Special Education Assistant	8/26/2024
Margarite Mayes	Harrison Education Center	Special Education Assistant	9/10/2024
Emily Mazalewski	Kenwood Elementary	Special Education Assistant	9/30/2024
George Meredith	River Bend Education Center	Security Monitor	8/26/2024
Australia Micheau	Folwell Elementary	School Secretary	9/9/2024
Amaree Mohamed	SEA Cadre	Special Education Assistant	9/23/2024
Jesus Montoya Salazar	Office of Latine Achievement	School Success Program Assistant	9/17/2024
Travis Moy	Washburn High	Special Education Assistant	9/24/2024
Julia Offerdahl	Lyndale Elementary	Associate Educator (Interventionist)	9/9/2024
Jazmin Potes Mangra	Transition Plus	Special Education Assistant	9/9/2024
Natalia Powers	Office of Latine Achievement	School Success Program Assistant	9/16/2024
Haydee Quezada Hernandez	CWS, Production	CWS Production Assistant	9/30/2024
Nadine Rassatt	Loring Elementary	Special Education Assistant	9/30/2024
Serena Robertson	Transportation, Regular Ed Transp.	Bus Aide	9/30/2024

## Minneapolis Public Schools

### List A: All Employees: Tuesday, October 8, 2024

#### Hiring - Non Licensed

Susan Rose	Kenny Elementary	Associate Educator	9/30/2024
Katelyn Rosen	Minneapolis Kids	Child Care Assistant	9/17/2024
Steven Rouse	Accounting & Finance	Accountant	9/23/2024
Daneva Russell	Sanford Middle	Special Education Assistant	9/30/2024
Shenick Sandford	Harrison Education Center	Special Education Assistant	9/24/2024
Alejandra Schuessler Ayala	Emerson Elementary	Special Education Assistant	9/16/2024
Latrice Sinclair	River Bend Education Center	Special Education Assistant	8/26/2024
Qurina Slayhi	Multilingual & Magnet Programs	K-12 Content Lead	9/16/2024
Joseph Smith	Harrison Education Center	Security Monitor	8/28/2024
Michelle Smith	Ella Baker PK-8	School Success Program Assistant	9/23/2024
Ricardo Solomon	Anwatin Middle	Special Education Assistant	9/23/2024
John Strand	Kenwood Elementary	Bilingual Program Assistant	9/23/2024
Casey Strecker	Core Instruction (K-12)	K-12 Content Lead	8/26/2024
Areeanna Triplett	Camden High	Special Education Assistant	9/9/2024
Ariane Tyson-Cradle	Harrison Education Center	Special Education Assistant	8/29/2024
Bill Vang	Olson Middle	Associate Educator	9/9/2024
Amani Wagner	Sanford Middle	Security Monitor	9/19/2024
Amy Young	Multilingual & Magnet Programs	Director, ESL / Bilingual Programming	10/8/2024
Ayan Yusuf	Early Childhood Education Program 1	Associate Educator	9/23/2024
Ava Zwack-Lafaurie	Minneapolis Kids	Child Care Assistant	10/2/2024



**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND  
Braun Intertec**

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and Braun Intertec dated 9/25/2024 (“Contract”) is made and entered into by and between Special School District No.1 (“District”) and Braun Intertec (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law (“District”) and Braun Intertec (“Contractor”) entered into a contract titled CONTRACT FOR SERVICES for a period between 9/1/2022 through 12/31/2024 (“Contract”), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: MAS-13853 and AMD 14055

1. *Original contract amount:* \$92,668
2. *Accumulative contract amount:* \$152,668

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

**Section:** 3.1 District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$152,668.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description:** Increase the total obligation from \$102,668 to \$152,668 for inspection in testing for the Phase 2, Phase 3 and future Phase 4 work including soils for the new storm sewer line.

Expiration date extended to 10/1/2025.

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

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Tom Parent

Title: Senior Operations Officer

Date: \_\_\_\_\_

**Braun Intertec:**

Signature: \_\_\_\_\_

Name: Dan Martin

Title: Senior Project Manager

Date: \_\_\_\_\_



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR GOODS – above \$50,000**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and EPS Operations, LLC “Contractor” (collectively “parties”) to provide intervention curriculum. at Minneapolis Public Schools.

### **1 TERM OF CONTRACT**

- 1.1 This Contract is effective on October 8, 2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until June 30th, 2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

### **2 SCOPE OF WORK**

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

### 3 CONSIDERATION AND TERMS OF PAYMENT

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

#### 3.1 *Total Obligation*

District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$222,962.94 (Two Hundred Twenty-Two Thousand, Nine Hundred Sixty-Two and Ninety-Four Hundredths). Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

#### 3.2 *Frequency of Invoicing and Terms of Payment*

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

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

#### 3.3 *Taxes.*

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

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

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

#### **4 INSPECTION OF GOODS & REJECTION**

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

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

#### **5 RISK OF LOSS**

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

#### **6 TITLE**

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

#### **7 FORCE MAJEURE**

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

## 8 GENERAL TERMS AND CONDITIONS

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

## 9 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

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

## 10 DATA PRIVACY

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

10.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign Exhibit C (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student's dedicated personal use, and includes devices issued through a one-to-one program.

## **11 USE OF DISTRICT NAME OR LOGO**

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

## **12 INDEPENDENT CONTRACTOR**

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

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

## **13 WORKER HEALTH, SAFETY AND TRAINING**

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

## **14 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS**

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

## **15 INSURANCE**

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

15.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

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

## **16 INDEMNIFICATION**

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

## **17 LIMITATION ON LIABILITY**

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

## **18 CONFLICT OF INTEREST/CODE OF ETHICS**

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

## **19 COMPLIANCE WITH LAWS AND DEBARMENT**

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

## **20 TERMINATION**

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

20.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall,

without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

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

## 21 RETURN OF DATA

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

## 22 RECORDS MANAGEMENT AND MAINTENANCE

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

## 23 NOTICES/ADMINISTRATION

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

## Special School District No. 1

Division: Core Academics

Attn: Tia Clasen

1250 W Broadway

Minneapolis, MN 55411

Email: [tia.clasen@mpls.k12.mn.us](mailto:tia.clasen@mpls.k12.mn.us)

## CONTRACTOR

NAME: EPS Learning: EPS Operations LLC

Address: 4800 Hampden Ln., Suite 560 Bethesda, MD 20814

Phone: 800.225.5750

Email: [melissa.johnson@epslearning.org](mailto:melissa.johnson@epslearning.org)

## ACKNOWLEDGMENT

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

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

## 24 NON-WAIVER

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

## 25 ASSIGNMENT

25.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for



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its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

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

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

## **27 WARRANTY**

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

## **28 SEVERABILITY**

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

## 29 SURVIVABILITY

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

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Tia Clasen  
(Printed)

Title: Senior Officer of Academics.

Date: \_\_\_\_\_

**EPS OPERATIONS, LLC**

Signature: \_\_\_\_\_

Name: Brent Goodman  
(Printed)

Title: Bids and Contracts Manager

Date: \_\_\_\_\_

## EXHIBIT A: SCOPE OF WORK

### *Deliverables:*

To provide various intervention materials to our 6-12 grade intervention classes and groups.

### *Service Outcome:*

The two curriculum will allow differentiated intervention models, materials, and training for 6-12 intervention teachers.

### *Method of Evaluation*

Content Lead will monitor delivery and distribution

[The remainder of this page intentionally left blank.]

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

Qty	Item Number	ISBN	description	Unit Price	Amount
1	2039406		SPIRE VIRTUAL INITIAL IMPLEMENTATION TRAINING (3 90 MIN SESSION)	\$1,750.00	\$1,750.00
1	5016199	9781429325721	INITIAL VIRTUAL <b>READING</b> ACCELERATOR TRAINING	\$1,750.00	\$1,750.00
6	2001976		SPIRE SUPPORT COACHING DAY	\$3,250.00	\$19,500.00
6	5016202	9781429325752	ON-SITE READING ACCELERATOR COACHING SESSION	\$3,250.00	\$19,500.00
3	2039409		SPIRE REFRESHER VIRTUAL SESSION (1 90 MIN SESSION)	\$500.00	\$1,500.00
1	5016201	9781429325745	90 MIN REFRESHER READING ACCELERATOR VIRT TRAINING	\$500.00	\$500.00
995	5015094	9781429324762	READING ASSISTANT FOR SPIRE - ASSESSMENT AND PRACTICE	\$20.00	\$19,900.00
13	2129408	9780838879818	SPIRE 4E SINGLE LVL TEACHERS SET LVL 1 W/ DIGITAL	\$384.29	\$4,995.77
13	2129409	9780838879801	SPIRE 4E SINGLE LVL TEACHERS SET LVL 2 W/ DIGITAL	\$384.29	\$4,995.77
13	2129406	9780838879788	SPIRE 4E SINGLE LVL TEACHERS SET LVL 3 W/ DIGITAL	\$384.29	\$4,995.77
14	2129411	9780838879792	SPIRE 4E SINGLE LVL TEACHERS SET LVL 4 W/ DIGITAL	\$384.29	\$5,380.06
14	2129410	9780838879825	SPIRE 4E SINGLE LVL TEACHERS SET LVL 5 W/ DIGITAL	\$384.29	\$5,380.06
14	2129407	9780838879832	SPIRE 4E SINGLE LVL TEACHERS SET LVL 6 W/ DIGITAL	\$384.29	\$5,380.06
224	2001951	9780838865408	SPIRE WORKBOOK 4TH ED LV 1	\$24.09	\$5,396.16
232	2001953	9780838865415	SPIRE WORKBOOK 4TH ED LV 2	\$24.09	\$5,588.88

Qty	Item Number	ISBN	description	Unit Price	Amount
240	2001954	9780838865422	SPIRE WORKBOOK 4TH ED LEVEL 3	\$24.09	\$5,781.60
220	2001955	9780838865439	SPIRE WORKBOOK 4TH ED LEVEL 4	\$24.09	\$5,299.80
193	2001950	9780838865446	SPIRE WORKBOOK 4TH ED LV 5	\$24.09	\$4,649.37
187	2001949	9780838865453	SPIRE WORKBOOK 4TH ED LV 6	\$24.09	\$4,504.83
9	2116404	9780838865996	SPIRE DIGITAL TEACHER COMPANION	\$20.00	\$180.00
60	9780838856000	9780838856000	ISPIRE ONE YEAR	\$72.00	\$4,320.00
53	5016699		READING ACCELERATOR TEACHER BUNDLE	\$300.00	\$15,900.00
800	5016698		READING ACCELERATOR STUDENT BUNDLE	\$75.00	\$60,000.00

**Large Order Delivery Contact**

This quote will likely ship "Less Than Truckload" (LTL) freight. Please provide a delivery contact to ensure that we can coordinate receipt of your shipment.

Delivery Contact Name: \_\_\_\_\_

Delivery Contact Phone: \_\_\_\_\_

Delivery Contact Email: \_\_\_\_\_

**Subtotal** \$207,148.13

**Shipping & Handling** \$15,814.81

**Tax Total** \$0.00

Page 2 / 2 Total \$222,962.94

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## EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
  - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
  - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.
7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.

8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

***BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.***

**CONTRACTOR**

NAME: EPS Learning: EPS Operations LLC  
Address: 4800 Hampden Ln., Suite 560 Bethesda, MD 20814  
Phone: 800.225.5750  
Email: [melissa.johnson@epslearning.org](mailto:melissa.johnson@epslearning.org)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date





MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR SERVICES – \$25,000 above**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Johnson Litho Graphics “Contractor” (collectively “parties”) to provide printing and mailing of brochures and postcards to Minneapolis Community Education.

### **TERM OF CONTRACT**

- 1.1 This Contract is effective on October 8, 2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until September 30, 2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

### **2 SCOPE OF WORK**

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

### **3 CONSIDERATION AND TERMS OF PAYMENT**

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

#### **3.1 *Total Obligation***

District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$128,580.00. Contractor shall



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not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

### ***3.2 Frequency of Invoicing and Terms of Payment***

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

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

### ***3.3 Taxes.***

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

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

### ***3.4 Fund Availability; Federal Funds Contingency.***

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

are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

#### **4 GENERAL TERMS AND CONDITIONS**

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

#### **5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY**

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

#### **6 BACKGROUND CHECKS**

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

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

## 7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.
- 7.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign **Exhibit C** (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student’s dedicated personal use, and includes devices issued through a one-to-one program.

## 8 OWNERSHIP OF MATERIAL

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

## 9 USE OF DISTRICT NAME OR LOGO

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

## 10 INDEPENDENT CONTRACTOR

- 10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding,

worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

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

## **11 WORKER HEALTH, SAFETY AND TRAINING**

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

## **12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS**

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

## **13 INSURANCE**

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

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

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

## **14 INDEMNIFICATION**

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

## **15 LIMITATION ON LIABILITY**

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

## **16 CONFLICT OF INTEREST/CODE OF ETHICS**

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

## **17 COMPLIANCE WITH LAWS AND DEBARMENT**

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government.

Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## **18 TERMINATION**

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

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

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

## **19 RETURN OF DATA**

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

## **20 RECORDS MANAGEMENT AND MAINTENANCE**

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items

available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## 21 NOTICES/ADMINISTRATION

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

### Special School District No. 1

Division: Community Education  
Attn: Aviva Hillenbrand  
1250 W Broadway  
Minneapolis, MN 55411  
Email: Aviva.Hillenbrand@mpls.k12.mn.us

### CONTRACTOR

Letecia Papke  
Phone: 612-332-3892  
Address: 2219 Galloway St, Eau Claire, WI 54703  
Email: davidf@fjohnsonlitho.com

### ACKNOWLEDGMENT

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



1250 West Broadway Ave. Minneapolis, MN 55411-2533  
Phone: 612.668.0000  
[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)  
SRM: 4400002643

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Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S person for tax purposes or U.S. resident alien.

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

## **22 NON-WAIVER**

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

## **23 ASSIGNMENT**

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

## **24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT**

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

## **25 WARRANTY**

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and

representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

## **26 SEVERABILITY**

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

## **27 SURVIVABILITY**

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

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Tia Clasen

(Printed)

Title: Senior Academic Officer

Date: \_\_\_\_\_

**CONTRACTOR NAME**

Signature: *Letecia Papke*

Name: Letecia Papke

(Printed)

Title: Corporate Counsel

Date: September 26, 2024



**Exhibit A:**

**Deliverables:**

Johnson Litho Graphics will provide printing and mailing of three (3) Community Education brochures based on proposal submitted for MPS RFP 25-02, Community Education, 2024-2025 Brochures.

**Service Outcome:**

Vendor will print and mail high quality brochures.

**Method of Evaluation:**

Vendor will be evaluated based on brochures quality and meeting agreed upon deadlines.

[The remainder of this page intentionally left blank.]

## **EXHIBIT B: PAYMENT TERMS**

If there are exhibits to describe the payment terms:

[The remainder of this page intentionally left blank.]

## EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
  - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
  - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.

7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.
8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

***BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.***

[CONTRACTOR NAME]

Letecia Papke  
Signature

Johnson Litho Graphics of Eau Claire, Ltd.  
Name

Corporate Counsel  
Title

September 26, 2024  
Date



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR GOODS – above \$50,000**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Kognity “Contractor” (collectively “parties”) to provide online textbook licenses and access at Minneapolis Public Schools

### **1 TERM OF CONTRACT**

- 1.1 This Contract is effective on November 1, 2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until October 31, 2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

### **2 SCOPE OF WORK**

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

### 3 CONSIDERATION AND TERMS OF PAYMENT

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

#### 3.1 *Total Obligation*

District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$120,000.00. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

#### 3.2 *Frequency of Invoicing and Terms of Payment*

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

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

#### 3.3 *Taxes.*

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

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

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

#### **4 INSPECTION OF GOODS & REJECTION**

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

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

#### **5 RISK OF LOSS**

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

#### **6 TITLE**

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

#### **7 FORCE MAJEURE**

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

## 8 GENERAL TERMS AND CONDITIONS

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

## 9 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

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

## 10 DATA PRIVACY

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

10.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign Exhibit C ("Student Data Privacy"). "School-issued devices," as used herein, refers to hardware or software that is provided to an individual

student for that student's dedicated personal use, and includes devices issued through a one-to-one program.

## **11 USE OF DISTRICT NAME OR LOGO**

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

## **12 INDEPENDENT CONTRACTOR**

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

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

## **13 WORKER HEALTH, SAFETY AND TRAINING**

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

## **14 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS**



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

## 15 INSURANCE

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

## 16 INDEMNIFICATION

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

## 17 LIMITATION ON LIABILITY

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

## 18 CONFLICT OF INTEREST/CODE OF ETHICS

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

## 19 COMPLIANCE WITH LAWS AND DEBARMENT

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

## 20 TERMINATION

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

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

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

## 21 RETURN OF DATA

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

## 22 RECORDS MANAGEMENT AND MAINTENANCE

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

## 23 NOTICES/ADMINISTRATION

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

### Special School District No. 1

Division: Academics  
Attn: Robert Kohnert  
1250 W Broadway



1250 West Broadway Ave. Minneapolis, MN 55411-2533  
Phone: 612.668.0000  
[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)  
SRM: 4400002658

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## CONTRACTOR

NAME: Sebastian Dederling  
Address: 263 Shuman Blvd, Suite 145  
Phone: 763-278-8881  
Email: Sebastian.dederling@kognity.com

## ACKNOWLEDGMENT

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

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

## 24 NON-WAIVER

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

## 25 ASSIGNMENT

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

in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

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

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

## **27 WARRANTY**

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

## **28 SEVERABILITY**

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

## **29 SURVIVABILITY**

29.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of

the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Tia Clasen  
(Printed)

Title: Senior Academic Officer

Date: \_\_\_\_\_

**CONTRACTOR NAME**

Signature: \_\_\_\_\_

Name: Sebastian Dederling  
(Printed)

Title: Manager, International Markets

Date: \_\_\_\_\_



1250 West Broadway Ave. Minneapolis, MN 55411-2533  
Phone: 612.668.0000  
[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)  
SRM: 4400002658

## EXHIBIT A: SCOPE OF WORK

### *Deliverables:*

Kognity Student Access IBDP

### *Service Outcome:*

Providing Kognity subscription for student access to IBDP

### *Method of Evaluation*

Leadership Evaluation

[The remainder of this page intentionally left blank.]

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

[The remainder of this page intentionally left blank.]

## EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
  - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
  - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.

7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.
8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

***BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.***

[CONTRACTOR NAME]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND  
Matrix-NDI**

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and Matrix-NDI dated 9/27/2024 (“Contract”) is made and entered into by and between Special School District No.1 (“District”) and Matrix-NDI (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law (“District”) and Matrix-NDI (“Contractor”) entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2024 through 12/31/2024 (“Contract”), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: SC 1000240730 / 4400002406  
Amendment Number/Change Order number: 1

1. *Original contract amount:* \$83,200
2. *Amendment amount:* \$66,800
3. *Accumulative contract amount:* \$150,000

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

**Section 3.1:** District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$150,000.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description:** Original contract was submitted to get service started in July for the new school year and now increasing amount to cover service until 6/30/25. Extending end date until 06/30/2025.

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

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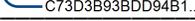
**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Tom Parent

Title: Senior Operations Officer

Date: \_\_\_\_\_

**Matrix:**  \_\_\_\_\_  
Signature: 

Name: Frank Millo

Title: VP - Sales

Date: 10/1/2024



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR GOODS – above \$50,000**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and N2Y, LLC “Contractor” (collectively “parties”) to provide Unique Learning System (ULS) & News2You Math Curriculum Licenses for Special Education students.

### **1 TERM OF CONTRACT**

- 1.1 This Contract is effective on September 9, 2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until October 17, 2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

### **2 SCOPE OF WORK**

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

### **3 CONSIDERATION AND TERMS OF PAYMENT**

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

### 3.1 *Total Obligation*

District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$130,688.18. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

### 3.2 *Frequency of Invoicing and Terms of Payment*

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

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

### 3.3 *Taxes.*

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

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

## **4 INSPECTION OF GOODS & REJECTION**

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

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

## **5 RISK OF LOSS**

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

## **6 TITLE**

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

## **7 FORCE MAJEURE**

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

## **8 GENERAL TERMS AND CONDITIONS**

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

## **9 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY**

9.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or

sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

## 10 DATA PRIVACY

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

10.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign Exhibit C (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student's dedicated personal use, and includes devices issued through a one-to-one program.

## 11 USE OF DISTRICT NAME OR LOGO

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

## 12 INDEPENDENT CONTRACTOR

12.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay

when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

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

### **13 WORKER HEALTH, SAFETY AND TRAINING**

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

### **14 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS**

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

### **15 INSURANCE**

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

15.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation

and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

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

## **16 INDEMNIFICATION**

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

## **17 LIMITATION ON LIABILITY**

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

## **18 CONFLICT OF INTEREST/CODE OF ETHICS**

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

## **19 COMPLIANCE WITH LAWS AND DEBARMENT**

19.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically

set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## 20 TERMINATION

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

N.B. - N2Y subscriptions are sold in prepaid 1 year increments. No refunds will be provided for partial year prorations.

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

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

## 21 RETURN OF DATA

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

## 22 RECORDS MANAGEMENT AND MAINTENANCE

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

## 23 NOTICES/ADMINISTRATION

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

### Special School District No. 1

Division: Dr. Deeqaifrah Hussein  
Attn: Special Education Services  
1250 W Broadway  
Minneapolis, MN 55411  
Email: [Deeqaifrah.hussein@mpls.k12.mn.us](mailto:Deeqaifrah.hussein@mpls.k12.mn.us)

## CONTRACTOR

NAME: Natalie Keener  
Address: Po Box 550 Huron, OH 44839  
Phone: 419-433-9800, ext 1212  
Email: [nkeener@n2y.com](mailto:nkeener@n2y.com)

## ACKNOWLEDGMENT

23.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding



1250 West Broadway Ave. Minneapolis, MN 55411-2533  
Phone: 612.668.0000  
[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)  
SRM: 4400002612

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as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

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

## **24 NON-WAIVER**

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

## **25 ASSIGNMENT**

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

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

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

## **27 WARRANTY**

27.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this

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

## **28 SEVERABILITY**

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

## **29 SURVIVABILITY**

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

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Dr. Tia Clasen  
(Printed)

Title: Sr. Academic Officer

Date: \_\_\_\_\_

**CONTRACTOR NAME**

Signature:  \_\_\_\_\_  
Ryan Fast (Sep 25, 2024 12:59 CDT)

Name: Ryan Fast  
(Printed)

Title: Chief Revenue Officer

09/25/2024  
Date: \_\_\_\_\_

## EXHIBIT A: SCOPE OF WORK

### *Deliverables:*

Qty 58 New2you Add users starting 9/9/24 to 10/17/24

Qty 50 Unique Learning System Add users starting 9/9/24 to 10/12/24

Qty 125 New2You License Renewal starting 10/18/24 to 10/17/25

Qty 125 Unique Learning System License Renewal starting 10/13/24 to 10/12/25

### *Service Outcome:*

Staff and students will have access to New2you and Unique Learning System curriculums during this School Year 2024-25.

### *Method of Evaluation*

Staff and students will have tools and resources to use in the classroom.

[The remainder of this page intentionally left blank.]

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

[The remainder of this page intentionally left blank.]

## EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
  - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
  - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.
7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.

8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

**BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.**

[CONTRACTOR NAME]

  
Ryan Fast (Sep 25, 2024 12:59 CDT)  
\_\_\_\_\_  
Signature

Ryan Fast  
\_\_\_\_\_  
Name

Chief Revenue Officer  
\_\_\_\_\_  
Title

09/25/2024  
\_\_\_\_\_  
Date

## FY20 District Wide Security Upgrades-Group 5

**Contract Sum: \$1,299,745.22**

**Contractor: Parallel Technologies, Inc.**

### Project Name and Number

Minneapolis Public Schools Project Number 20MULTI007  
OP# 25-2502

### Description

Camera, intrusion detection and access control upgrades at Anwatin Middle School, Bryn Mawr Elementary School, Edison High School, Field Elementary School, Hall STEM Academy, Loring Elementary School and Roosevelt High School.

### Contract Documents

AIA Document A101-2017  
AIA Document A101 Exhibit A-2017  
Exhibit B – Project Charter  
Exhibit C – Insurance  
Exhibit D – Project Schedule  
AIA Document E201-2022  
AIA Document A201-2017

 **AIA**® Document A101® – 2017**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the twelfth day of September in the year 2024  
*(In words, indicate day, month and year.)*

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

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

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

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

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

FY20 District Wide Security Upgrades-Group 5

The Architect:  
*(Name, legal status, address and other information)*

True North Consulting Group  
140 Third Street South  
Stillwater, MN 55411

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## 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
- EXHIBIT A 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:  
*(Check one of the following boxes.)*

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

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

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

#### § 3.3 Substantial Completion

**§ 3.3.1** The Contractor shall achieve Substantial Completion of the entire Work:  
*(Check one of the following boxes and complete the necessary information.)*

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**User Notes:**

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

By the following date: Defined in EXH-D Project Schedule

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates as defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

*(Table Deleted)*

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### **ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

#### **§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Table Deleted)*

**§ 4.2.2** Subject to the conditions noted in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Paragraph Deleted)*

*(Table Deleted)*

**§ 4.3** Allowances, if any, included in the Contract Sum are defined in EXH-B Project Charter.

*(Table Deleted)*

**§ 4.4** Unit prices, if any are defined in EXH-B Project Charter.

*(Paragraph Deleted)*

*(Table Deleted)*

#### **§ 4.5 Liquidated damages**

*Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays,*

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User Notes:

(3B9ADA3D)

*expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the Owner.

*(Paragraph Deleted)*

*After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

## **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.

**§ 5.1.3** When an Application for Payment is received by the Architect, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) days after the Architect receives the Application for Payment.

*(Paragraph Deleted)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor on AIA G702 Application and Certificate for Payment 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 of values 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** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

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

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

- .1 The aggregate of any amounts previously paid by the Owner;

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- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Paragraph Deleted)*

5% (five percent)

§ 5.1.7.1.1 The following items are not subject to retainage:

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

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

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

*Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as*

determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

*(Paragraph Deleted)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 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 or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

### § 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 Article 12 of AIA Document A201–2017, 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.  
.3 all lien waivers and IC134 forms have been delivered to the Owner.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

**§ 5.3 Interest**

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. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.  
*(Paragraph Deleted)*

**§ 5.4 Prompt Payment to Subcontractors**

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017.

**§ 6.1.1 Mediation**

Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

*If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:  
*(Check the appropriate box.)*

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other (*Specify*)

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

## **ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:  
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

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

Diedra Geye  
1250 West Broadway Avenue  
Minneapolis, MN 55411

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

Jeffrey Martin  
Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344  
952-920-7185  
jsmartin@ptnet.com

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

Init.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

**§ 8.7** Other provisions:

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

January 31, 2020

- .5 Drawings

Number	Title	Date
--------	-------	------

- .6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

- .7 Addenda, if any:

Number	Date	Pages
--------	------	-------

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

- .8 Other Exhibits:

*(Paragraphs Deleted)*

[EXH-B Project Charter](#)

Init.

| (Paragraph Deleted)

EXH-C Owner Insurance  
EXH-D Project Schedule

| (Paragraph Deleted)

| (Table Deleted)

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.9 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

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

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

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

*Karrie Schwartz*  
\_\_\_\_\_  
CONTRACTOR (Signature)

Karrie Schwartz, COO  
\_\_\_\_\_  
(Printed name and title)

# **Additions and Deletions Report for** **AIA® Document A101® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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 14:06:54 CT on 09/12/2024.

## **PAGE 1**

**AGREEMENT** made as of the twelfth day of September in the year 2024

...

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

...

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

...

FY20 District Wide Security Upgrades-Group 5

...

True North Consulting Group  
140 Third Street South  
Stillwater, MN 55411

## **PAGE 2**

[  ] A date set forth in a notice to proceed issued by the Owner.

...

**§ 3.3.1** ~~Subject to adjustments of the Contract Time as provided in the Contract Documents, the~~ The Contractor shall achieve Substantial Completion of the entire Work:

## **PAGE 3**

[  ] By the following date: Defined in EXH-D Project Schedule

...

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following ~~dates~~; dates are defined in EXH-D Project Schedule. Such portions of the work not completed as defined in EXH-D Project Schedule shall be subject to liquidated damages as set forth in Article 4.5.

...

<b>Portion of Work</b>	<b>Substantial Completion Date</b>
------------------------	------------------------------------

...

**§ 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 (\$ ),~~ Contract as defined in EXH-B Project Charter, subject to additions and deductions as provided in the Contract Documents.

...

**§ 4.2.1** Alternates, if any, included in the Contract ~~Sum~~; Sum are defined in EXH-B Project Charter.

...

<b>Item</b>	<b>Price</b>
-------------	--------------

...

**§ 4.2.2** Subject to the conditions noted ~~below~~, the following in EXH-B Project Charter, alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

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

...

<b>Item</b>	<b>Price</b>	<b>Conditions for Acceptance</b>
-------------	--------------	----------------------------------

...

**§ 4.3** Allowances, if any, included in the Contract ~~Sum~~:

...

*(Identify each allowance.)* Sum are defined in EXH-B Project Charter.

...

<b>Item</b>	<b>Price</b>
-------------	--------------

...

**§ 4.4** Unit prices, if any: any are defined in EXH-B Project Charter.

...

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

...

**Item**

**Units and Limitations**

**Price per Unit (\$0.00)**

...

**§ 4.5** Liquidated damages, if any: damages

**PAGE 4**

*(Insert terms and conditions for liquidated damages, if any.) Contractor and Owner recognized that time is of the essence for the Project and the Owner will suffer financial loss if the Work is not completed in the time specified in the Contract Documents. The parties also recognized the delays, expenses, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, the Owner and Contractor agree that as liquidated*

...

damages for delay (but not as penalty), Contractor shall pay Owner \$1,000.00 per calendar day for each day that expires after the time specified for Substantial Completion in EXH-D Project Schedule until such time the Work is determined to be substantially complete by the

...

Owner.

...

**§ 4.6** Other:

...

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.) After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining work within the Contract time specified in the Contract Documents, the contractor shall pay the Owner \$1,000.00 per day that expires after the time specified in the Contract Documents for Final Completion and readiness for Final Payment until the Work is completed.*

...

**§ 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:

...

month.

...

**§ 5.1.3** ~~Provided that~~ When an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 45 ( forty-five ) 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 on AIA G702 Application and Certificate for Payment 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 of values shall be used as a basis for reviewing the Contractor’s Applications for Payment.

**PAGE 5**

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

...

5% (five percent)

...

For major items installed into the Work, the Contractor may request full payment for the items to ensure prompt delivery and fabrication. Such items shall be recommended by the Architect and approved by the Owner as not requiring retainage. Prompt payment for the items shall be documented by the Contractor to the Owner in the subsequent payment application by submitting a full lien release for the items. Major items may include mechanical units with long lead times, structural systems with long lead times, critical path systems or items, etc. Major items will be discussed and defined by Owner, Architect, and Contractor.

...

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)* Prior to Substantial Completion and at the discretion of the Owner, retainage may be reduced. If the Work has been 50% completed as

...

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include

retainage as follows: determined by the Architect and is satisfactory to the Owner, then 90% of the retained amount may be released to the Contractor for completed work (with 10% of the total retained by the Owner.) Upon Substantial Completion, additional retainage may be returned to the Contractor as recommended by the Architect and approved by the Owner to an amount sufficient to satisfactorily complete the Work. Retainage release will comply with Minnesota Statute 15.72 after Substantial Completion and punch list acceptance by the Owner.

...

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

...

**§ 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 site or otherwise stored offsite with adequate Owner approved insurance provided to the Owner.

#### **PAGE 6**

.3 all lien waivers and IC134 forms have been delivered to the Owner.

...

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~45 days after the issuance of the Architect's final Certificate for Payment, ~~or as follows:~~

...

Payment.

...

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. Owner will pay the Contractor 0% interest for Payments not due made within forty five (45) days.

...

*(Insert rate)*

...

#### **§ 5.4 Prompt Payment to Subcontractors**

...

This Contract requires the Contractor and all Subcontractors and Sub-subcontractors (of any tier) to promptly pay any subcontractor or material supplier contract within ten (10) days of receipt of interest agreed upon, if any.) payment by Owner for undisputed services provided by the party requesting payment. The party responsible for payment (other than the Owner) shall pay interest of one and one half (1-1/2) percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment shall pay the actual penalty due to the party requesting payment.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless A201–2017.

...

### **§ 6.1.1 Mediation**

...

the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. Either the Owner or the Contractor may request mediation of any Claim submitted to the Architect for decision before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the date of this contract. The request for mediation shall be made in writing to the American Arbitration Association and to the other party of this contract.

...

Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of the date of filing the request.

...

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.) If the Claim is not resolved by mediation, the Architect's action shall become final and binding thirty (30) days after termination of the mediation proceedings. Within the time period, the Owner and Contractor may request Binding Dispute Resolution.*

...

The Work must continue, at the Owner's discretion, in accordance with paragraph 15.1.4.1 of AIA Document A201-2017.

**PAGE 7**

Litigation in a court of competent jurisdiction

...

Termination fee will be based on the percentage of work completed and any materials purchased or in production at the time of termination. Said fee and justification shall be provided to the Owner by the Contractor within ten (10) days of the notice of termination.

...

Diedra Geye  
1250 West Broadway Avenue  
Minneapolis, MN 55411

...

Jeffrey Martin  
Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344  
952-920-7185  
jsmartin@ptnet.com

**PAGE 8**

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

...

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

...

Owner prohibits Contractor from using the Work in any marketing material or business development practice. Contractor is prohibited from communication with any news outlet or public without Owner's written approval.

Floor plans, designs, wiring, safety and security measures shall be kept confidential by the Contractor, the Subcontractors, the Sub-subcontractors (of any tier) during and after completion of the Work.

...

- .4** Building information modeling exhibit, AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...

*(Insert the date of the ~~building information modeling exhibit E203-2013~~ incorporated into this Agreement.)*

...

January 31, 2020

...

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

...

AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:

...

[EXH-B Project Charter](#)

**PAGE 9**

*(Insert the date of the E204 2017 incorporated into this Agreement.)*

...

[EXH-C Owner Insurance](#)

...

[EXH-D Project Schedule](#)

...

The Sustainability Plan:

...

**Title**

**Date**

**Pages**

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:06:54 CT on 09/12/2024 under Order No. 4104251278 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.



---

*(Signed)*

Curtis Hartog, Executive Director

---

*(Title)*

9 / 12 / 2024

---

*(Dated)*



# AIA® Document A101® – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the **twelfth** day of **September** in the year **2024**  
*(In words, indicate day, month and year.)*

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

FY20 District Wide Security Upgrades-Group 5

**THE OWNER:**  
*(Name, legal status and address)*

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

**THE CONTRACTOR:**  
*(Name, legal status and address)*

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

### TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER’S INSURANCE**
- A.3 CONTRACTOR’S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER’S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor’s request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § A.2.2 Liability Insurance

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

#### ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

**Causes of Loss**

**Sub-Limit**

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

**Coverage**

**Sub-Limit**

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.
  
- § A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
  
- § A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
  
- § A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
  
- § A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
  
- § A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
  
- § A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

[ ] § A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] § A.2.5.2 **Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage

Limits

## ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

### § A.3.1 General

§ A.3.1.1 **Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 **Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 **Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### § A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:  
*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

### § A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits as defined is ECH-C Owner Insurance, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and

Init.

.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits as defined in EXH-C Owner Insurance .

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

§ A.3.2.5 Workers' Compensation at statutory limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability Coverage B as defined in EXH-C Owner Insurance .

*(Paragraph deleted)*

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits as defined in EXH-C Owner Insurance .

*(Paragraphs deleted)*

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits as defined in EXH-C Owner Insurance.

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1 as defined in EXH-C Owner Insurance.

*(Paragraphs deleted)*

**§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	Full contract value
Performance Bond	Full contract value

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

None

# Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

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 14:08:01 CT on 09/12/2024.

## PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the twelfth day of September in the year 2024

...

FY20 District Wide Security Upgrades-Group 5

...

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

...

Parallel Technologies  
7667 Equitable Drive  
Eden Prairie, MN 55344

## PAGE 4

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, as defined in ECH-C Owner Insurance, providing coverage for claims including~~

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§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~(\$ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage, as defined in EXH-C Owner Insurance .~~

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella coverage as defined in EXH-C Owner Insurance

§ A.3.2.5 Workers' Compensation at statutory ~~limits.~~limits for Coverage A as defined in EXH-C Owner Insurance.

§ A.3.2.6 Employers' Liability with ~~policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.~~Coverage B as defined in EXH-C Owner Insurance .

~~§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~

~~§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, as defined in EXH-C Owner Insurance .~~

~~§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, as defined in EXH-C Owner Insurance.~~

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If Professional Liability Insurance is required as part of this contract or becomes required during the course of the project coverage shall be in accordance with A.3.2.8, the insurance coverage shall be maintained for one calendar year after the date of Substantial Completion

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1:

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)* A.3.3.1 as defined in EXH-C Owner Insurance.

~~§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:  
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*~~

~~§ A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.~~

~~§ A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage,~~

transportation, and disposal of asbestos-containing materials.

**§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

**§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

**§ A.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

**Coverage**

**Limits**

**§ A.3.4 Performance Bond and Payment Bond**

...

Payment Bond

Full contract value

Performance Bond

Full contract value

...

None

# Exhibit B – Project Charter

## Project Name and Number

FY20 District Wide Security Upgrades-Group 5  
Minneapolis Public Schools Project Number 20MULT1007  
OP# 25-2502

## Description

Camera, intrusion detection and access control upgrades at Anwatin Middle School, Bryn Mawr Elementary School, Edison High School, Field Elementary School, Hall STEM Academy, Loring Elementary School and Roosevelt High School.

## Contract Sum

The Contract Sum shall be \$1,299,745.22.

## Alternates

Item	Price	Status
N/A		

## Conditions

Item	Price	Conditions for Acceptance
N/A		

## Allowances

Item	Price
N/A	

## Unit Prices

Item	Units and Limitations	Price per Unit (\$0.00)
#1 Programmer Labor	Per Hour	\$122.38
#2 Technician Labor	Per Hour	\$122.38

# EXHIBIT C Owner Insurance

## Insurance Requirements

1. CONSULTANT'S INSURANCE – to be used with AIA B101-2017, AIA C103-2015, or similar non-contractor consultants:

The Consultant shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

- a. Worker's Compensation and Employer's Liability Insurance

- i. Coverage A is statutory.
- ii. Coverage B
  - \$500,000 Each Accident
  - \$500,000 Each Employee
  - \$500,000 Policy Limit (Disease)

- b. Comprehensive General Liability Insurance \*

General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000
Per Occurrence	\$1,000,000
Medical Payments	\$10,000

\* The Owner should be named as an additional insured for Comprehensive General Liability Insurance.

- c. Automobile Insurance

Per Occurrence	\$1,000,000
PIP	Basic
Underinsured Motorist	\$1,000,000
Uninsured Motorist	\$1,000,000

- d. Professional Liability Insurance

- i. Per Claim \$2,000,000

- ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

Aggregate	\$4,000,000
-----------	-------------

e. Umbrella Liability Insurance

- i. Per Occurrence \$2,000,000
- ii. For projects with an estimated construction Contract Sum of over \$10,000,000 or major structural work an aggregate is required as follows:
 

Aggregate	\$2,000,000
-----------	-------------

f. Manned or Unmanned Aircraft Coverage (if used)

- i. Per Claim \$1,000,000
- ii. Aggregate \$1,000,000

For specialty consultants used for commissioning activities, studies, asbestos surveys and security, items A, B, C and F shall apply.

Special Asbestos Abatement Liability Insurance is required for Asbestos Abatement Contractors. The limits are \$1,500,000 per claim, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

2. CONSULTANT’S OBLIGATIONS

Consultant shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required to be carried under the terms hereof and shall endeavor to satisfy the requirements of the insurance companies issuing them. In the event Consultant neglects, refuses or fails to provide or maintain any of the insurance required to be carried under the Agreement, or if such insurance is canceled for any reason, the Owner or the Owner’s lender(s) shall have the right, but not the duty, to procure or maintain the same.

In the event the Owner or the Owner’s lender(s) do procure or maintain such insurance, the Owner or the Owner’s lender(s) shall have, in addition to any and all other available remedies, the right to recover from the Consultant (including the right of set-off against sums otherwise due the Consultant) all of the costs associated with procuring or maintaining such insurance.

### 3. PROFESSIONAL LIABILITY INSURANCE

- a. Professional Liability Coverage of \$2,000,000 shall be maintained for one (1) year from the date of Substantial Completion. If the Consultant discontinues its business and if directed by Owner in writing, Consultant shall purchase such insurance in such amount for an extended discovery period beyond the one (1) year after the date of Substantial Completion, with the premium cost to be a reimbursable expense paid by the Owner. The limit of liability for such policy may not be reduced below \$2,000,000 without the Owner giving its prior, written consent. All policies of insurance that Consultant is required under the terms of this Exhibit C Owner's Insurance to secure and maintain shall bear the endorsement "Not to be canceled until sixty (60) calendar days after Owner has received a written notice from insurer as evidence by a return receipt of registered or certified mail."
- b. The Owner shall not be responsible for obtaining or paying premiums or other expenses in connection with insurance required to be carried under the Agreement or normally carried by the Consultant's consultants, and the obligation to obtain such insurance and to pay such premiums and other expenses shall be solely that of the Consultant.
- c. The Consultant shall bear all the costs of any and all deductible amounts under any insurance policies required to be carried under the Agreement and shall remain solely and fully liable for the full amount of any claim or item not compensated by insurance (to the extent that any amount resulted from damages that arose out of the Consultant's sole negligence.)

### 4. COVERAGE

The coverage's referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete.

### 5. GENERALLY

- a. The Consultant thereby represents and warrants to the Owner that, as of the date of the execution of the Agreement, the Consultant is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance or for damages covered by any of the insurance required to be carried under the Agreement that would affect the Consultant's ability to provide the insurance coverage required by this agreement.

- b. It is understood that the provisions in the Agreement requiring the Consultant to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Consultant as to any obligations imposed under the Agreement, including, but not limited to, obligations imposed under the provisions of Article 11 of the AIA A201-2017 General Conditions.

## Insurance requirements for Contractors

### 1. CONTRACTOR’S INSURANCE – to be used with AIA A101-2017

The Contractor shall at its own expense maintain in effect at all times during the performance of the Work under the Agreement at least the following coverage and limits of insurance:

#### a. Commercial General Liability

- |   |             |
|---|-------------|
| i. General Aggregate                        | \$1,500,000 |
| ii. Products/Completed Operations Aggregate | \$1,500,000 |
| iii. Per Occurrence                         | \$1,500,000 |

The Owner shall be named as additional insured for Commercial General Liability Insurance

#### b. Automobile Insurance

- |                            |             |
|----------------------------|-------------|
| i. Per Occurrence          | \$1,000,000 |
| ii. PIP                    | Basic       |
| iii. Underinsured Motorist | \$1,000,000 |
| iv. Uninsured Motorist     | \$1,000,000 |

#### c. Workers Compensation

- i. Coverage A is statutory.
- ii. Coverage B \$500,000 Each Accident
- iii. \$500,000 Each Employee

d. Professional Liability (if the Contractor is hiring professionals)

i. Per Claim \$2,000,000

For Projects with an estimated construction cost of over \$10,000,000 or major structural work, additional Aggregate coverage of \$4,000,000 is required.

e. Manned or Unmanned Aircraft Coverage (if used)

i. Per Claim \$1,000,000

ii. Aggregate \$1,000,000

f. Property Insurance

i. Per Claim \$1,000,000

ii. Aggregate \$1,000,000

This insurance is only required for materials stored offsite and not incorporated into the project at delivery. For material stored on site, no additional insurance is required.

g. Builders "all risk" Insurance

i. Per Claim \$2,000,000

ii. Aggregate \$4,000,000

This insurance is only required for additions exceeding \$10,000,000. Renovations to existing schools are not required to have builders all risk insurance.

h. Umbrella Liability

i. Aggregate limit \$5,000,000

This insurance is required only for projects larger than \$10,000,000 in total construction costs.

# Exhibit D – Project Schedule

## Project Name and Number

MPS Project Number: 20MULTI007

FY20 District Wide Security Upgrade-Group 5

OP#:25-2502

## Description

Camera, intrusion detection and access control upgrades at Anwatin Middle School, Bryn Mawr Elementary School, Edison High School, Field Elementary School, Hall STEM Academy, Loring Elementary School and Roosevelt High School.

## Schedule

Construction Commences: October 14, 2024

Substantial Completion: May 2, 2025

Close-out Documents no later than 45 days past date of Substantial Completion

## Substantial Completion

The Work will be substantially complete on or before May 2, 2025.



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

FY20 District Wide Security Upgrades-Group 5

**THE OWNER:**

*(Name, legal status and address)*

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

**THE ARCHITECT:**

*(Name, legal status and address)*

True North Consulting Group  
140 Third Street South  
Stillwater, MN 55411

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

**ADDITIONS AND DELETIONS:**

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

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

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

Init.

User Notes:

(1883911760)

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(Topics and numbers in bold are Section headings.)

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

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

#### **§ 1.1.2 The Contract**

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

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

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 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.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

### **§ 1.6 Notice**

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

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

### **§ 1.7 Digital Data Use and Transmission**

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

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

**§ 2.1.2** The Owner shall furnish to the Contractor, within 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 Evidence of the Owner's Financial Arrangements**

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

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

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

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

### **§ 2.3 Information and Services Required of the Owner**

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

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

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

§ 2.3.4 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.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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

#### § 2.4 Owner's Right to Stop the Work

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

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 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 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made 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 submit 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, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 Supervision and Construction Procedures**

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

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

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

### **§ 3.4 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.

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

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

### § 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 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 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

### **§ 3.8 Allowances**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .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 notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent 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 and Submittal Schedules**

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

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

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

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

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

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

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

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval 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 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.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and 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 the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity 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 Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

### **§ 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.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. 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**

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

§ 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 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will 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 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 order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, 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 the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

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

§ 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will 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; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

### **§ 6.2 Mutual Responsibility**

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

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

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 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. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 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 7.3.4.

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

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

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

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

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

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

## § 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended 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

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

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

### § 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect 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 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 encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that 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 (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within 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' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## **§ 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

### 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

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- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 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 hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 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 reimburse the Contractor for all cost and expense thereby incurred.

#### **§ 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 Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## § 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## § 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. 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 any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of 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 2.5.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, 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, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under 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 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 Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

### § 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The 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 the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

§ 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 15.1.7, 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 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



# **Additions and Deletions Report for** **AIA® Document A201® – 2017**

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FY20 District Wide Security Upgrades-Group 5

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

...

True North Consulting Group  
140 Third Street South  
Stillwater, MN 55411

## **PAGE 10**

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

...

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

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:09:00 CT on 09/12/2024 under Order No. 4104251278 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.



\_\_\_\_\_  
*(Signed)*

Curtis Hartog, Executive Director

\_\_\_\_\_  
*(Title)*

9 / 12 / 2024

\_\_\_\_\_  
*(Dated)*

**Exhibit A**

**MEMORANDUM OF AGREEMENT BETWEEN  
THE MINNEAPOLIS PUBLIC SCHOOLS AND PYC HIGH SCHOOL  
TO SPECIFY THE AMOUNT OF SUPPORT IN ACCORDANCE WITH FORMULA SPECIFIED IN MINN. STAT. 124.D.69**

The Program PYC has an estimated Average Daily Membership (ADM) or:

86.17	Secondary students
-------	--------------------

as a basis for payment under Minn. Stat 12D.69 and amendments.

Grades	Total # of students	Weighting	Weighted Student Number	2024/2025 Revenue	Total Revenue
<b>7-12 Grades</b>	<b>100</b>	<b>1.2</b>	<b>120</b>	<b>\$899,579</b>	<b>\$899,579</b>

We have used projected enrollment to determine the amount of support. Reconciliation may begin in January 2025 if necessary to reconcile a total amount paid to the school with the total amount due based on actual enrollment. After February 15<sup>th</sup>, 2025, a final adjustment payment to or refund from the school will be made based on the actual ADMs for 2023-24. A monthly invoice will be submitted to Minneapolis Public Schools to request payment. Actual ADM for eligible students for 2024-25 school-year will determine the final budget allocation.

Compensation for Compensatory Education and Title I funding is in the table below.

Funding Source	Total Dollars	Monthly Allocation (based on 10 Months)
ADMs	\$899,579	\$89,957.90
Compensatory Education	\$353,665.60	\$35,366.56
*Title 1* (Invoice through Funded Programs)	\$1,017.90 (Title 1 Family) \$39,000 (Title 1 Basic)	<b>Invoiced Monthly</b>
<b>Total Monthly Payments</b>		<b>\$125,324.46</b>

Funding for approved summer school programs will be distributed when the district received the funds from the state (approximately December for the year following summer school). There will be no reimbursement for students 21 and over.

**TOTAL AMOUNT TO PYC HIGH SCHOOL \$1,293,262.50**

**BOARD OF EDUCATION  
SPECIAL SCHOOL DISTRICT NO. 1**

By: \_\_\_\_\_  
date

Title: \_\_\_\_\_

**PYC HIGH SCHOOL**

By: Melissa Denton 9/26/24  
date

Title: Executive Director



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR SERVICES – \$25,000 above**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and **Trane U.S. Inc** “Contractor” (collectively “parties”) to provide **Installation of chiller and BAS controls** to **North Community High School**

### **TERM OF CONTRACT**

- 1.1 This Contract is effective on **September 16, 2024** or the date of the last signature of the parties, whichever is later, and shall remain in effect until **October 1, 2025**, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that **NO WORK SHOULD BEGIN UNDER THIS CONTRACT** until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s **OWN RISK** and as a volunteer.

### **2 SCOPE OF WORK**

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

### **3 CONSIDERATION AND TERMS OF PAYMENT**

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

#### **3.1 *Total Obligation***

District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed **\$297,265.00**. Contractor shall



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not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

### ***3.2 Frequency of Invoicing and Terms of Payment***

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

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

### ***3.3 Taxes.***

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

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

### ***3.4 Fund Availability; Federal Funds Contingency.***

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

are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

#### **4 GENERAL TERMS AND CONDITIONS**

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

#### **5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY**

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

#### **6 BACKGROUND CHECKS**

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

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

## 7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.
- 7.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign **Exhibit C** (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student’s dedicated personal use, and includes devices issued through a one-to-one program.

## 8 OWNERSHIP OF MATERIAL

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

## 9 USE OF DISTRICT NAME OR LOGO

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

## 10 INDEPENDENT CONTRACTOR

- 10.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding,

worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

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

## **11 WORKER HEALTH, SAFETY AND TRAINING**

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

## **12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS**

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

## **13 INSURANCE**

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

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

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

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

## **14 INDEMNIFICATION**

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

## **15 LIMITATION ON LIABILITY**

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

## **16 CONFLICT OF INTEREST/CODE OF ETHICS**

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

## **17 COMPLIANCE WITH LAWS AND DEBARMENT**

17.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government.

Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

## **18 TERMINATION**

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

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

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

## **19 RETURN OF DATA**

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

## **20 RECORDS MANAGEMENT AND MAINTENANCE**

20.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items

available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## 21 NOTICES/ADMINISTRATION

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

### Special School District No. 1

Division: Operations Division  
Attn: Curt Hartog, Executive Director  
1250 W Broadway  
Minneapolis, MN 55411  
Email: [curtis.hartog@mpls.k12.mn.us](mailto:curtis.hartog@mpls.k12.mn.us)

### CONTRACTOR

Trane U.S. Inc  
Phone: 612-322-5295  
Address: 1285 Grey Fox Road, Arden Hills, MN 55112  
Email: [Zackary.main@trane.com](mailto:Zackary.main@trane.com)

### ACKNOWLEDGMENT

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



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Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

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

## **22 NON-WAIVER**

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

## **23 ASSIGNMENT**

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

## **24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT**

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

## **25 WARRANTY**

25.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and

representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

## **26 SEVERABILITY**

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

## **27 SURVIVABILITY**

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

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: **Tom Parent**

(Printed)

Title: **Senior Operations Officer**

Date: \_\_\_\_\_

**CONTRACTOR NAME**

Signature: \* 

Name: Samuel Branson

(Printed)

Title: Contract Manager

Date: 09/18/2024

\*NOTE: Subject to the Omnia - Racine County Contract # 3341 and Trane's Terms and Conditions as referenced in Trane Proposal dated 6/06/2024.



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**Exhibit A:**

**Deliverables:**

Installation of chiller and BAS controls for new chiller at North Community High School per Trane proposal 7787758r2. Omnia Racine #3341

**Service Outcome:**

Successful installation and operation of chiller system at North Community High School

**Method of Evaluation:**

Certification of successful operation

[The remainder of this page intentionally left blank.]

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

MPS standard payment terms apply

[The remainder of this page intentionally left blank.]

## EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
  - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
  - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.

7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.
8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

***BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.***

**[CONTRACTOR NAME]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

## **CONTRACT FOR SERVICES – \$25,000 above**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and Tyler Technologies “Contractor” (collectively “parties”) to provide Student Transportation Routing Software to Minneapolis Public Schools.

### **TERM OF CONTRACT**

- 1.1 This Contract is effective on 10/08/2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until 6/30/2026, with the option to renew for an additional two years, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.
- 1.2 Contractor understands that NO WORK SHOULD BEGIN UNDER THIS CONTRACT until all required signatures on this Contract have been obtained and the Contract has been authorized and/or approved by the District’s Board. Any work performed by Contractor prior to such time shall be considered as having been performed at Contractor’s OWN RISK and as a volunteer.

### **2 SCOPE OF WORK**

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

### **3 CONSIDERATION AND TERMS OF PAYMENT**

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

#### **3.1 *Total Obligation***



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Phone: 612.668.0000

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District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$1,364,197.00 for the initial contract term (10/1/2024 – 6/30/2026) and \$651,416.00 for the optional 2-year renewal term (7/1/2026 – 6/30/2028). Contractor shall prorate fiscal year obligations based on delivery date of deliverables, such as Software Access Dates and receipt of hardware Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

Initial Contract Term (10/1/2024 – 6/30/2026)		
Fiscal Year	Date	Maximum Anticipated Obligation
FY25	10/1/2024 – 6/30/2025	\$1,112,309.00
FY26	7/1/2025 – 6/30/2026	\$251,888.00

Optional 2-Year Renewal Term (7/1/2026 – 6/30/2028)		
Fiscal Year	Date	Maximum Anticipated Obligation
FY27	7/1/2026 – 6/30/2027	\$399,528.00
FY28	7/1/2027 – 6/30/2028	\$251,888.00

### 3.2 *Frequency of Invoicing and Terms of Payment*

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

As applicable, for all agreed upon work performed by Contractor or Contractor’s personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor at the hourly or per diem rates as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the hours recorded provided such hours are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and

Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

### 3.3 *Taxes.*

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

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

### 3.4 *Fund Availability; Federal Funds Contingency.*

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

## 4 GENERAL TERMS AND CONDITIONS

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

## 5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or

recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

## 6 BACKGROUND CHECKS

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

## 7 DATA PRIVACY

- 7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.
- 7.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign **Exhibit C** (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student's dedicated personal use, and includes devices issued through a one-to-one program.

## **8 OWNERSHIP OF MATERIAL**

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

## **9 USE OF DISTRICT NAME OR LOGO**

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

## **10 INDEPENDENT CONTRACTOR**

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

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

## **11 WORKER HEALTH, SAFETY AND TRAINING**

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

## 12 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS

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

## 13 INSURANCE

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

## 14 INDEMNIFICATION

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

## **15 LIMITATION ON LIABILITY**

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

## **16 CONFLICT OF INTEREST/CODE OF ETHICS**

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

## **17 COMPLIANCE WITH LAWS AND DEBARMENT**

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

## **18 TERMINATION**

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

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

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

## 19 RETURN OF DATA

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

## 20 RECORDS MANAGEMENT AND MAINTENANCE

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

## 21 NOTICES/ADMINISTRATION

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

### Special School District No. 1

Division: Transportation Department



1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)

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Attn: Lisa Beck  
1001 2<sup>nd</sup> Ave. N  
Minneapolis, MN 55405  
Email: [lisa.beck@mpls.k12.mn.us](mailto:lisa.beck@mpls.k12.mn.us)

## CONTRACTOR

Ryan Oakes  
Phone: 207-939-7126  
Address: 11 Cornell Road, Latham, NY 12110  
Email: [Ryan.Oakes@tylertech.com](mailto:Ryan.Oakes@tylertech.com)

## ACKNOWLEDGMENT

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

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

## 22 NON-WAIVER

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

## 23 ASSIGNMENT

23.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment,

District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

## **24 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT**

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

## **25 WARRANTY**

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

## **26 SEVERABILITY**

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

## **27 SURVIVABILITY**

27.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of

the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Tom Parent

(Printed)

Title: Senior Operations Officer

Date: \_\_\_\_\_

**Tyler Technologies**

Signature:

Name:

(Printed)

Title:

Date: \_\_\_\_\_



## **Exhibit A:**

### **Deliverables:**

Tyler Technologies Student Transportation software implemented and MPS Transportation staff have a workable product. MPS Transportation staff will have access to Student Transportation and be trained on using software to perform routing duties, monitor dispatch functions and fully use features for activity trips.

Tyler Drive installed, functioning correctly and 'Train the trainer' training complete with MPS Transportation staff.

Parent/caregiver app is functioning correctly; MPS Transportation staff have been trained on sending and receiving messages (including forms) via the app.

School-facing on time arrival information (via a dashboard or other Tyler Tech feature) is functioning correctly and 'Train the trainer' training complete with MPS Transportation staff.

Details attached labeled Exhibit D & Exhibit E

### **Service Outcome:**

MPS Transportation staff quickly and accurately route students per their needs and eligibility. Route and run performance can be monitored for efficiency.

Performance of daily operations are easily visible for MPS Transportation staff and other key stakeholders.

Communication between families/caregivers and MPS Transportation staff has been streamlined and response time has decreased.

MPS Transportation executive director and key stakeholders will review department KPIs and determine performance of Tyler Technologies Student Transportation.

### **Method of Evaluation:**

MPS Transportation executive director and key stakeholders will review department KPIs and determine performance of Tyler Technologies Student Transportation.

[The remainder of this page intentionally left blank.]

## **EXHIBIT B: PAYMENT TERMS**

If there are exhibits to describe the payment terms:

See Exhibit B

The license fee for Tyler Technologies is to be paid annually with a one-time set up fee to be paid the first year.

[The remainder of this page intentionally left blank.]

## EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
  - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
  - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.
7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.

8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

***BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.***

[CONTRACTOR NAME]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

**CONTRACT FOR GOODS – above \$50,000**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and School Specialty “Contractor” (collectively “parties”) to provide furniture, materials and supplies for Sensory Rooms for Special Education classrooms across the District.

**1 TERM OF CONTRACT**

1.1 This Contract is effective on October 8, 2024 or the date of the last signature of the parties, whichever is later, and shall remain in effect until June 30, 2025, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

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

**2 SCOPE OF WORK**

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

**3 CONSIDERATION AND TERMS OF PAYMENT**

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

### 3.1 *Total Obligation*

District's total obligation to Contractor/Vendor under this Contract, including compensation for goods, and/or services, and reimbursable expenses (if applicable), shall not exceed \$731,758.56. Contractor/Vendor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

### 3.2 *Frequency of Invoicing and Terms of Payment*

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

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

### 3.3 *Taxes.*

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

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the

Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

#### **4 INSPECTION OF GOODS & REJECTION**

- 4.1 Buyer is entitled to inspect the Goods upon delivery. If the Goods are unacceptable for any reason, Buyer must reject them at the time of delivery up to ten (10) business days from the date of delivery. If Buyer has not rejected the Goods within ten (10) business days from the date of delivery, Buyer shall have waived any right to reject that specific delivery of Goods.
- 4.2 In the event Buyer rejects the Goods, Buyer shall allow Seller a reasonable time to cure the deficiency. A reasonable time period shall be determined by industry standards for the Goods, as well as the Seller and Buyer.

#### **5 RISK OF LOSS**

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

#### **6 TITLE**

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

#### **7 FORCE MAJEURE**

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

#### **8 GENERAL TERMS AND CONDITIONS**

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

## 9 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY

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

## 10 DATA PRIVACY

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

10.2 Contractors that provide school-issued devices for student use and directly or indirectly create, receive, or maintain educational data incidental to performing their duties under this Contract shall also sign Exhibit C (“Student Data Privacy”). “School-issued devices,” as used herein, refers to hardware or software that is provided to an individual student for that student’s dedicated personal use, and includes devices issued through a one-to-one program.

## 11 USE OF DISTRICT NAME OR LOGO

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



## **12 INDEPENDENT CONTRACTOR**

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

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

## **13 WORKER HEALTH, SAFETY AND TRAINING**

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

## **14 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS**

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

## **15 INSURANCE**

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

certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.

15.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.

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

## 16 INDEMNIFICATION

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

## 17 LIMITATION ON LIABILITY

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

## 18 CONFLICT OF INTEREST/CODE OF ETHICS

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

## 19 COMPLIANCE WITH LAWS AND DEBARMENT

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

## 20 TERMINATION

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

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

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

## 21 RETURN OF DATA

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

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

## **22 RECORDS MANAGEMENT AND MAINTENANCE**

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

## **23 NOTICES/ADMINISTRATION**

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

### **Special School District No. 1**

Division: Special Education Department  
Attn: Dr. Deeqaifrah Hussein  
1250 W Broadway Ave  
Minneapolis, MN 55411  
Email: [deeqaifrah.hussein@mpls.k12.mn.us](mailto:deeqaifrah.hussein@mpls.k12.mn.us)

## **CONTRACTOR**

NAME: School Specialty  
Address: W6316 Design Dr, Greenville, WI 54942  
Phone: 612-505-8741  
Email: [bob.kaye@schoolspecialty.com](mailto:bob.kaye@schoolspecialty.com)



1250 West Broadway Ave. Minneapolis, MN 55411-2533  
Phone: 612.668.0000  
[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)  
SRM: 4400002670

## ACKNOWLEDGMENT

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

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

## 24 NON-WAIVER

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

## 25 ASSIGNMENT

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

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

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

## 27 WARRANTY

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

## 28 SEVERABILITY

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

## 29 SURVIVABILITY

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

[The remainder of this page intentionally left blank.]

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Dr. Tia Clasen

(Printed)

Title: Senior Academic Officer

Date: \_\_\_\_\_

**CONTRACTOR NAME**

Signature: *Sarah Peterson*

Name: Sarah Peterson

(Printed)

Title: Assistant Secretary

Date: 10/2/2024



## EXHIBIT A: SCOPE OF WORK

### ***Deliverables:***

Vendor will provide furniture, materials and supplies for Sensory Rooms at the following sites: Elementary - Anishinabe, Armatage, Bancroft, Barton, Bethune, Bryn Mawr, Cityview, Emerson, Field, Folwell, Green Central, Hale, Hall, Hiawatha, Howe, Keewaydin, Kenny, Kenwood, LH Upper, Las Estrellas, Loring, Lucy Craft Laney, Lyndale, Marcy, Nellie Stone Johnson, Northrup, Pillsbury, Waite Park, Wenonah, Whittier, Windom. Pre K – Ella Baker. Middle School – Anderson, Anthony, Franklin, Justice Page and Northeast. High Schools – Edison, North, South, Southwest, Washburn. Specialty Sites – Stadium View and Transition Plus.

### ***Service Outcome:***

The requested furniture, materials and supplies are delivered in good condition.

### ***Method of Evaluation***

Fulfillment of the requested furniture, materials and supplies

[The remainder of this page intentionally left blank.]

## EXHIBIT B: PAYMENT TERMS

If there are exhibits to describe the payment terms:

[The remainder of this page intentionally left blank.]



1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)

SRM: 4400002670

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## EXHIBIT C: STUDENT DATA PRIVACY

As used in this exhibit, the term “educational data” shall have the meaning ascribed to it under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13.32 as amended.

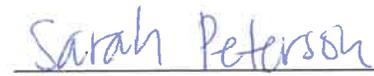
1. Contractor acknowledges that all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the services described in this Contract is subject to the requirements of the MGDPA, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall be subject to all civil remedies available under the MGDPA, Minn. Stat. § 13.08 as amended, for any violation of these obligations.
2. No educational data created, received, maintained, or disseminated by Contractor pursuant or incidental to this Contract shall become or be considered property of the Contractor. Any such educational data shall remain the property of the District.
3. If educational data maintained by Contractor pursuant or incidental to performance of this Contract are subject to a breach of security of the data, as that term is defined by the MGDPA, Minn. Stat. § 13.055 as amended, Contractor shall, upon discovering such breach, provide the District with all information necessary for the District to fulfill its obligations under the MGDPA.
4. Contractor shall not sell, share, or disseminate educational data, except as permitted under the MGDPA, Minn. Stat. § 13.32 as amended, or as part of a valid delegation or assignment of this Contract, if the terms of the Contract permit delegation or assignment. Any assignee or delegee must separately execute this Exhibit and is bound by the same terms.
5. Contractor shall not use educational data for any commercial purpose, including but not limited to marketing or advertising to a student or parent.
  - a. The term “commercial purpose,” does not include providing the specific services agreed upon in this Contract.
  - b. Contractor may use deidentified aggregate information for the purpose of improving, maintaining, developing, supporting, or diagnosing the Contractor’s site, service, or operation, as long as all direct and indirect identifiers have been removed from the data prior to use.
6. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only have access to educational data if authorized.
7. Contractor’s employees, officers, agents, and sub-contractors, if applicable, shall only be authorized to access educational data if such access is necessary to fulfill their official duties in the performance of this Contract.

8. Unless renewal of the Contract is reasonably anticipated, Contractor shall destroy or return all educational data created, received, or maintained pursuant or incidental to the Contract within 90 days of the expiration of this Contract.
9. Contractor shall abide with all the requirements and restrictions of Minn. Stat. § 13.32, as amended, that pertain to or address technology providers. Contractor shall be considered a “technology provider” for purposes of Section 13.32.

**BY SIGNING BELOW, CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT UNDERSTANDS THE TERMS OF THIS EXHIBIT, THAT THESE TERMS ARE PART OF ITS CONTRACT WITH THE DISTRICT, AND THAT IT AGREES TO BE BOUND BY AND ABIDE BY THESE TERMS.**

[CONTRACTOR NAME]

  
Signature

  
Name

  
Title

  
Date

SRM #4400002652

**VITALITY SERVICES AGREEMENT**  
**between**  
**THE VITALITY GROUP, LLC.**  
**And**  
**MINNEAPOLIS PUBLIC SCHOOLS**

**AMENDMENT to VITALITY SERVICES AGREEMENT**

THIS AMENDMENT (“Amendment”) is made effective as of January 1, 2025, by and between Minneapolis Public Schools (“Customer”) and The Vitality Group LLC. (“TVG”).

WHEREAS, Customer and TVG have entered into the Vitality Services Agreement on January 1, 2014, as amended (the “Original Agreement”), whereby TVG provides an incentive-based health and wellness program, collectively referred to as “Vitality Services”, and

WHEREAS, Customer and TVG desire to amend the Original Agreement.

The Original Agreement is hereby amended as follows:

1. Section 4.2.5 shall be deleted in its entirety and replaced as follows:  
“Following the Second Extended Term, once per year TVG may revise the Administration Fee with 90 (ninety) days’ notice to Customer. Any increase to the Administration Fee will be limited to the percentage increase in the Consumer Price Index-Urban over a corresponding time period.”
2. Section 6.1. Term shall be deleted in its entirety and replaced with the language following:  
“The Agreement will be renewed for a 3 (three) year period from January 1, 2025 to December 31, 2027 (“Second Extended Term”). Thereafter, this Agreement shall automatically renew for successive terms of one (1) year each (each a ‘Renewal Term”).”
3. Section 6.2 TERMINATION WITHOUT CAUSE shall be deleted in its entirety and replaced with the language following: “There shall be no termination without cause during the Second Extended Term. Effective after the Second Extended Term, either Party may terminate this Agreement without cause by giving at least ninety (90) days prior written notice. The termination shall be effective the last day of the month following the ninety (90) day notice period.”
4. Exhibit A Compensation Schedule shall be amended by including the following:

Administration Fee for Second Extended Term	Per Employee Per Month (PEPM)	\$2.92
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This Amendment does not change, waive, alter or extend any part of the Vitality Services Agreement other than as set forth herein. All provisions not changed by this Amendment shall remain as stated in the Vitality Services Agreement.

[Signature Page to Follow]

INTENDING TO BE BOUND, this Amendment has been duly executed by the authorized representatives of the parties set forth below.

**CUSTOMER**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**TVG**

**By:** \_\_\_\_\_

**Name:** Elizabeth Dunphy

**Title:** Chief Operating Officer

**Dated:** 10/1/2024

DocuSigned by:  
*Elizabeth Dunphy*  
7D13F0A23B054AE...

**AMENDMENT TO CONTRACT BETWEEN: SPECIAL SCHOOLS DISTRICT NO.1 AND  
Wilson Language Training Corp.**

This Amendment (“Amendment”) to the Contract between Special School District No. 1 and Wilson Language Training Corp. dated 10/8/2024 (“Contract”) is made and entered into by and between Special School District No.1 (“District”) and Wilson Language Training (“Contractor”) (collectively “parties”).

WHEREAS, Special School District No.1, a special school district created and existing under Minnesota law (“District”) and Wilson Language training (“Contractor”) entered into a contract titled CONTRACT FOR SERVICES for a period between 7/1/2024 through 6/30/2025 (“Contract”), and

WHEREAS, the Parties now desire to amend the Contract number: SRM: 4400002371

1. *Original contract amount:* \$ 172,224 (Current Wilson Contract Amount)
2. *Accumulative contract amount:* \$225,950.40

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

**Section 3.1:** District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$225,950.40. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

**Description:** We are increasing the request from the vendor in order to provide instructional materials to staff who are providing services to students receiving special education services and/or English language services. We will also be providing instructional materials for student usage.

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

(The remainder of this page intentionally left blank.)

**SPECIAL SCHOOL DISTRICT NO. 1**

Signature: \_\_\_\_\_

Name: Tia Clasen

Title: Senior Academic Officer

Date: \_\_\_\_\_

**Wilson Language Training Corp:**

Signature: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

**MINNEAPOLIS PUBLIC SCHOOLS  
RESOLUTION 2024-0048**

**RESOLUTION REPEALING POLICY 6524 AND ADOPTING POLICY 6255 (2024-0048)**

**WHEREAS**, School districts are required by state or federal law to have a policy addressing this matter; and

**WHEREAS**, The Board’s Policy Committee has recommended the proposed new policy.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors, Special School District No. 1 (Minneapolis Public Schools) adopts the changes as follows:

**SECTION 1:**            **ADOPTION** “Policy 6255: School-Sponsored Student Publications And Activities” of the Minneapolis Public Schools Policies & Regulations is hereby *added* as follows:

**ADOPTION**

Policy 6255: School-Sponsored Student Publications And Activities(*Added*)

**1. PURPOSE**

The purpose of this policy is to protect students’ rights to free speech in production of school-sponsored media and activities while at the same time balancing the school district’s role in supervising student publications and the operation of public schools.

**2. GENERAL STATEMENT OF POLICY**

- a. To the extent otherwise consistent with this policy, the school district may exercise editorial control over the style and content of student expression in school-sponsored publications and activities.
- b. Expressions and representations made by students in school-sponsored publications and activities are not expressions of official school district policy. Faculty advisors shall supervise student writers to ensure compliance with the law and school district policies.
- c. Students who believe their right to free expression has been unreasonably restricted in school-sponsored media or activity may seek review of the decision by the building principal. The principal shall issue a decision no later than three (3) school days after review is requested.
  - i. Students producing school-sponsored media and activities shall be under the supervision of a faculty advisor and the school principal. School-sponsored media and activities shall be subject to the guidelines set forth below.
  - ii.

School-sponsored media may be distributed at reasonable times and locations.

### **3. DEFINITIONS**

- a. “Distribution” means circulation or dissemination of material by means of handing out free copies, selling or offering copies for sale, accepting donations for copies, posting, or displaying material, or placing materials in internal staff or student mailboxes.
- b. “Material and substantial disruption” of a normal school activity means:
  - i. Where the normal school activity is an educational program of the school district for which student attendance is compulsory, “material and substantial disruption” is defined as any disruption which interferes with or impedes the implementation of that program.
  - ii. Where the normal school activity is voluntary in nature (including, without limitation, school athletic events, school plays and concerts, and lunch periods) “material and substantial disruption” is defined as student rioting, unlawful seizures of property, conduct inappropriate to the event, participation in a school boycott, demonstration, sit-in, stand-in, walk-out, or other related forms of activity.
- c. “Minor” means any person under the age of eighteen (18).
- d. “Obscene to minors” means:
  - i. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest of minors of the age to whom distribution is requested;
  - ii. The material depicts or describes, in a manner that is patently offensive to prevailing standards in the adult community concerning how such conduct should be presented to minors of the age to whom distribution is requested, sexual conduct such as intimate sexual acts (normal or perverted), masturbation, excretory functions, or lewd exhibition of the genitals; and
  - iii. The material, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
- e. “School activities” means any activity of students sponsored by the school including, but not limited to, classroom work, library activities, physical education classes, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays and other theatrical productions, and in-school lunch periods.
- f. “School-sponsored media” means material that is:
  - i. prepared, wholly or substantially written, published, broadcast, or otherwise disseminated by a student journalist enrolled in the school district;
  - ii. distributed or generally made available to students in the school; and
  - iii. prepared by a student journalist under the supervision of a student media adviser.

School-sponsored media does not include material prepared solely for

distribution or transmission in the classroom in which the material is produced, or a yearbook.

- g. "Student journalist" means a school district student in grades 6 through 12 who gathers, compiles, writes, edits, photographs, records, or otherwise prepares information for dissemination in school-sponsored media.
- h. "Student media adviser" means a qualified teacher, as defined in Minnesota Statutes,

#### **4. GUIDELINES**

- a. Except as provided in paragraph B below, a student journalist has the right to exercise freedom of speech and freedom of the press in school-sponsored media regardless of whether the school-sponsored media receives financial support from the school or district, uses school equipment or facilities in its production, or is produced as part of a class or course in which the student journalist is enrolled. Freedom of speech includes freedom to express political viewpoints. Consistent with paragraph B below, a student journalist has the right to determine the news, opinion, feature, and advertising content of school-sponsored media. The school district must not discipline a student journalist for exercising rights or freedoms under this paragraph or the First Amendment of the United States Constitution
- b. Student expression in school-sponsored media, a yearbook, or school-sponsored activity is prohibited when the material:
  - i. is obscene to minors;
  - ii. is defamatory;
  - iii. is profane, harassing, threatening, or intimidating;
  - iv. constitutes an unwarranted invasion of privacy;
  - v. violates federal or state law;
  - vi. causes a material and substantial disruption of school activities;
  - vii. is directed to inciting or producing imminent lawless action on school premises or the violation of lawful school policies or rules, including a policy adopted in accordance with Minnesota Statutes, section 121A.03 or 121A.031;
  - viii. advertises or promotes any product or service not permitted for minors by law;
  - ix. expresses or advocates sexual, racial, or religious harassment or violence or prejudice; or
  - x. is distributed or displayed in violation of time, place, and manner regulations.
- c. The school district must not retaliate or take adverse employment action against a student media adviser for supporting a student journalist exercising rights or freedoms under paragraph A above or the First Amendment of the United States Constitution.
- d. Notwithstanding the rights or freedoms of this Article or the First Amendment of the United States Constitution, nothing in this Article inhibits a student media adviser from teaching professional standards of English and journalism to student journalists.

These professional standards may include, but are not limited to, the following:

- i. assuring that participants learn whatever lessons the activity is designed to teach;
- ii. assuring that readers or listeners are not exposed to material that may be inappropriate for their level of maturity;
- iii. assuring that the views of the individual speaker are not erroneously attributed to the school;
- iv. assuring that the school is not associated with any position other than neutrality on matters of political controversy;
- v. assuring that the sponsored student speech cannot reasonably be perceived to advocate conduct otherwise inconsistent with the shared values of a civilized social order;
- vi. assuring that the school is not associated with expression that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.

e. Time, Place, and Manner of Distribution

Students shall be permitted to distribute written materials at school as follows:

- i. Time  
Distribution shall be limited to the hours before the school day begins, during lunch hour and after school is dismissed.
- ii. Place  
Written materials may be distributed in locations so as not to interfere with the normal flow of traffic within the school hallways, walkways, entry ways, and parking lots. Distribution shall not impede entrance to or exit from school premises in any way.
- iii. Manner  
No one shall induce or coerce a student or staff member to accept a student publication.

**5. POSTING**

The school district must adopt a student journalist policy consistent with Minnesota Statutes, section 121A.80 and post it on the district website.

**Original Adoption: Legal References:**

- U. S. Const., amend. I
- Morse v. Frederick, 551 U.S. 393 (2007)
- Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)
- Bystrom v. Fridley High School, I.S.D. No. 14, 822 F. 2d 747 (8th Cir. 1987)
- Minn. Stat. § 121A.03 (Model Policy)
- Minn. Stat. § 121A.031 (School Student Bullying Policy)

- Minn. Stat. § 121A.80 (Student Journalism; Student Expression)

**MPS Policy Cross References:**

- MPS Policy 4000
- MPS Policy 4001
- MPS Policy 4002
- MPS Policy 5025
- MPS Policy 5050
- MPS Policy 5200
- MPS Policy 6250

**SECTION 2:**            **REPEAL** “Policy 6524: Student Publications” of the Minneapolis Public Schools Policies & Regulations is hereby *repealed* as follows:

REPEAL

~~Policy 6524: Student Publications (Repealed)~~

~~Student publications are important elements of the instructional program and contribute directly to the accomplishment of the schools' goals. The Board wishes to support the development of student produced school newspapers, annuals, and magazines.~~

~~The regulation of such publications shall be the responsibility of the Board of Education.~~

~~**Original Adoption:**~~

~~04/25/67~~

~~**Revision Dates:**~~

~~3/28/72, 12/16/75, 7/19/83, 8/13/85~~

PASSED AND ADOPTED BY THE MINNEAPOLIS PUBLIC SCHOOLS BOARD OF DIRECTORS \_\_\_\_\_.

	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Abdi	_____	_____	_____	_____
Beachy	_____	_____	_____	_____
Cerrillo	_____	_____	_____	_____
El-Amin	_____	_____	_____	_____
Ellison	_____	_____	_____	_____
Emerick	_____	_____	_____	_____
Jourdain	_____	_____	_____	_____
Norvell	_____	_____	_____	_____

Presiding Officer

Attest

\_\_\_\_\_  
Collin Beachy, Chair, Minneapolis  
Public Schools

\_\_\_\_\_  
Lori Norvell, Clerk, Minneapolis  
Public Schools

# MEMO

To: The Board of Education  
From: Curt Hartog, Executive Director of Capital Planning, Construction, Maintenance  
Date: 10.4.2024

Re: Proposed Purchase Agreement for Willard – Gordon Property

In accordance with Board Policy 3270 – SALES AND LEASES OF REAL PROPERTY and Regulation 3270A – DISPOSITION OF SURPLUS PROPERTY, the Purchase Agreement for the designated surplus property of the Willard and Gordon buildings is being brought for your consideration at the regularly scheduled October Board of Education meeting. This memo endeavors to provide a summary of events leading to the recommendation of entering into a Purchase Agreement (PA) on these properties.

## History of the Buildings

Willard Elementary School is a two-story masonry building that was constructed in 1910 and had a small addition in 1920. For many years Willard Elementary had over 500 students. The building exhibits extensive physical and functional obsolescence; is marginally suited for elementary instruction, and scarcely large enough for a minimal two-kindergarten elementary program enrolling 270 to 300-plus students in grades kindergarten through fifth grade. For instructional purposes, Willard was historically paired with the Gordon Center to provide adequate spaces for complete programming. Instructional use of this two-building site ended in June 2005, at which time enrollment was 199 students. Since then, heat has been maintained and building use has been infrequent and episodic. The school was used for storage and training until 2019, after which time it has been vacant.

Gordon Center School was constructed in 1950 by Talmud Torah and named after George Gordon. The school primarily served the Minneapolis Jewish population on the North side from 1950 to 1967. In 1967 the building was sold to Minneapolis Public Schools. By 1969

Talmud Torah combined all operations in St Louis Park. The Gordon Education Center continued to be an elementary school from 1967 to 2005. The school was used for storage for the District until 2019, after which time it has been vacant.

## **Designation as Surplus**

In May of 2022 both Willard and Gordon were declared by the Board of Education as surplus properties in accordance with District policy and based on a strategic assessment of the District's foreseeable real estate needs. Major factors in the decision to deem the buildings as surplus stemmed from their small size, misalignment with current educational practices, and the resources needed to be invested in the building's physical condition.

After a Request for Proposal process, in December of 2022, MPS awarded Commercial Equities Group the contract for real estate brokerage services. Through their services, the District received hundreds of inquiries on the property, three of which turned in proposals that met the District's minimum requirements. During that time it was also established that while the City or the Park Board did not have interest in the buildings themselves, the Park Board did identify a strategic need for them to take possession of the northern half of the site for use as an extension of Willard Park. The subdivision of the property to facilitate that transfer to the Park Board is currently underway, courtesy of prior action from the Board.

After deliberation with the Board, the proposal from The Link Holdings, LLC best meets the requirements of the District and presents an offer in alignment with the appraised value of the property. For the Board's consideration, a copy of the community engagement plan provided by the prospective Buyer and a letter of support for the proposal by City Council Member Ellison is attached to this memo.

## **Recommended Action**

Based on the above, and in the strategic interest of the District, staff recommend that the Board of Education enter into a Purchase Agreement with The Link Holdings, LLC for the Willard - Gordon property for \$1,600,000.



**Division of Operations**

Tom Parent, Senior Operations Officer  
1250 West Broadway Ave. Mpls, MN 55411

Attachments:

1. Buyer's "The Link at Willard - Gordon School Building Community Engagement Plan", dated 9.14.2024
2. Council Member Jeremiah Ellison's letter of support for the proposed development, received 6.18.2024

(End of Memo)

**Community Engagement Plan**

**September 14,20,24**

**Project Name:** The Link at Willard – Gordon School Building

**Location:** 2220 16<sup>th</sup> Avenue North, Minneapolis, MN

**Executive Summary**

The development team has a wide variety of well-versed experience in engaging with communities specific to real estate development projects. It is our team’s shared understanding that community input is critical to the success of a project but also to the long-term operations of the community. To do this, our team will engage with key stakeholders in the community, city and county agencies, and surrounding organizations to solicit immediate feedback and input about the proposed project and its operations.

<b>Project Team</b>	
<b>Owner/Operator</b>	The Link
<b>Development Manager</b>	JB Vang Partners
<b>Architect</b>	LSE Architects

After a first round of community outreach, the development team will conduct its own internal feasibility assessment as to the viability of the project’s approval at both local and government agency levels. Assuming a positive outcome of proceeding with the project, the team would engage in a formal community engagement process (outlined below) which would involve public meetings and/or open houses along with a formal request of approval from community organizations. The project team would then undergo the formal City Entitlement process to receive all required zoning approvals which may be required such as a Conditional Use Permit, for example. The zoning approval process with the City will also include its own public notice and public hearing process to which residents will receive formal notifications during the land use application process. Our intent would be to have engaged with the community organizations well in advance of the City’s formal public notification process.

The development team has engaged in informal conversations with City Councilmembers, City Planning Staff at Community Planning and Economic Development (CPED), and with individuals involved in the Northside Residents Redevelopment Council (NRRC). Our team feels there are several key stakeholders within the community which would support The Link at this location due to the non-profit organizations key mission, vision, and values and its long-term positive reputation it holds in the North Minneapolis community.

The development team intends to formally engage with the community, the County, and the City as soon as a Purchase Agreement has been executed. It has been our team’s collective experience that this is the first step for the team to engage in meaningful conversations with these types of organizations.

**Community Engagement Diagram**  
**September 14,20,24**

**Project Name:** The Link at Willard – Gordon School Building

**Location:** 2220 16<sup>th</sup> Avenue North, Minneapolis, MN



Dear Minneapolis Public Schools School Board Chair Beachy, Vice Chair Ellison, Board Directors, & Superintendent Dr. Lisa Sayles-Adams,

I am writing to you today to share my unwavering support for The Link and their work to support young people who are experiencing homelessness, poverty, and social injustice.

Today, I represent Ward 5 on the Minneapolis City Council, but twelve years ago, I was a youth counselor at Avenues for Youth. I worked the overnight shift, and they were the most grueling hours. You are responsible in ensuring the youth get to bed safely, address concerns, respond to crises as they arise, and at the crack of dawn, you cook breakfast and break bread with the youth.

In this work, you build trust, connections, and opportunities for these young people. The Link has always been an organization that not only encourages but empowers staff to build these things. As a former youth counselor who worked closely with unhoused young people and now as the Council Member who represents the Link, I understand how critical it is to provide housing and resources to our young people, and how urgently we need to act.

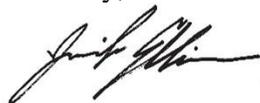
The Link's dedication to supporting our most vulnerable youth is not just commendable, it's essential. Their innovative programs and incredible commitment are changing lives for the better. You're not just offering a bed or a meal; you're providing stability, mentorship, and opportunities for a brighter future. I'm ecstatic about The Link's expansion project in North Minneapolis and interest in purchasing the Willard-Hay building to carry out their vision. This expansion represents progress, hope, and a tangible commitment to our community. By broadening their reach, you're ensuring that more young people have access to the support and resources they need to thrive.

As your Council Member, I stand firmly behind The Link and its mission. Together, we can make a meaningful difference in the lives of our unhoused youth and create a community where everyone has the opportunity to succeed.

Thank you for your dedication to this critical cause. I'm excited to continue our partnership and to witness the positive impact of The Link's expansion project in North Minneapolis.

I thank you for your time and consideration,

Sincerely,



Council Member Jeremiah Bey Ellison, Minneapolis City Council Ward 5

**Special School District Number 1  
Board of Education Resolution**



Resolution No. 2024-0046  
October 8, 2024

**Resolution Authorizing the Sale of Real Properties**

**WHEREAS**, Special School District No. 1 (Minneapolis Public Schools) is the owner (“Owner”) of properties located at 2220 North 16th Ave. Minneapolis, Minnesota 55411 (former Gordon and Willard schools) (“Property”); and

**WHEREAS**, on May 10, 2022, the School Board declared this Property as surplus in accordance with Policy 3270 and Regulation 3270A; and

**WHEREAS**, The Link Holdings LLC (“Buyer”), has agreed to purchase the Property under the terms of a purchase agreement (labeled as 2024-0046A); and

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 (Minneapolis Public Schools) hereby approves the purchase agreement selling its Property located at 2220 North 16th Ave. Minneapolis, Minnesota to the Buyer for the sum of \$1,600,000.00, and other conditions as determined by the purchase agreement.

**FURTHER BE IT RESOLVED**, that the respective board officers and senior administrative staff are authorized to execute any and all documents necessary to complete the sale of the Property to the Buyer, including but not limited to the deed.

ADOPTED this 8th day of October 2024.

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Collin Beachy, Chair

---

Lori Norvell, Clerk

<b>RECORD OF BOARD VOTE (2024-0046)</b>						
DIRECTOR	MOVE	SECOND	AYE	NAY	ABSTAIN	ABSENT
Abdi						
El-Amin						
Cerrillo						
Norvell						
Jourdain						
Beachy						
Ellison						
Emerick						

## REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT (“**Agreement**”) is dated, for reference purposes, \_\_\_\_\_, 2024 (“**Contract Date**”). It is being entered into by and between Minneapolis Public Schools aka SP School District No. 1, a special school district in the State of Minnesota (“**Seller**”), and The Link Holdings LLC, a Minnesota nonprofit limited liability company, or its assignee (“**Buyer**”).

### RECITALS

Seller owns and is offering for sale that portion of the real property located at 2220 16<sup>th</sup> Avenue North in the City of Minneapolis, County of Hennepin, State of Minnesota, identified as Parcel ID #17-029-24-41-0196 and as depicted on Exhibit A attached hereto (the “**Land**”).

The Land is improved with various buildings, structures, parking areas, drive lanes, and other improvements (collectively, the “**Facilities**”).

Buyer has offered to purchase approximately 3.7 acres of the Property, as defined below, and Seller has agreed to sell same to Buyer. The parties are entering into this Agreement to set forth the terms and conditions of the sale to Buyer.

Seller will be solely responsible for all costs and expenses incurred in connection with the lot split for the sale of the 3.7 acres from the 5.2 acres covered by Parcel ID #17-029-24-41-0196.

Buyer seeks to acquire the Property for the sole purpose of leasing it to The Link, a Minnesota nonprofit corporation, in order to expand its support for youth and young families who are experiencing homelessness, are victims of sex trafficking and/or who are involved in the juvenile justice or foster care systems. Buyer will rehab and repurpose the Property to provide a multi-use building which will include programming space where youth and families can have access to basic need items, food and support, programming space, administrative and program office and meeting space and an additional 40-45 units of housing for youth and young families who are transitioning out of homelessness. Buyer will use the Property to provide supportive housing for its clients as well as its headquarters.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

#### 1. **Agreement of Sale.**

Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Land and Facilities as described on Exhibit A hereto comprised of approximately 3.7 acres, together with all assignable rights of access and ownership associated with the Land or the Facilities, and all other rights held by Seller appurtenant to the Land (collectively, the “**Property**”).

Seller and Buyer understand and agree that the Property does not currently exist as a separate, transferrable parcel of real estate. During the Due Diligence Period, Seller and Buyer will work together to create a subdivision of the Land in a manner mutually acceptable to both Seller and Buyer that causes the Property to be transferrable to Buyer as a separate parcel of real estate. The foregoing may be accomplished by a Registered Land Survey, CIC Plat, or other similar subdivision method. This process is more specifically described in Paragraph 4.3, below, and is referred to herein as the “**Subdivision**”.

**2. Purchase Price.**

The purchase price for the Property is One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00) to be paid by Buyer as set forth below.

**3. Deposit (Earnest Money).**

Upon full execution of this Agreement by both parties, Buyer shall make an earnest money deposit in the amount of Twenty Thousand and 00/100 Dollars (\$20,000.00) (the "**Deposit**") in escrow with Land Title, Inc. (the "**Title Company**"), attention Larry Mountain, email address: lmountain@landtitleinc.com; telephone: (612) 697-6116, to be held in accordance with the terms of this Agreement.

3.1. In the event the sale of the Property is consummated, the Deposit and Additional Deposit, if applicable, as hereinafter defined, shall be applied to the Purchase Price.

3.2. If Buyer timely elects to terminate this Agreement (i) during the Due Diligence Period or any extension thereof as defined below, or (ii) pursuant to its terms (including, without limitation, any Buyer's condition described in Section 6, below, not being satisfied or fulfilled), or (iii) if the transaction fails to close due to a Seller default, then the Deposit and Additional Deposit, if applicable, shall be returned to Buyer and Buyer shall have no further obligations under this Agreement; provided, however, that any claim that Buyer may have under Sections 4.2 and 12 that exceed the Deposit shall survive termination of this Agreement under this Section 3.2.

3.3. If, after the expiration of the Due Diligence Period or earlier waiver of all contingencies (as provided in Sections 4 and 5) and all conditions to Buyer's obligation to close have been satisfied, but Buyer fails to consummate this transaction, or in the event of a Buyer default, Seller shall be entitled to the Deposit as liquidated damages. The parties have agreed that Seller's damages, in the event of a default by Buyer, would be extremely difficult or impracticable to determine. Therefore, the parties acknowledge that the Deposit has been agreed upon, after negotiation, as the parties' reasonable estimate of Seller's damages. Receipt of the Deposit shall constitute Seller's exclusive remedy against Buyer at law or in equity and shall terminate all of Buyer's liability and obligations to Seller under this Agreement. The foregoing notwithstanding, any obligations that Buyer may have under Section 4.2 are separate and distinct from receipt of the Deposit as liquidated damages and any claim that Seller may have under Section 4.2 shall survive termination of this Agreement under this Section 3.3.

**4. Due Diligence.**

Buyer shall have One Hundred Twenty (120) days from the Contract Date of this Agreement (the "**Due Diligence Period**"), to inspect and investigate the Property and all other aspects of this transaction, including, without limitation: legal status and requirements pertaining thereto (such as building codes, zoning, environmental, public health, and fire safety laws) confirming the suitability of the Property for Buyer's intended use as stated above and otherwise for Buyer's purposes; hazardous substance inspections including soil borings and environmental assessments; and all other matters of significance to the Buyer in Buyer's sole and absolute discretion. Buyer shall have the option to extend the Due Diligence Period for one (1) One Hundred Eighty (180) day period by (i) depositing in escrow with the Title Company an additional earnest money deposit in the amount of Ten Thousand and 00/100 (\$10,000.00) which shall be non-refundable (the

“**Additional Deposit**”), (ii) providing documentation to Seller showing Buyer’s good faith efforts to obtain all necessary governmental permits, regulatory and zoning approvals for the construction, rehabilitation and repurposing the Property, and (iii) providing a reasonable explanation for the extension, including the additional items needed to satisfy all of Buyer’s contingencies and concerns in its sole discretion with regard to the Property.

- 4.1. Documents and Items to be Delivered to Buyer. Seller will, within five (5) days of the Contract Date of this Agreement, furnish Buyer with copies of (or otherwise provide an opportunity to review, copy and inspect) such information about the Property as reasonably requested by Buyer to the extent the same is in Seller’s actual possession or control, including, without limitation, the information specified on Exhibit B hereto, as well as any Phase I or Phase II Environmental Reports, geotechnical reports or studies, surveys, insurance information, rent rolls, property tax information, environmental assessments and reports, service contracts, and other information in Seller’s possession relating to the Property (collectively, the “**Due Diligence Items**”).
- 4.2. Access and Cooperation. Seller shall afford Buyer and authorized representatives of Buyer reasonable access to the Property, at reasonable times, for the purposes of satisfying Buyer with respect to the condition of said Property. Buyer shall use commercially reasonable efforts not to disrupt Seller’s business activities from the Property when performing its diligence activities. Buyer’s inspection may not include intrusive testing (including, without limitation, so called Phase II testing) without Seller’s prior written approval, which may be withheld or conditioned in Seller’s reasonable discretion. Buyer shall repair and restore the Property promptly after such testing, and shall indemnify, defend, and protect Seller against and hold Seller harmless from all losses, costs, damages, liabilities and expenses resulting from any acts or omissions of Buyer or Buyer’s representatives in connection with their entry upon, or inspection or investigation of, the Property. Buyer’s obligations under this Section 4.2 shall survive any termination of this Agreement.
- 4.3. Subdivision. During the Due Diligence Period, Seller will engage a registered land surveyor, at Seller’s sole cost and expense, to prepare a survey of the area to be subdivided showing the existing and proposed boundaries and a tabulation showing the land area and legal description of each new parcel. Buyer’s obligations under this Agreement are conditioned upon Buyer’s approval of the Subdivision in Buyer’s reasonable discretion. Seller and Buyer shall work with such surveyor to assure the Property being purchased is reflected and properly shown on the survey. Seller shall be solely responsible for the timely filing of the subdivision application to the City of Minneapolis, submitting all required information and the payment of all fees. Seller and Buyer shall work together so that the subdivision is planned and implemented in a manner that is acceptable to Buyer in Buyer’s reasonable discretion. The parties understand that Buyer cannot obtain any permits or other approvals required for the improvement of the subdivided land until after the final subdivision approval has been recorded with the Hennepin County Recorder or Registrar. The documents and items that are completed and approved by Buyer and Seller in this process will be referred to herein as the “**Subdivision Documents**”.

Buyer’s obligation to purchase the Property is conditioned upon Buyer’s approval of every aspect of the Property, and the Due Diligence Items, in Buyer’s sole and absolute discretion, as set forth in Sections 4.1-4.3. If, prior to the expiration of the Due Diligence Period, Buyer notifies Seller in writing that it disapproves of the Property or any Due Diligence Item set forth in Section 4.1-4.3, for any reason in Buyer’s sole discretion, then this Agreement shall be terminated and the Deposit and Additional Deposit, if applicable, disbursed as set forth in Section 3.2. All materials, reports,

surveys, and other information generated by Buyer during Buyer's Due Diligence ("**Buyer's Diligence Items**") will remain the sole property of the Buyer; provided that if Buyer's termination is based upon the results of one or more such Buyer's Diligence Items, then Buyer shall deliver the same to Seller along with its notice of termination.

## 5. Title and Survey Review.

Seller shall cause the Title Company, at Seller's expense, to deliver to Buyer a current preliminary title report and commitment (the "**Title Commitment**") for an owner's policy of title insurance policy (the "**Title Policy**"), in the full amount of the Purchase Price, showing fee simple title to the Property in Seller, together with legible and complete copies of all recorded documents evidencing title exceptions raised in Schedule B of the Title Commitment. Subject to Buyer's survey rights below, Buyer shall have ten (10) days after Buyer's receipt of the Title Commitment and the Survey as defined below (the "**Title Review Period**") to review the title and survey to the Property, including, without limitation: the boundary lines; all easements and appurtenances; all liens and encumbrances; and all other matters of significance to Buyer.

Within Ten (10) days after the Contract Date, Seller, at Seller's sole cost, shall have prepared a new or updated survey of the Property made by a registered land surveyor and conforming to the 2021 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, and certified and delivered to buyer, Buyer's Lender, Title Company and such other party/ies as Buyer requests (the "**Survey**").

5.1. Permitted Exceptions. Seller shall, on or before Closing, cause all mortgages, mechanics liens, and other monetary encumbrances created by or through Seller; as well as all encumbrances created after the date of this Agreement which are not created by Buyer, but prior to Closing, to be removed. If, prior to the end of the Title Review Period, Buyer disapproves of any title exception or survey item in writing, Seller shall have five (5) business days after receipt of written notice of the disapproved exception(s) and survey item to notify Buyer that Seller will attempt to remove the disapproved exception(s) or resolve the survey item prior to Closing or that Seller will not remove the exception(s) or resolve the survey item. Seller's failure to deliver such notice shall be deemed to mean that Seller will not remove the exception(s) or resolve the survey item. If Seller elects to remove an exception to title or survey item that Buyer has disapproved, Seller shall be obligated to use diligent, good faith efforts to remove that exception or survey item at Seller's sole cost and expense.

If Seller elects not to remove any disapproved exception or survey item, Buyer shall have five (5) business days from the receipt of Seller's notice or the expiration of the five (5) business days without notice from Seller either to: (a) terminate this Agreement, in which event the Deposit and Additional Deposit shall be returned to Buyer as set forth in Section 3.2; or (b) waive its disapproval of such exception(s) and agree to complete the Closing subject to the disapproved exception(s). Buyer's failure to deliver such notice will be deemed a waiver of such disapproved exception. All exceptions that Buyer has approved hereunder shall be termed the "**Permitted Exceptions**."

If Seller elects to remove an exception or resolve a survey item pursuant to the foregoing but has failed to complete such removal or resolved such survey item by the Closing Date, Buyer may (c) refuse to complete the Closing, in which event the Deposit and Additional Deposit, if applicable, shall immediately be returned to Buyer, and Buyer will have no further obligations under this Agreement; or (d) waive its disapproval of such exception(s)

and agree to complete the Closing, subject to a credit to Buyer from the Purchase Price for the reasonably estimated amount necessary to eliminate such exception(s) and resolve such survey items.

- 5.2. The Title Commitment and Title Policy issued at Closing shall have all standard and general printed exceptions deleted so as to afford full "extended form coverage," and shall further include any and all title endorsements that buyer requires including, without limitation: zoning; access; contiguity; survey; and mechanic's lien coverage. As a condition precedent to Buyer's obligation to purchase the Property, the title commitment shall be later-dated to cover the Closing Date and the recording of the limited warranty deed, and the Title Company shall deliver a "Marked-up" Title commitment to the Buyer concurrently with the Closing. At the Closing, Buyer will pay the premium for the basic ALTA policy and any lender's policy required by Buyer's lender. Buyer will pay the portion of the premium for extended coverage as well as any additional endorsements required by Buyer or Buyer's lender.

## 6. Conditions to Closing.

- 6.1. Buyer's Conditions to Closing. Buyer's obligation to complete the Closing is conditioned upon the satisfaction of each of the following conditions, the failure of any of which will enable Buyer to terminate this Agreement, in which event the Deposit and Additional Deposit, if applicable, shall be returned to Buyer pursuant to Section 3.2.
- 6.1.1. Buyer obtaining, at its expense and with the cooperation of Seller, all regulatory and zoning approvals required to operate the Property for Buyer's intended purpose.
- 6.1.2. Buyer obtaining, at its expense, an as-is appraisal for the Property in an amount not less than the Purchase Price and/or as required to obtain successful financing for the project.
- 6.1.3. Buyer obtaining, at its expense and with the cooperation of Seller, a commitment for financing for the purchase on terms and conditions acceptable to Buyer in Buyer's sole discretion. Buyer will be seeking financing with loans, deferred funding sources, grants, and other sources of financing funds from the local and state financing agencies.

The Buyer must secure full financing before Buyer can close. In the event the above-mentioned financing is not awarded to Buyer by December 31, 2025, Buyer may elect to extend or terminate the Purchase Agreement. Buyer may extend this agreement until December 31, 2026 by (i) depositing in escrow with the Title Company an additional earnest money deposit in the amount of Twenty Thousand and 00/100 (\$20,000.00) which shall be non-refundable (the "**Additional Financing Deposit**"), (ii) providing documentation to Seller showing Buyer's good faith efforts to obtain all necessary financing, and (iii) providing a reasonable explanation for the extension, including the additional items needed to satisfy all of Buyer's financing in its sole discretion with regard to the Property. If Buyer elects to terminate the Purchase Agreement the Deposit shall be refunded to Buyer, and neither party shall have any further obligations under this Agreement.

- 6.1.4. The delivery to Buyer, at Closing, of good and marketable fee simple title to the Property subject only to the Permitted Exceptions.
  - 6.1.5. All leases for the Property, if any, will be terminated as of the Closing Date. All tenants and occupants will have vacated the Property.
  - 6.1.6. The issuance at Closing of the Title Policy.
  - 6.1.7. That no material adverse change in the Property, or its future use or operation, shall have occurred after the end of the Due Diligence Period.
- 6.2. Seller's Conditions to Closing. Seller's obligation to complete the Closing is conditioned upon the satisfaction of each of the following conditions each of which is for the exclusive benefit of Seller. Seller may at any time or times before the Closing, waive one or more of the following conditions, without affecting its rights and remedies with respect to the remaining conditions;
- 6.2.1. The performance by Buyer of all its obligations hereunder, and the truth, completeness and accuracy of each representation and warranty made by Buyer as of the Contract Date and the Closing.

## 7. Closing.

The consummation of the purchase and sale (the "**Closing**") shall be held at the offices of the Title Company on or before the day that is no later than Thirty (30) days after the later of (i) the date upon which Buyer has notified Seller that Buyer has completed its Due Diligence, or (ii) the date upon which all Buyer Conditions described in Section 6.1 have been satisfied (the "**Closing Date**").

- 7.1. Seller's Deposits Into Escrow. Seller shall deposit the following documents and items into escrow:
  - 7.1.1. all duly executed and acknowledged documents, including, without limitation, a Limited Warranty Deed conveying fee title in the Property to Buyer or Buyer's assignee, subject only to the Permitted Exceptions;
  - 7.1.2. fully executed and recorded copies of all Subdivision Documents;
  - 7.1.3. a duly executed Seller's Certificate in the form of Exhibit C;
  - 7.1.4. a Seller's Affidavit of Title in the standard Minnesota form, and the Closing Statement (as defined below), each executed by Seller;
  - 7.1.5. an affidavit reasonably acceptable to Buyer stating that Seller is not a "foreign person" under IRC Section 1445(f)(3);
  - 7.1.6. information necessary to complete an electronic Minnesota Certificate of Real Estate Value;
  - 7.1.7. Seller's share of the closing costs as described in Section 7.5 below or instructions to Title Company to deduct same from the Purchase Price; and

- 7.1.8. such other documents and items as may reasonably be required to complete the Closing.
- 7.2. Buyer's Deposits into Escrow. Buyer shall deposit the following into escrow:
  - 7.2.1. the remaining Purchase Price;
  - 7.2.2. Buyer's share of the closing costs as described herein; and
  - 7.2.3. The Closing Statement and such other documents and items as may reasonably be required to complete the Closing.
- 7.3. Prorations. All expenses for the Property will be prorated on the Closing Date (based on actual days of the month and a 365-day year) and the Purchase Price will be adjusted on the following basis:
  - 7.3.1. Property Taxes and Assessments. Seller will be responsible for all real estate taxes and all installments of special assessments owing as of the Closing Date, based on the latest available tax rate and assessed valuation.
  - 7.3.2. Utility Charges. All utility (including electricity, gas, water, sewer and telephone) charges will be prorated to the Closing date. All utility security deposits, if any, will be retained by Seller.
- 7.4. Post Closing. If the amount of any proration cannot be determined at the Closing, the adjustments will be made between the parties within sixty (60) days after Closing.
- 7.5. Closing Costs. The Closing costs for this transaction shall be paid as follows:
  - 7.5.1. Seller shall pay the following:
    - 7.5.1.1. Cost of the Title Commitment;
    - 7.5.1.2. One half of escrow and recording fees to record documents to place title to the Property in the condition required by this Agreement;
    - 7.5.1.3. County and City transfer taxes, if any; and
    - 7.5.1.4. Minnesota Deed Tax.
  - 7.5.2. Buyer shall pay the following:
    - 7.5.2.1. Cost of Owner's Title Insurance Premium, the premium of any extended coverage or additional endorsements, Lender's Title Insurance Premium and all endorsements;
    - 7.5.2.2. One half of escrow cost and recording fees for the recording of the Limited Warranty Deed and financing documents;
    - 7.5.2.3. All costs of Buyer's due diligence activities, to the extent not paid outside of closing; and

7.5.2.4. All costs related to Buyer's financing, including, without limitation payment of Mortgage Registration Tax.

7.6. Closing. Title Company shall close the escrow for this transaction when it is in a position to issue the Title Policy and has received from Seller and Buyer the items required of each in Sections 7.1 and 7.2 above. Title Company shall close escrow by doing the following:

7.6.1. Recording the Limited Warranty Deed(s) and/or other documents in the Official Records of the Hennepin County Recorder or the Hennepin County Registrar of Titles, as applicable;

7.6.2. Delivering to Buyer the Title Policy (a marked-up commitment shall suffice), the original documents and items listed above, and a closing statement for the escrow consistent with this Agreement and satisfactory to Buyer and Seller (the "**Closing Statement**"); and

7.6.3. Deliver to Seller the Purchase Price and a signed original of Seller's Closing Statement.

## 8. Representations and Warranties.

8.1. Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer, which representations and warranties shall survive the Closing and all of which: (i) are material and are being relied upon by Buyer; and (ii) are true, complete and accurate as of the Contract Date and shall be true, complete and accurate at the Closing date.

8.1.1. This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are, or at the time of Closing will be, (i) duly authorized, executed, and delivered by Seller, (ii) are, or at the Closing will be, legal, valid, and binding obligations of Seller, and (iii) do not, and at the time of Closing will not, violate any provision of any agreement to which Seller is a party or to which it is subject or any law, judgment or order applicable to Seller including, without limitation, any option or right of first refusal.

8.1.2. There is no tenant or other occupant with rights to possession or use of the Property.

8.1.3. No proceedings under any federal or state bankruptcy or insolvency laws have been commenced by or against Seller which have not been terminated; no general assignment for the benefit of creditors has been made by Seller; and no trustee or receiver of Seller's interest in the Property has been appointed.

8.1.4. There is no litigation or proceeding pending, or, to Seller's knowledge, threatened, nor is there any unsatisfied judgment against or involving Seller, any entity owned or controlled by Seller, or the Property which might materially and adversely affect the Property or Seller's ability to consummate the transactions contemplated by this Agreement.

8.1.5. There are underground storage tanks located on the Property. Said tanks hold diesel fuel for use in the boilers in the building on the Property. The boilers no

longer use diesel fuel as they use natural gas instead, but they may still be operated with diesel fuel, if necessary.

- 8.1.6. There are no minimum valuation agreements, special assessment proceedings, or other property tax or assessment agreements or proceedings affecting the Property.
- 8.2. Material Changes: Survival. If, prior to the Closing, Seller becomes aware of any fact or circumstance that would materially change a representation or warranty of Seller in this Agreement, then Seller shall promptly, and in all events at least five (5) days prior to the Closing Date (which date shall be extended if necessary to give Buyer five days to review such material change), give written notice of such changed fact or circumstance to Buyer. If, prior to Closing, upon Seller's notice or otherwise, Buyer becomes aware of the untruth or inaccuracy of, or facts or circumstances that would change materially, any representation or warranty of Seller in this Agreement, then Buyer shall have the option of: (i) waiving such breach of representation or warranty and completing the Closing pursuant to this Agreement; (ii) reaching agreement with Seller to adjust the terms of this Agreement to compensate Buyer for such change; or (iii) refusing to complete the Closing. Seller's representations and warranties shall survive the Closing for a period of six (6) months.
- 8.3. Limits on Seller's Obligations and Liabilities. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, BUYER AGREES TO ACCEPT THE PROPERTY "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS. EXCEPT FOR THOSE WARRANTIES AND REPRESENTATIONS SPECIFICALLY MADE BY SELLER IN THIS AGREEMENT, NO WARRANTY OR REPRESENTATION IS MADE BY SELLER WITH RESPECT TO THE PROPERTY. THE PROVISIONS OF THIS SECTION 8.3 SHALL SURVIVE INDEFINITELY ANY CLOSING OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO ANY DOCUMENTS, EXECUTED OR DELIVERED AT CLOSING.
- 8.4. Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller, which representations and warranties shall survive the Closing and all of which (i) are material and are being relied upon by Seller; and (ii) are true, complete and accurate as of the date hereof and shall be true, complete and accurate at the Closing date.
- 8.4.1. This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are, or at the time of Closing will be, duly authorized, executed, and delivered by Buyer, and are, or at the Closing will be, legal, valid, and binding obligations of Buyer, and do not, and at the time of Closing will not, violate any provision of any agreement to which Buyer is a party or to which it is subject or any law, judgment or order applicable to Buyer.
- 8.4.2. There is no litigation or proceeding pending, or, to Buyer's knowledge, threatened, nor is there any unsatisfied judgment against or involving Buyer, any entity owned or controlled by Buyer, or the Property which might materially and adversely affect the Property or Buyer's ability to consummate the transactions contemplated by this Agreement.

**9. Risk of Loss: Insurance Proceeds: Condemnation.**

- 9.1. Insurance. Seller represents to Buyer that the Land is presently insured by a commercial general liability policy. Seller agrees to maintain the policy in effect through the Closing Date, and upon Buyer's request, to provide Buyer evidence of such insurance.
- 9.2. Eminent Domain. If, prior to the Closing, all of the Property and Improvements are taken by eminent domain, this Agreement shall be deemed canceled. If only part of the Property or Improvements are so taken, Buyer shall have the option of (a) proceeding with the Closing and acquiring the Property as affected by such taking, together with all compensation and damage awarded or the right to receive same, or (b) canceling this Agreement, in which event the Deposit and Additional Deposit, if applicable, shall be returned to Buyer. If Buyer elects option (a) above, Seller agrees to assign to Buyer at the Closing its rights to such compensation and damages, and will not settle any proceedings relating to such taking without Buyer's prior written consent. Seller shall promptly (and in any event prior to the Closing) notify Buyer of any actual or threatened condemnation affecting the Property.
- 9.3. Casualty. If, prior to the Closing Date, all or any part of the Property is damaged by fire, casualty, the elements or any other cause ("**Damages**"), Seller will immediately give notice to Buyer of such Damages, and, at Buyer's option (to be exercised by notice to Seller within thirty (30) days after receipt of Seller's notice), this Agreement will terminate in which case Buyer will be entitled to the return of the Deposit and Additional Deposit, if applicable, and neither Seller nor Buyer will have any further rights or obligations under this Agreement, except for obligations that expressly survive termination. If Buyer does not elect to terminate this Agreement, Seller will promptly and diligently commence to repair the Damage and return the Property to its condition before to the Damage. If the Damage is completely repaired before the Closing Date, then the Purchase Price will not be reduced, and Seller will retain the proceeds of all insurance related to the Damage. If the Damage is not completely repaired prior to the Closing Date, then Buyer will complete the repairs after the Closing Date and will be entitled to receive the proceeds of all insurance related to Buyer's completion of the repairs.

**10. Seller's Covenants During Contract Period.**

Between Seller's execution of this Agreement and the Closing, or earlier termination of this Agreement as permitted hereunder, Seller shall: (i) maintain the Property in good order, condition and repair, reasonable wear and tear excepted; (ii) not enter into any contracts or agreements affecting the Property unless such contracts can be completed or terminated on or before Closing; and (iii) not offer or enter into agreement with a third party to sell any portion of the Land for sale publicly or, once the Property is identified and demarcated, otherwise solicit, make, pursue, negotiate or accept offers for the sale of the Property to or from any party.

**11. Indemnification.**

Each party hereby agrees to indemnify, defend, protect and hold harmless the other party from and against any and all claims, demands, liabilities, costs and damages, including without limitation, reasonable attorneys' fees (collectively, "**Claims**"), resulting from any misrepresentations or breach of warranty or covenant made by such party in this Agreement or in any document, certificate, or exhibit given or delivered to the other party pursuant to or in connection with this Agreement.

**12. Default.** If Seller fails to perform any of its obligations under this Agreement and fails to cure such default within five (5) business days after receipt of written notice thereof, Buyer may: (i) terminate this Agreement and obtain a full refund of the Deposit and Additional Deposit, if applicable ; or (ii) commence an action for specific performance of this Agreement within six (6) months after Seller’s default. In both cases, Buyer will also have the ability to maintain a claim against Seller for damages, including all out-of-pocket expenses incurred by Buyer in connection with Buyer’s due diligence and other actions under this agreement, as well as consequential damages due to Buyer’s inability to open a facility in a timely manner. If Buyer defaults in performance of its obligations under Section 4.2, Seller may bring an action to enforce its Buyer’s obligation under such Section. If Buyer defaults in performance of its obligations under any other Sections of this Agreement and fails to cure such default within five (5) business days after receipt of written notice thereof, Seller will have the right to terminate this Agreement in the manner provided by Minn. Stat. Sec. 559.21 and to retain the Deposit as liquidated damages. Termination of this Agreement and retention of the Deposit will be the only remedy available to Seller for a default by Buyer, and Buyer will not be liable for damages or specific performance, except as to claims under Section 4.2. The parties hereby acknowledge that the Property is not residential property and is not subject to Minn. Stat. Section 559.217.

**13. Miscellaneous.**

13.1. Notice. All notices and any other communications permitted or required under this Agreement must be in writing and will be effective: (i) immediately upon delivery in person or by electronic communication/facsimile, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering party to be employed by the recipient; or (ii) 48 hours after deposit with a commercial courier or delivery service for overnight delivery, provided delivery is made during regular business hours or receipt is acknowledged by a person reasonably believed by the delivering party to be employed by the recipient; or (iii) five days after deposit with the United States Postal Service, first class postage prepaid. All notices must be properly addressed and delivered to the parties at the addresses set forth below, or at such other addresses as either party may subsequently designate by written notice given in the manner provided in this Section:

Seller:	Minneapolis Public Schools SP School District No. 1, et al Willard School 1250 West Broadway Avenue Minneapolis, MN 55411 Attn: _____ E-Mail: _____	Sarah Sonsalla Kennedy & Graven, Chartered Fifth Street Towers, Suite 700 150 South Fifth Street Minneapolis, MN 55402 Email: Ssonsalla@kennedy-graven.com
Buyer	The Link Holdings LLC 1210 Glenwood Avenue Minneapolis, MN 55405 Attn: Beth Holger Email: <a href="mailto:bholger@thelinkmn.org">bholger@thelinkmn.org</a>	Craig Kepler Best & Flanagan LLP 60 S 6th Street, Ste. 2700 Minneapolis, MN 55402 Email: <a href="mailto:ckepler@bestlaw.com">ckepler@bestlaw.com</a>

13.2. Covenant of Further Assurances. The parties hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Agreement.

- 13.3. Entire Agreement. This document represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements, whether oral or written, express or implied. This Agreement may only be modified by a written instrument signed by both parties.
- 13.4. Partial Invalidity. If any term, covenant or condition of this Agreement or its application to any person or circumstances shall be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provisions to other persons or circumstances shall not be affected, and each term hereof shall be valid and enforceable to the fullest extent permitted by law.
- 13.5. No Waiver. No consent or waiver by either party to or of any breach of any representation, covenant or warranty shall be construed as a consent to or waiver of any other breach of the same or any other representation, covenant, or warranty.
- 13.6. Brokers and Finders. Seller is represented by Commercial Equities Group, Inc., Jeff Salzbrun (“**Seller’s Broker**”) and Seller shall be solely responsible for payment of all brokerage fees and/or commissions due to Seller’s Broker pursuant to a separate agreement. Buyer is represented by Suntide Commercial Realty, Kevin Peck (“**Buyer’s Broker**”). Buyer’s Broker shall receive a commission equal to three percent of the Purchase Price. Each party will indemnify the other from and against any and all liability to which the indemnified party may be subjected by any broker’s, finder’s, or similar fee with respect to the transactions contemplated by this Agreement to the extent such fee is attributable to any action undertaken by or on behalf of the indemnifying party or any affiliate thereof.
- 13.7. Time of the Essence. Time is of the essence of this Agreement. If the final day of a period or date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance will fall on the next day that is not a Saturday, Sunday or legal holiday. Performance shall be due by 5:00 pm local time on any applicable deadline date.
- 13.8. Governing Law; Forum; Attorney’s Fees. This Agreement is entered into and shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes regarding this Agreement shall be resolved in the Courts of Hennepin County, Minnesota. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY AND ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE ON ANY BASIS WHATSOEVER IN ANY ACTION ARISING FROM OR RELATING TO THIS AGREEMENT. In the event of any litigation between the parties concerning this Agreement, the prevailing party shall be entitled to an award of his or her reasonable attorneys’ fees.
- 13.9. Specific Performance. Seller acknowledges that Buyer will be irreparably and irremediably damaged if Seller fails to fulfill Seller’s obligations under this Agreement. Accordingly, Seller agrees that, in addition to remedies at law, Buyer is entitled to an award of injunctive relief compelling Seller to perform Seller’s obligations hereunder.
- 13.10. Interpretation. All parties have had an opportunity to consult with legal counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in

interpreting this Agreement. Whenever the term "days" is used in this Agreement, it shall mean calendar days unless specifically provided otherwise. Whenever the term "including" is used in this Agreement, it shall mean "including, but not limited to," the items thereafter enumerated.

- 13.11. IRS Form 1099-S Designation. In order to comply with information reporting requirements of Section 6045(e) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder, the parties agree (i) to execute an IRS Form 1099-S Designation Agreement to designate the Title Company (the "**Designee**") as the party who shall be responsible for reporting the contemplated sale to the Internal Revenue Service on IRS Form 1099-S; and (ii) to provide the Designee with the information necessary to complete Form 1099-S.
- 13.12. Compliance With Laws. Each party shall comply with all applicable laws, rules, regulations, orders, consents and permits in the performance of all of their obligations under this Agreement.
- 13.13. Assignment. Neither Seller nor Buyer may assign its rights under this Agreement to any third party, without the prior written consent of the other party, which shall not be unreasonably withheld or conditioned; provided, however, that Buyer may assign this Agreement to an affiliated building company without prior consent of Seller.
- 13.14. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, binding on all parties, even though all parties are not signatory to the same counterpart. A signature sent via fax or by email will be deemed to be an original signature.

*[The remainder of this page is intentionally left blank.]*

[SIGNATURES TO REAL ESTATE PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Contract Date.

**Seller:**

Minneapolis Public Schools  
SP School District No. 1

**Buyer:**

The Link Holdings LLC  
a Minnesota nonprofit limited liability company

\_\_\_\_\_  
By:  
Its: Board Chair

DocuSigned by:  
  
\_\_\_\_\_  
By: Beth Holger 9/3/2024  
Its: Chief Executive Officer

\_\_\_\_\_  
By:  
Its: Board Clerk

## EXHIBIT A

### Depiction of the Land



**Blue Line = Current boundary line of 5.2 acres**

**Red Line = Boundary line of approximately 3.7 acres being purchased**

## **EXHIBIT B**

### **Due Diligence Items**

Seller shall provide Purchaser with copies of, or the ability to copy, all pertinent documents relating to the Property which the Seller currently has in its possession, including but not limited to, the following information:

1. A complete list of all warranties and guaranties and complete copies of all such warranties and guaranties.
2. Seller will provide copies of, or access to Purchaser to copy, the following in Seller's possession:
  - (a) All soil tests, structural engineering tests, ADA surveys, masonry tests, percolation tests, water, oil, gas or mineral assessments, tests or reports, radon, formaldehyde, PCB, asbestos or other environmental tests reports, abatement and/or containment plans, audits or reports, market studies and site plans related to the Property.
  - (b) Parking, structural, mechanical or other reports and engineering reports or studies related to the Property and any and all as-built drawings, architectural plans or studies, grading plans, topographical maps and similar data respecting the Property.
  - (c) All authorizations, including, without limitation, all certificates of occupancy, permits, authorizations, approvals and licenses issued by Governmental Authorities having jurisdiction over the Property, all certificates issued by the local board of fire underwriters (or other body exercising similar functions) relating to the Property and the results of any and all inspections, investigations, tests and studies with regard to zoning, building codes and other governmental regulations or entitlement matters.
  - (d) Receipts for all ad valorem taxes and special assessments assessed against the Property for the current calendar year and prior three (3) calendar years, statements for utilities payable for the current calendar year and prior three calendar years, and any information regarding current renditions or assessments on the Property or notices relative to change in valuation for ad valorem taxes.
  - (e) A schedule of all current or pending litigation against Seller with respect to the Property or any part thereof, if any, together with a brief description of each such proceeding.
  - (f) Any other relevant documentation, such as tax abatement agreements, easement agreements, railroad agreements, drainage agreements, special improvement or metropolitan district agreements, ground leases and the like, if applicable.
3. Copies of the previous 12 months of utility bills, if applicable.
4. Income and expense information concerning the Property and the business activities located at the Property sufficient for Purchaser to fully understand the income and expenses associated therewith.

**EXHIBIT C**

**Seller's Certificate**

This Seller’s Certificate is being given pursuant to and in consideration of that certain Real Estate Purchase Agreement, dated \_\_\_\_\_, 2024, for the purchase of 2220 16th Avenue North, Minneapolis, Minnesota between Minneapolis Public Schools, SP School District No. 1 ("**Seller**"), and The Link Holdings LLC, a Minnesota nonprofit limited liability company, or assignee ("**Buyer**") (the "**Agreement**"), and in accordance therewith, Seller hereby certifies, represents and warrants to Buyer as of \_\_\_\_\_, 202\_\_, that:

1. There has been no change in or damage to the Property (as defined in the Agreement) or its use or operation from \_\_\_\_\_, 2024;
2. All the representations and warranties described in Section 8.1 of the Agreement are true, complete and accurate as of the date hereof, except as specifically set forth on Exhibit A to this Seller’s Certificate.

IN WITNESS WHEREOF, this Seller’s Certificate was executed by the Seller as of the date stated above.

**SELLER:**

Minneapolis Public Schools,  
SP School District No. 1

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A  
TO  
SELLER'S CERTIFICATE**

Description of all exceptions and qualifications to Seller's representations and warranties. If none, so state.

**Special School District Number 1  
Board of Education Resolution**



Resolution No. 2024-0052  
October 8, 2024

**Resolution Appointing Members to a Spanish Dual Immersion Task Force**

**WHEREAS**, Board Resolution 2023-0072 called for the formation of a Spanish Dual Language Task Force (“Task Force”); and

**WHEREAS**, the Task Force is charged with reviewing and making recommendations to the Superintendent’s Senior Leadership Team and the School Board about the purpose and goals of Spanish Dual Immersion Programming, funding sources, and the amount and placement of programming; and

**WHEREAS**, the Task Force shall minimally include a board director, student and parent voice, a representative from the Latino Parent Advisory Council (LPAC), and school and district staff.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 (Minneapolis Public Schools) hereby appoints the following individuals to serve on the Spanish Dual Language Task Force.

<b>Name</b>	<b>Role</b>	<b>Affiliation</b>
Kim Ellison	Vice-Chair	School Board
Dulce de la Rosa	LPAC President	LPAC
Leo Peralta	Student	Roosevelt
Elena Alpizar	Student	Roosevelt
Yuriria Danae Becerra Alvarez	Student	Andersen
Jonathan Kealing	Parent/Caregiver	Green Central
Ashley Nicole Walker	Parent/Caregiver	Andersen
Kingsley Calvo	Parent/Caregiver	Roosevelt
Markanetta Smith	Parent/Caregiver	Emerson
Priscilla Del Cisne Quinde	Parent/Caregiver	Las Estrellas
Ellen Enebo	Parent/Caregiver	Andersen
Molly Dengler	Parent/Caregiver	Emerson
Angela Cruz	Staff (TOSA)	Green Central
Diane Hahn	Staff (Teacher)	Emerson
Elizabeth Dwight	Staff (Teacher)	Andersen
Julia Monzon-Melantuche	Staff (Teacher)	Roosevelt
Janet Jimenez	Staff (Teacher)	Las Estrellas
Yajaira Guzman-Carrero	Staff (Principal)	Las Estrellas
Ray Aponte	Staff (Principal)	Andersen

Kate McNulty	Staff (Assistant Principal)	Roosevelt
Rocio Ancasi-Walsh	School Site Council Member	Green Central
Bill Thompson	School Site Council Member	Las Estrellas
Brian Estervig	School Site Council Member	Emerson
Amy Gustafson	School Site Council Member	Andersen
Robyn Eliason	School Site Council Member	Roosevelt

ADOPTED this 8th day of October 2024.

\_\_\_\_\_  
Collin Beachy, Chair

\_\_\_\_\_  
Lori Norvell, Clerk

<b>RECORD OF BOARD VOTE (2024-0052)</b>						
DIRECTOR	MOVE	SECOND	AYE	NAY	ABSTAIN	ABSENT
Abdi						
El-Amin						
Cerrillo						
Norvell						
Jourdain						
Beachy						
Ellison						
Emerick						

**Special School District Number 1  
Board of Education Resolution**



Resolution No. 2024-10-ER-CBA-AMP  
October 8, 2024

**Resolution Approving the 2023-2024 Collective Bargaining Agreement between Special School District No. 1 and Association of Minneapolis District Professional Employees**

**WHEREAS**, Special School District No. 1 (District) and Association of Minneapolis District Professional Employees (Union) were parties to a collective bargaining agreement for the period of July 1, 2021, through June 30, 2023; and;

**WHEREAS**, the collective bargaining agreement between the District and Union expired on June 30, 2023; and

**WHEREAS**, the District and Union engaged in collective bargaining negotiations, and reached a tentative agreement on a successor agreement through June 30, 2026; and

**WHEREAS**, the Union membership voted affirmatively to ratify the successor agreement.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 hereby approves the collective bargaining agreement between Special School District No. 1, and Association of Minneapolis District Professional Employees, effective July 1, 2023, through June 30, 2026.

ADOPTED this 8th day of October 2024.

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Collin Beachy, Chair

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Lori Norvell, Clerk

<b>RECORD OF BOARD VOTE (2024-10-ER-CBA-AMP)</b>						
DIRECTOR	MOVE	SECOND	AYE	NAY	ABSTAIN	ABSENT
Abdi						
El-Amin						
Cerrillo						
Norvell						
Jourdain						
Beachy						
Ellison						
Emerick						

# PUBLIC BOARD SUMMARY

## SPECIAL SCHOOL DISTRICT NO.1

and

## ASSOCIATION OF MINNEAPOLIS SCHOOL DISTRICT PROFESSIONAL EMPLOYEES

2023-2025

### Board meeting – October 8, 2024

**Term:** Two (2) years, July 1, 2023, through June 30, 2025

**Pay: Year one:**

- No general salary schedule increases for 2023-2024.
- Automatic salary progression on the step schedule effective July 1, 2023 for all eligible employees.

**Year two:**

- Salary Schedule Increases:
  - 2.5% increase, effective July 1, 2024
  - 2.5% increase, effective November 1, 2024
  - 2.5% increase, effective February 1, 2025
- Automatic salary progression on the step schedule effective July 1, 2024 for all eligible employees.
- Step increase structure changes:
  - Add two steps to the top of the salary schedule, effective June 30, 2025.
  - Remove two steps from the bottom of the salary schedule on June 30, 2025.
  - Renumber the steps.

**Article 15.6 – On-Call Pay**

On-call pay for eligible employees will increase to \$4,000 per year for exempt employees and \$2,000 for non-exempt employees, to be paid monthly throughout the year.

**Article 15.10 – Travel – Compensation**

A new section will be added outlining provisions for daily compensation for employees required to travel for the District.

**Article 8 – Leaves – Vacation and Sick**

- Vacation cashout: Increase the number of days allowable for cashout from three (3) to five (5)
- Sick Leave: For reinstated former employees, the District will restore all sick leave hours unused at the time of separation, if returning within two (2) years.
- Language will be added that waives the vacation balance cap for one year in the event that corrections of substantial errors in balance calculations resulted in inability of the employee to use restored vacation hours by the June 30<sup>th</sup> cutoff date for vacation carryover.

## PUBLIC BOARD SUMMARY

### **Article 11 – Probationary Period**

- Addition of provisions for 1) right to request return to a previous position if released from a promotional position, 2) clarification of existing language regarding the avenue for appeal relative to a probationary release, and 3) reduction in probation period from one year to six months for internal promotion or transfer.

### **Article 12.1 Layoff and Recall**

- Addition of provisions for bumping rights, addition and clarification of provisions regarding posting and application for open positions during spring Budget Tie Out process, and addition of language prohibiting layoffs that circumvent contractual just cause provisions.

### **Article 13 – Group Insurance Benefits**

- For increased efficiency and to eliminate delays, Short-Term Disability (STD) coverage will automatically apply when an employee is granted medical leave.
- Effective July 1, 2025, identity theft coverage will be provided by the District.

### **Article 14 – Pre-Tax Benefits**

- The District will increase the deferred compensation match from \$2,000 to \$3,000.
- Deferred compensation matches based on student loan repayments will be explored, pending the outcome of legislative action.

### **Article 16.2 – Career Transition Trust**

- Additional language clarifies that employees may receive pro-rated benefits if separating from the District in mid-year.
- The conversion formula removes the annual and lifetime cap amounts (daily limits remain unchanged).

### **Article 13 – Changes in Classification or Position, Layoff**

- A new section “Work Out of Class” will lay out provisions for employees temporarily working in higher level positions, to include salary requirements, restrictions on length of assignment, etc.

### **Fiscal Impact:**

The two-year total package cost of the tentative agreement is \$2,480,304, which represents a 9.5% increase in annual costs spread over two years.

**Special School District Number 1  
Board of Education Resolution**



Resolution No. 2024-10-ER-CBA-MAAS  
October 8, 2024

**Resolution Approving the 2023-2024 Collective Bargaining Agreement between Special School District No. 1 and Minneapolis Association of Administrators and Supervisors**

**WHEREAS**, Special School District No. 1 (District) and Association of Minneapolis District Professional Employees (Union) were parties to a collective bargaining agreement for the period of July 1, 2021, through June 30, 2023; and;

**WHEREAS**, the collective bargaining agreement between the District and Union expired on June 30, 2023; and

**WHEREAS**, the District and Union engaged in collective bargaining negotiations, and reached a tentative agreement on a successor agreement through June 30, 2025; and

**WHEREAS**, the Union membership voted affirmatively to ratify the successor agreement.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 hereby approves the collective bargaining agreement between Special School District No. 1, and Minneapolis Association of Administrators and Supervisors, effective July 1, 2023, through June 30, 2026.

ADOPTED this 8th day of October 2024.

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Collin Beachy, Chair

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Lori Norvell, Clerk

<b>RECORD OF BOARD VOTE (2024-10-ER-CBA-MAAS)</b>						
DIRECTOR	MOVE	SECOND	AYE	NAY	ABSTAIN	ABSENT
Abdi						
El-Amin						
Cerrillo						
Norvell						
Jourdain						
Beachy						
Ellison						
Emerick						

# PUBLIC BOARD SUMMARY

## SPECIAL SCHOOL DISTRICT NO.1

and

## MINNEAPOLIS ASSOCIATION OF ADMINISTRATORS AND SUPERVISORS

2023-2025

### Board meeting – October 8, 2024

**Term:** Two (2) years, July 1, 2023, through June 30, 2025

**Pay: Year one:**

- No general salary schedule increases for 2023-2024.
- Automatic salary progression on the step schedule effective July 1, 2023 for all eligible employees.

**Year two:**

- Salary Schedule Increases:
  - 2.5% increase, effective July 1, 2024
  - 2.5% increase, effective November 1, 2024
  - 2.5% increase, effective February 1, 2025
- Automatic salary progression on the step schedule effective July 1, 2024 for all eligible employees.
- Step increase structure changes:
  - Add two steps to the top of the salary schedule, effective June 30, 2025.
  - Remove two steps from the bottom of the salary schedule on June 30, 2025.
  - Renumber the steps.

**Article 15.6 – On-Call Pay**

On-call pay for eligible employees will increase to \$4,000 per year for exempt employees and \$2,000 for non-exempt employees, to be paid monthly throughout the year.

**Article 15.10 – Travel – Compensation**

A new section will be added outlining provisions for daily compensation for employees required to travel for the District.

**Article 8 – Leaves – Vacation and Sick**

- Vacation cashout: Increase the number of days allowable for cashout from three (3) to five (5)
- Sick Leave: For reinstated former employees, the District will restore all sick leave hours unused at the time of separation, if returning within two (2) years.
- Language will be added that waives the vacation balance cap for one year in the event that corrections of substantial errors in balance calculations resulted in inability of the employee to use restored vacation hours by the June 30<sup>th</sup> cutoff date for vacation carryover.

## PUBLIC BOARD SUMMARY

### **Article 11 – Probationary Period**

- Addition of provisions for 1) right to request return to a previous position if released from a promotional position, 2) clarification of existing language regarding the avenue for appeal relative to a probationary release, and 3) reduction in probation period from one year to six months for internal promotion or transfer.

### **Article 12.1 Layoff and Recall**

- Addition of provisions for bumping rights, addition and clarification of provisions regarding posting and application for open positions during spring Budget Tie Out process, and addition of language prohibiting layoffs that circumvent contractual just cause provisions.

### **Article 13 – Group Insurance Benefits**

- For increased efficiency and to eliminate delays, Short-Term Disability (STD) coverage will automatically apply when an employee is granted medical leave.
- Effective July 1, 2025, identity theft coverage will be provided by the District.

### **Article 14 – Pre-Tax Benefits**

- The District will increase the deferred compensation match from \$2,000 to \$3,000.
- Deferred compensation matches based on student loan repayments will be explored, pending the outcome of legislative action.

### **Article 16.2 – Career Transition Trust**

- Additional language clarifies that employees may receive pro-rated benefits if separating from the District in mid-year.
- The conversion formula removes the annual and lifetime cap amounts (daily limits remain unchanged).

### **Article 13 – Changes in Classification or Position, Layoff**

- A new section “Work Out of Class” will lay out provisions for employees temporarily working in higher level positions, to include salary requirements, restrictions on length of assignment, etc.

### **Fiscal Impact:**

The two-year total package cost of the tentative agreement is \$2,128,773, which represents an 8.8 % increase in annual costs spread over two years.

**Special School District Number 1  
Board of Education Resolution**



Resolution No. 2024-10-ER-CBA-MACA  
October 8, 2024

**Resolution Approving the 2023-2025 Collective Bargaining Agreement between Special School District No. 1 and Minneapolis Association of Confidential Administrators**

**WHEREAS**, Special School District No. 1 (District) and Minneapolis Association of Confidential Administrators (Union) were parties to a collective bargaining agreement for the period of July 1, 2021, through June 30, 2023; and;

**WHEREAS**, the collective bargaining agreement between the District and Union expired on June 30, 2023; and

**WHEREAS**, the District and Union engaged in collective bargaining negotiations, and reached a tentative agreement on a successor agreement through June 30, 2025; and

**WHEREAS**, the Union membership voted affirmatively to ratify the successor agreement.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 hereby approves the collective bargaining agreement between Special School District No. 1, and Minneapolis Association of Confidential Administrators,, effective July 1, 2023, through June 30, 2025.

ADOPTED this 8th day of October 2024.

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Collin Beachy, Chair

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Lori Norvell, Clerk

<b>RECORD OF BOARD VOTE ((2024-10-ER-CBA-MACA)</b>						
DIRECTOR	MOVE	SECOND	AYE	NAY	ABSTAIN	ABSENT
Abdi						
El-Amin						
Cerrillo						
Norvell						
Jourdain						
Beachy						
Ellison						
Emerick						

# PUBLIC BOARD SUMMARY

## SPECIAL SCHOOL DISTRICT NO.1

and

## MINNEAPOLIS ASSOCIATION OF CONFIDENTIAL ADMINISTRATORS

2023-2025

### Board meeting – October 8, 2024

**Term:** Two (2) years, July 1, 2023, through June 30, 2025

**Pay: Year one:**

- No general salary schedule increases for 2023-2024.
- Automatic salary progression on the step schedule effective July 1, 2023 for all eligible employees.

**Year two:**

- Salary Schedule Increases:
  - 2.5% increase, effective July 1, 2024
  - 2.5% increase, effective November 1, 2024
  - 2.5% increase, effective February 1, 2025
- Automatic salary progression on the step schedule effective July 1, 2024 for all eligible employees.
- Step increase structure changes:
  - Add two steps to the top of the salary schedule, effective June 30, 2025.
  - Remove two steps from the bottom of the salary schedule on June 30, 2025.
  - Renumber the steps.

**Article 15.6 – On-Call Pay**

On-call pay for eligible employees will increase to \$4,000 per year for exempt employees and \$2,000 for non-exempt employees, to be paid monthly throughout the year.

**Article 15.10 – Travel – Compensation**

A new section will be added outlining provisions for daily compensation for employees required to travel for the District.

**Article 8 – Leaves – Vacation and Sick**

- Vacation cashout: Increase the number of days allowable for cashout from three (3) to five (5)
- Sick Leave: For reinstated former employees, the District will restore all sick leave hours unused at the time of separation, if returning within two (2) years.
- Language will be added that waives the vacation balance cap for one year in the event that corrections of substantial errors in balance calculations resulted in inability of the employee to use restored vacation hours by the June 30<sup>th</sup> cutoff date for vacation carryover.

## PUBLIC BOARD SUMMARY

### **Article 11 – Probationary Period**

- Addition of provisions for 1) right to request return to a previous position if released from a promotional position, 2) clarification of existing language regarding the avenue for appeal relative to a probationary release, and 3) reduction in probation period from one year to six months for internal promotion or transfer.

### **Article 12.1 Layoff and Recall**

- Addition of provisions for bumping rights, addition and clarification of provisions regarding posting and application for open positions during spring Budget Tie Out process, and addition of language prohibiting layoffs that circumvent contractual just cause provisions.

### **Article 13 – Group Insurance Benefits**

- For increased efficiency and to eliminate delays, Short-Term Disability (STD) coverage will automatically apply when an employee is granted medical leave.
- Effective July 1, 2025, identity theft coverage will be provided by the District.

### **Article 14 – Pre-Tax Benefits**

- The District will increase the deferred compensation match from \$2,000 to \$3,000.
- Deferred compensation matches based on student loan repayments will be explored, pending the outcome of legislative action.

### **Article 16.2 – Career Transition Trust**

- Additional language clarifies that employees may receive pro-rated benefits if separating from the District in mid-year.
- The conversion formula removes the annual and lifetime cap amounts (daily limits remain unchanged).

### **Article 13 – Changes in Classification or Position, Layoff**

- A new section “Work Out of Class” will lay out provisions for employees temporarily working in higher level positions, to include salary requirements, restrictions on length of assignment, etc.

### **Fiscal Impact:**

The two-year total package cost of the tentative agreement is \$1,365,345, which represents a 9.7% increase in annual costs spread over two years.

**Special School District Number 1  
Board of Education Resolution**



Resolution No. 2024-10-ER-CBA-DRIVERS  
October 8, 2024

**Resolution Approving the 2023-2024 Collective Bargaining Agreement between Special School District No. 1 and Minnesota Teamsters Public and Law Enforcement Employees, Local 320 Transportation Employees**

**WHEREAS**, Special School District No. 1 (District) and Minnesota Teamsters Public and Law Enforcement Employees, Local 320 (Union) were parties to a collective bargaining agreement for the period of July 1, 2021, through June 30, 2024; and;

**WHEREAS**, the collective bargaining agreement between the District and Union expired on June 30, 2024; and

**WHEREAS**, the District and Union engaged in collective bargaining negotiations, and reached a tentative agreement on a successor agreement through June 30, 2026; and

**WHEREAS**, the Union membership voted affirmatively to ratify the successor agreement.

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of Special School District No. 1 hereby approves the collective bargaining agreement between Special School District No. 1, Minnesota Teamsters Public and Law Enforcement Employees, Local 320, effective July 1, 2023, through June 30, 2026.

ADOPTED this 8th day of October 2024.

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Collin Beachy, Chair

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Lori Norvell, Clerk

<b>RECORD OF BOARD VOTE (2024-10-ER-CBA-DRIVERS)</b>						
DIRECTOR	MOVE	SECOND	AYE	NAY	ABSTAIN	ABSENT
Abdi						
El-Amin						
Cerrillo						
Norvell						
Jourdain						
Beachy						
Ellison						
Emerick						

# PUBLIC BOARD SUMMARY

## SUMMARY OF TENTATIVE AGREEMENT

**SPECIAL SCHOOL DISTRICT NO.1**

and

**TEAMSTERS, Local 320 - Drivers**

**2024-2026**

October 8, 2024

**Term:** Two (2) years, July 1, 2024 through June 30, 2026

**Pay:** **Salary Schedule:**

**School Bus Drivers**

Year One:

- Effective July 1, 2024, steps 1 – 3 shall be removed from the salary schedule and all School Bus Drivers shall move to step 1 (previously step 4).
- Step movement for all eligible employees.
- School Bus Drivers with 10+ years of service as a District School Bus Driver (as of the date of ratification of this agreement), and who were on step 3 or lower as of the last day of the prior year (June 30, 2024), shall receive one additional step.

Year Two:

- Effective July 1, 2025, 3.0% COLA increase to the salary schedule.
- Step movement for all eligible members

**Schedulers**

Year One:

- Effective July 1, 2024, 3.0% COLA increase to the salary schedule
- Step movement for all eligible members

Year Two:

- Effective July 1, 2025, 3.0% COLA increase to the salary schedule.
- Step movement for all eligible Schedulers.

**Bus Aides**

Year One: Effective 7-1-2024, increase hourly rate to \$17.00 per hour.

Year Two: Effective 7-1-2025, 5.0% COLA increase to the hourly rate.

**11.1.4 Standby Route Differential.** The hourly differential rate will increase from \$0.50 to \$0.75.

## PUBLIC BOARD SUMMARY

**Article 11.2 Step Progression.** Language is added to clarify that the 110 duty day requirement for step increase must be during the contract year preceding the year in which steps are being awarded.

**Article 11.2 Match Amount.** Increases the District match for contributions to the tax-deferred savings plans from \$600 to \$1,200, effective January 1, 2025.

**Article 4.9 Probation Period.** A new section introduces a 130-duty-day probation period, and includes provisions for a probation period upon promotion or new classification. (The previous six-month calendar day probation period, not actually stated in the contract, was a default provision from outdated Minneapolis Civil Service Rules.)

### **Other Provisional Agreements:**

- **Type Three Drivers – New Classification.** A Memorandum of Agreement describes an agreement between the District and Union to explore a new position for drivers of Type Three Vehicles, which would not require a Commercial Drivers License (CDL) or a School Bus Driver's endorsement.
- **Insurance Plans.** The District and Union agree to engage in discussions regarding The District insurance plan and the Teamsters' plan, with the purpose of both parties becoming fully aware of the options, benefits, and implications of both plans.

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### **Fiscal Impact:**

The two-year total package cost of the tentative agreement is \$1,271,609 which represents a 12.4% increase in annual costs spread over two years.