

## **Regular School Board Meeting**

Duluth Public Schools, ISD 709

### Agenda

Tuesday, March 18, 2025

District Services Center

709 Portia Johnson Dr.

Duluth, MN 55811

6:30 PM

- |   |            |
|---|------------|
| <b>1. Call to Order</b>   |            |
| <b>2. Roll Call</b>   |            |
| <b>3. Pledge of Allegiance</b>  |            |
| <b>4. Approval of the Agenda</b>  |            |
| <b>5. School and Community Recognition</b>  | <b>2</b>   |
| <b>6. Report of the Superintendent</b>  |            |
| A. Reports from Student School Board Representatives  | 3          |
| B. Superintendent's Report  | 8          |
| C. Schedule of Meetings and Events  | 18         |
| <b>7. Report of Standing Committees</b>   |            |
| A. Committee of the Whole   |            |
| 1) Monthly Committee of the Whole ( <i>March 4, 2025</i> )                                    | 19         |
| B. Human Resources/Business Services Committee ( <i>March 10, 2025</i> )                      | 69         |
| C. Policy Committee ( <i>March 13, 2025</i> )   | 283        |
| <b>8. General Board Committee Updates</b>   |            |
| <b>9. Consent Agenda</b>  | <b>314</b> |
| <b>10. Resolutions from Committee Reports</b>   |            |
| A. B-3-25-4091 - Acceptance of Donations to Duluth Public Schools                             | 520        |
| <b>11. Special Resolutions and Action Items</b>   |            |
| A. Approval of Revised 2025-2026 School Year Calendar   | 522        |
| B. Contract - Solar Development Agreement with Wolf Track Energy (Bid #1336 Approved 2.25.25) | 524        |
| <b>12. Questions / Other</b>  |            |
| <b>13. Adjournment</b>  |            |

Good evening, School Board members.

Tonight, I am pleased to recognize Samantha Kapaun and Maria Flore-stano for their exceptional commitment to our students' success.

Samantha, a mental health professional, and Maria, a paraprofessional at Denfeld High School, went above and beyond their regular duties by organizing events during February break at AICHO and NYS.

These events provided Denfeld students with a valuable opportunity to catch up on homework, receive tutoring, and obtain information about credit recovery.

Their efforts were a great success, with over a dozen families and students attending the events. And, they are hosting similar events over Spring Break.

This initiative demonstrates their dedication to supporting our students' academic journeys and providing them with the resources they need to succeed.

Furthermore, Samantha and Maria demonstrated their commitment to our families by meeting them in spaces where they feel comfortable, rather than asking families to come to us.

This embodies our commitment to family engagement.

Please join me in expressing our sincere appreciation to Samantha and Maria for their outstanding contributions.

## **UPCOMING EVENTS!!**

- **Student Vs. Staff Basketball game (End of March) Grade with highest hunter license gets free popcorn.**
- **Lip Dub ( Finished by Early May)**
- **Women's History spirit week put on by Stu GOV**

## **Denfeld Students Making History**

- **The Boys Basketball team earned a ticket to state, this is the first time since 2004. Along with MarNaries becoming the all-time leading scorer with 1,909 pts.**

## **Other**

- **Northern news video on vaping/fire alarms at Denfeld, noticed a lot of students and staff disagreeing with the story and felt it was bashing Denfeld**
- **A lot of the Information in the video had no data to back it up and I could tell the video was put together at the last minute. I reached out to Northern News now for a follow-up story because Denfeld students deserve a story that truly highlights Denfeld's achievements.**
- **"Denfeld students being outside of the building for 20 mins."**

- **“All bathrooms being closed during the school day.”**

## **March 2025**

Good evening! To preface this, know that I haven't had a student forum meeting since my last report, so there isn't as much new student feedback for this report.

Firstly, I'd like to thank Member Sadowski for coming to the last Active Youth of Duluth meeting. It was led by some of my peers from Marshall, but there were tons of East students there engaging in conversation about climate advocacy! If anyone is interested in coming to our next meeting, I will share the details with you! In addition to that, there is a Student Forum meeting coming up next week! I apologize for not sharing this information sooner, but there are going to be two Student Forum meetings on our next PAWS day, Wednesday, March 26. There will be one meeting in the late morning and one in the early afternoon. If you're able and interested to listen in on some great student discussion, let me know, and I will get you the specific times!

Now, to share about some exciting things that have been going on at East! Last week was Red and Grey Week, a spirit week that culminates in the crowning of our three top dogs. There were ten students nominated by the senior class for demonstrating positive qualities and school spirit. I'm sure you know one of the winners very well: Mia Patronas! The theme for the week was "Blast to the Past," so everything was centered around childhood memories. The halls were decked out with rainbow light covers, and we had great turn-outs at our movie night, picture recreation station, and other activities. The assemblies were also a huge success! I'd highly recommend checking out the East StuGo Instagram to see some pictures.

The Climate Club is working to get school wide involvement and support to get composting in our lunch room. We've taken inspiration from our peers at Marshall and are super excited to continue working to make our school and district more sustainable. There have been surveys shared to get student feedback and involvement, and I think that people really appreciate being kept up to date about things happening in the school.

Next, Amnesty International just finished their Write for Rights campaign and is ready to send out over 100 letters. It's genuinely so inspiring to see this group of my peers engaging with each other to speak up on international issues. I notice students at East who are constantly seeking out engagement and activism, which is a really incredible thing.

Members of our drama club are back in the theater starting rehearsals for our spring play: Lost Girl. Performances are on the 8th, 9th, and 10th of May! The speech team is still in the midst of their season. East students have earned numerous top places along with consistent representation in final rounds.

Boys tennis just had the start of their season, along with softball. Baseball, cheer, boys and girls lacrosse, and track are all practicing as well! There is a track meet this Saturday, which is exciting, as it is one of the biggest teams at East!

With Red and Grey week behind us, Student Government is brainstorming new committees for the rest of our year. March Madness will be held next week! We will also organize a senior sunrise, powder puff football game, and teacher appreciation week. I'm looking forward to Friday, when we will all share slideshow presentations with ideas for other projects or activities to take on.

This week, administration at East is running an attendance challenge. The three first hour classes with the highest average attendance this week will earn doughnuts. I asked some students what they thought of it, and there was mixed feedback. One person didn't know it was happening, and another shared that while they don't think it's super effective, it's definitely starting to get people's attention a bit more. I think that this sort of positive reinforcement is a great approach, and asking for student ideas or opinions would increase engagement!

On a different note, I'd like to share that I received some questions from a student *still* wondering about how the decision to get rid of WIN and shift to the seven period day was made. Even as someone in a position that should have a strong understanding of how these decisions were made, I realized that I didn't know enough to give a good answer. I reached out to Mr. Flohaug, and he pointed me to you. I think that this really serves as a reminder of something that I've mentioned in the past: the importance of keeping students in the loop. The students that I speak with are curious and excited about opportunities to engage, and it's important that you try to meet them halfway.

One method I see to achieve this is to help me stay up to date and knowledgeable about how decisions are being made, and I will do everything I can to get that back to students. I've felt incredibly welcomed by this board, and I believe that you care about student voice, but simply having me here isn't enough. If there are discussions happening around issues that are really pertinent to students, I *want* to understand what's happening. I did some brainstorming about how I can work with you to reach this goal, and the main things I thought of were participating in feedback sessions to get more student input on policies and providing clearer (or more publicized) follow up information about issues that we've demonstrated interest in (for example, solar for schools, changes to the library next year, and how we will feel the effects of the budget cuts). In addition to that, I think we should start discussions about following through with the idea of an intra-city student council.

I talked to some students about the violence prevention policy, and they feel that it doesn't seem like it's authored with a strong understanding of what our school environment is like. People

found it odd that we aren't able to access the policy while it's still being discussed, and it was repeated over and over that this is exactly the kind of issue you should be going directly to students to learn more about. I am more than happy to work with you on that.

With that, I've appreciated receiving the District Digest, but I've heard feedback (that I understand) that the information shared feels either insubstantial or is written in a way that's not meant to be understood. Last week, I sent an email to Superintendent Magas and Assistant Superintendent Bonds with a few questions raised by the March 9 Digest, but I haven't heard back yet. I would love to have some conversation in the near future about how that sort of communication could be of even more benefit to students.

Next, I would like to briefly circle back to two of the issues that East Students care about the most: our library and our Dean of Students. Decisions about our librarian and media center are what I've been asked about the most. Students are greatly appreciative of your decision to keep the library space open, and we are still upset to hear about the possible loss of Mrs. Knettel. As a student who has checked out many books from our library and as a book club co-president, I've personally interacted with Mrs. Knettel many times, and I can't emphasize her impact enough. One day, when I told my mom that I was going to school early to do work in the library, she was surprised and brought up instances she remembered from my freshman year when I complained about how no one liked being in the library and that it wasn't a nice environment. So what's changed since then? Mrs. Knettel arrived. She is an invaluable resource, and it makes me sad to imagine our school and library community without her. Next, I hope you will be mindful of the fact that every single testimony regarding Mr. Clark shared during the listening session is personal and comes from a unique place of care. I bring this up because I know that the stories shared in listening sessions can often follow similar themes. I challenge you to continue to remember that any sort of "repetition" isn't that at all. Every story deserves to be heard and considered on its own and then be strengthened by the fact that it is one of many. The decisions that have been made regarding the library, librarians, and Dean of Students are not in alignment with the goals that this board has promised to work towards for every student, every day.

To wrap up, I'd like to share a bit about what I've been doing within my role. In the past few weeks, I've started a newsletter with updates about board meetings and summaries of the District Digest. For now, each update is added at the top of a public Google Doc. I've shared the link with students that come to Student Forum, and I encourage them to share it with anyone else! If you're curious to check it out (which I hope you are), let me know so I can share the link! In addition, I do my best to make sure students know they can reach out to me with questions, things I should share with you, or anything else! I do this using social media, announcements at school, and with qr codes posted around the school that lead to a Google Form. I have been in contact with a teacher advisor of Real Talk, a student discussion group at Ordean. I am hoping to connect with them in the near future, and I'm excited to think about how I can share their voices as well.

I'm glad to be hear tonight, and thank you for your time!



[www.ISD709.org](http://www.ISD709.org)

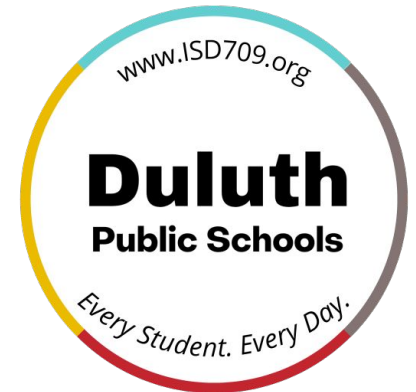
# Duluth

## Public Schools

Every Student. Every Day.

# Superintendent's Report

*March 18, 2025*



## OUR MISSION

Every student, every day will be empowered with learning opportunities for growth, creativity and curiosity, in preparation for their future in a global community.

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## OUR VISION

Duluth Public Schools provides an academically engaging, safe and inclusive environment with high expectations and responsible use of resources.

## OUR CORE VALUES

### Learning



Developing a love of learning through life-long inquiry.

### Excellence



Having high standards for all through accountability, integrity and authenticity.

### Equity



Creating conditions of justice, fairness and inclusion so all students have access to the opportunities to learn and develop to their fullest potential.

### Collaboration



Working in partnership with staff, families, students and community.

### Belonging



Providing a welcoming and accessible environment where everyone feels safe, seen and heard.

# Topics

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- Student Representative Reports
  - My'Aiana Taylor - ALC
  - Latasaija Garner - Denfeld
  - Kate Dean - East
- Budget Reduction and Realignment Updates
- Federal Government Updates
- Legislative Updates
- Other

# Budget Reduction and Realignment

# Budget Reduction and Realignment

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*Focus Statement: Achieving necessary budget adjustments while aligning resources to the district priorities and positioning us to make effective decisions now and into the future.*

<p><b>Reality "The Why"</b></p>	<p><b>Unacceptable Means "The Not How"</b></p>	<p><b>Results "The What"</b></p>
<ul style="list-style-type: none"> <li>● Elimination of federal pandemic relief funds</li> <li>● Inflation costs</li> <li>● New unfunded legislative mandates requiring resources</li> <li>● Ongoing effects of employee contract settlements</li> <li>● Relatively stable enrollment</li> <li>● Current projected deficit of for FY26 \$7.5M</li> <li>● Actual FY26 deficit dependent on prior intended reductions in FY25 budget - minimum of \$2.6M in overloads, summer extension, overtime, travel, floating subs and attrition.</li> <li>● FY26 deficit will be reduced to \$4.9M if current goal of \$2.6M in FY25 reductions is met</li> <li>● FY26 Priority areas supporting every student, advancing equity and improving systems including new MS and HS new schedule and model, literacy work</li> <li>● Increasing costs of special education services</li> <li>● Have been able to mitigate some financial impacts through unassigned fund balance (a savings account) and Long-Term Facilities and Maintenance fund balance.</li> </ul>	<ul style="list-style-type: none"> <li>● Violate laws, board policy, regulations &amp; contracts</li> <li>● Going into Statutory Operating Debt</li> <li>● Avoid going below 8% fund balance</li> <li>● Violate identified November 2023 referendum commitments               <ul style="list-style-type: none"> <li>○ Maintain most social emotional and mental health supports</li> <li>○ Implementation of a new high school schedule</li> <li>○ Maintain and strengthen most academic supports</li> </ul> </li> <li>● Develop reduction and reallocation options in isolation without representative stakeholder input</li> <li>● Make decisions without proper or sufficient data</li> </ul>	<ul style="list-style-type: none"> <li>● Balanced budget for 2025-26</li> <li>● Utilize a transparent and engaging process for budget reductions and reallocations for FY26</li> <li>● Prioritize and protect classroom needs as much as possible</li> <li>● Alignment of funding and operations to district priorities:               <ul style="list-style-type: none"> <li>○ Continue to support student needs throughout the district</li> <li>○ Continue to advance equity efforts throughout the district (e.g. Continue to allocate additional resources to students with the greatest need.)</li> <li>○ Continue to improve systems throughout the district</li> </ul> </li> <li>● Develop and forecast balanced budgets</li> <li>● Examine all legacy practices with a lens of fiscal accountability</li> <li>● Protects school district's fiscal health by continually seeking efficiencies and identifying new sources of funding, such as grants and investment opportunities</li> </ul>

# Federal Government Updates

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- We continue to monitor federal government changes and impacts on our schools, including immigration, and reductions in Department of Education funds and services.
- The potential dismantling of the Department of Education could have a significant impact on our funding and programming. Department of Education funding included resources for Special Education, Title, and Head Start, amongst other programs and services

# Legislative Updates

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- We have multiple bills authored, including bills for the Duluth Promise and for our special education funding anomaly. ([Video](#))
- Member Lofald and Member Loeffler-Kemp represented the district at the state MSBA lobbying day on March 10th.
- Barbara McDonald, President of the College of St. Scholastica, Charles Nies, Chancellor of the University of Minnesota Duluth and I will be testifying at the House Workforce Development, Labor, and Economic Development Committee on Thursday
- I will also be representing MASA and AMSD on Monday, March 24th as MASA Legislative Committee Chair Elect

# Questions



## Schedule of Meetings and Events

All meetings will be held at: **District Services Center, 709 Portia Johnson Drive, Duluth, MN 55811**  
(Unless otherwise noted).

[Listening Session Guidelines](#)

***The Schedule of Meetings and Events is Subject to Change.***

### **Week of March 17 - March 21, 2025**

Tuesday	March 18, 2025	5:15 p.m.	Music In Our Schools Performance
Tuesday	March 18, 2025	5:30 p.m. - 6:15 p.m.	School Board Listening Session
Tuesday	March 18, 2025	6:30 p.m.	Regular School Board Meeting*

### **Week of March 24 - March 28, 2025**

None

### **Week of March 31 - April 4, 2025**

None

### **Week of April 7 - April 11, 2025**

Tuesday	April 8, 2025	4:30 p.m.	Monthly Committee of the Whole
Tuesday	April 8, 2025	5:30 p.m.	Special [Closed] Session - Mid Year Supt. Eval
		(or immediately after Monthly Committee of the Whole)	
Thursday	April 10, 2025	5:30 p.m.	Head Start Parent Policy Council Lowell Elementary School 2000 Rice Lake Rd.

*\*If a Regular School Board meeting is canceled and cannot be held on the regularly scheduled date listed above, due to weather or unforeseen circumstances, it will be held the very next day at the same time and location.*

**Office of the Superintendent  
March 14, 2025**

**Monthly Committee of the Whole Board Meeting**

Duluth Public Schools, ISD 709

Agenda

Tuesday, March 4, 2025

District Services Center

709 Portia Johnson Dr.

Duluth, MN 55811

4:30 PM

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. AGENDA ITEMS**

**A. Strategic Plan Alignment**

1) Supporting Every Student

a. Computer Science Pathway in Duluth

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2) Advancing Equity

a. Attendance Update

16

3) Improving Systems

a. Recruitment and Retention Plan

27

**B. Budget Update**

1) Budget Update

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**C. Other**

**4. ADJOURN**

**COW Agenda Cover Sheet**

**Meeting Date: 3/4/25**

**Topic: Computer Science Pathway in Duluth**

**Presenter(s): Cindy Miller, maybe Danette Seboe and Peter Graves**

**Attachment (yes):  Duluth Public Schools Computer Science Ed**

**Brief Summary of Presentation or Topic (no more than a few sentences): We're nearing the end of the second year of our 4 year grant with Northern Lights Collaborative. This presentation will show our progress and goals.**

**This Requires School Board Approval \_\_\_Yes \_\_\_No**

# Duluth Public Schools

## Computer Science Education

[cynthia.miller@isd709.org](mailto:cynthia.miller@isd709.org)

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## Who We Are

**Cindy Miller, Media Specialist and Building Tech Coordinator, K12  
Computer Science Lead, Content Specialist**

**Peter Graves, Technology Manager, Former Educational  
Technology and Innovation Coordinator, Former Classroom  
Teacher**

**Danette Seboe, Principal on Special Assignment - College, Career,  
and Life Readiness, CTE Coordinator**

# How it Started

## 2022-23 School Year

National Center for Computing Education - CS For All

- Teacher Committee - Media Specialist, Math teachers
- PD for Art, Media, Science, and Math teachers
- Jen Rosato, Paul Schonfeld and team

Elementary Media/Tech Classes introduce Scratch coding and Code and Go Mouse

6th Grade Computers Class - unchanged since 1996 (!), applications

AP CSP Elective for grades 9-12

Spotty CS “Pet Projects” throughout the district

MN Dead Last in High School CS Offerings<sup>5</sup> - five schools



## Elementary Code and Go Mouse and Scratch learning



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## Middle School RVR+ projects



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# How it Started

## 2023-24 School Year

- Northern Lights Consortium for Computing Education - National Science Foundation Grant
  - Hired CS Lead, Cindy Miller (.2 FTE)
  - Formed CS Champions Team (teachers, counselor, Native American and SpEd. staff, and some admin)
  - Conducted SCRIPT Rubric (Leadership, Teacher Capacity, Curriculum and Materials, Partnerships, Community, Technology Infrastructure)
- District hired Education Technology and Innovation Coordinator and Digital Innovation Spec.
- CTE Pathway explored - Business or Communications Pathway
- K12 Media Specialists trained with CodeSavvy and NLCCE - Hour of Code, CS Fundamentals and Unplugged CS; CS pilot in elementary
- HS and MS Courses added over the Summer - Revamped 6th grade class, Robotics and Coding, CS 8, CS 10

# How it's Going

## 2024-25 School Year

Educational Technology and Innovation Coordinator position dissolved

Goals in NLCCE Project - LOTS of work with NLCCE

- Rewrite the 6th Grade "Computers" Course
- Scope and Sequence alignment
- Identify Funding for sustainable CS
- Use District PD Days

Unwritten goals

- New Courses - Codes, curriculum, and course descriptions don't match or align with CTE frameworks - BIG JOB!
- CSTA and Information Technology Educators of MN standards alignment
- Equipment and Supply purchases
- Build awareness - teachers, administration, community, STEMpathy Event



Middle School teachers PD with Paul Schonfeld and Tom Cozzolino from NLCCE - physical computing and more

Quarterly PLN meetings with NLCCE; work with other districts in Northern MN.



# How it's Going

## 2024-25 School Year

### Required Courses

- K-5 Integrated Media/Tech - 8-10 Unplugged and Code.org's CS Fundamentals
- 6th Grade Computer Literacy - Tech Applications and Code.org's CS Discoveries units
- 10th Grade Computer Science - by name only

### Elective Courses

- 6th and 7th Grade Coding and Robotics (Industrial Tech teachers) - underwater robotics
- 8th Grade Computer Science - Data Science and Scratch
- 9-12 AP CSP - one class, low enrollment<sup>10</sup>

# What's Next

## 2025-26 School Year

K-8 - CS Integrated with Music and Science

9th-12th - Computer Repair Academy - Vivacity program, Intern with Tech Dept.

11th-12th - Computer Gaming and App Design, Code.org

Outside of school programming - Summer, afterschool, Community Ed., organizations

## 2026-27 School Year

K-8 - CS Integrated with Music and Science

11th-12th - Multi-Media and Video (not exactly Computer Science)

11th-12th - Cybersecurity (collab with local community college, local ASAF Base)

## Coming Up Soon - CS Teachers

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### **Midwest Indigenous CS PD event**

- March 13, 2025
- 9am - 3pm at NE Service Coop in Mountain Iron
- Who: Educators in the K12 CS Pathways Grant Project
- Stipend: Participants will receive a \$400 stipend for teaching and reflecting on one CS lesson after the workshop
- [Poster to share](#)
- Register here: <https://bit.ly/IndigenousEd4CS>

# Coming Up Soon - 4th Grade Teachers

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## Intro to CS/CT PD

- **Online course, mix of synchronous and asynchronous learning**
- **April - May coursework open**
- **Synchronous meetings April 10, 17, 24 (4pm-5pm online via Zoom)**
- **Lesson implementation with reflection**
- **Reflection, wrap up May 22nd (4pm-5pm online via Zoom)**
- **[Save the date flyer](#)**
- **Registration coming soon**
- **\$875 Stipend for completion of coursework, meetings, and lesson implementation**

## Coming Up Soon

### K12 CS Teachers (including Media Specialists)

#### **MN + CS Conference**

- Dates: April 11-12, 2025
- Location: Minneapolis, Minnesota
- \$15 registration - Register here:  
<https://form.raspberrypi.org/4873931>
- Travel scholarships<sup>14</sup> are available

**Questions?**  
**Email Cindy Miller**  
**[cynthia.miller@isd709.org](mailto:cynthia.miller@isd709.org)**

**COW Agenda Cover Sheet**

**Meeting Date:**

**Topic: Attendance Update**

**Presenter(s): Shalon Monroe**

**Attachment (yes) or (no) Yes**

**Brief Summary of Presentation or Topic (no more than a few sentences):**

**This presentation will focus on updates regarding attendance and how various sites are utilizing different materials and resources to improve attendance. We will explore some of the challenges we've faced and share the strategies we've implemented to overcome these obstacles, allowing us to strengthen our partnerships with students, families, and communities both at the district and site levels.**

**This Requires School Board Approval    Yes    No**

# COW Update on Student Attendance

Shalon Monroe, Family and Community Engagement Specialist  
Adelle Wellens, Communications Officer

# Attendance vs Chronic Absenteeism

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## ATTENDANCE

- It can be looked at in many ways just as “chronic absenteeism” can be, but viewed as instances of not attending school whether it's excused or unexcused.
- A student is considered consistently attending if they attend more than 90 percent of the time that the student is enrolled during the year.
- When attendance numbers start to fall in different areas, that's when the first steps of attacking the problem are taken.

## CHRONIC ABSENTEEISM

- An issue that can become a recurring problem when a student misses school frequently.
- It can be viewed as an indicator of poor individual performance from grades, behavioral and beyond.
- Missing 10 percent or more than 2 days a year can translate into students having difficulty learning to read by third-grade, advancing into middle school and even graduating from high school.

# Attendance Policy Updates

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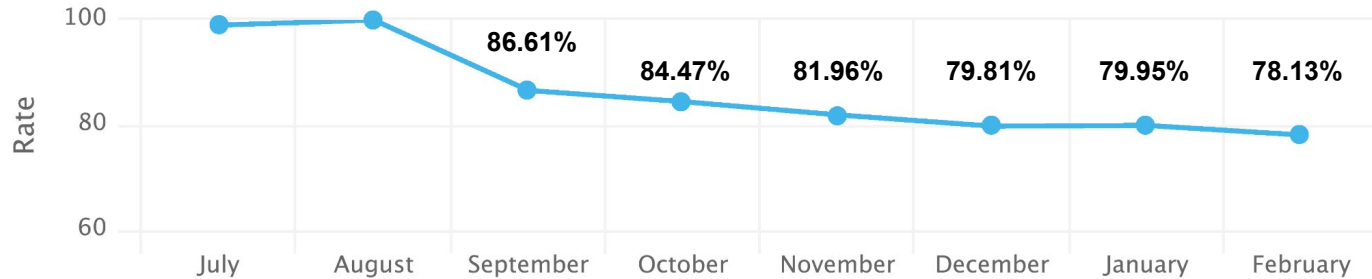
A deep look at the attendance policies has been looked over and reviewed for a while. Since the beginning of the school year, policies have been discussed and reworded in different languages about the standard of attendance throughout the school district.

The new attendance policies went into their second read and was approved by the school board on Tuesday, February 25, 2025.

In the works, we know that there can be confusion when it comes to what an “exempt” and an “absent” are. In the near future there will be training for clerics on how to determine the differences and how to mark them in the system.

# Let's take a look at the Numbers

A student is considered consistently attending if they attend more than 90 percent of time that the student is enrolled during the year.



● Full Day Attendance Rate ● SIS Reported Attendance Rate

# Growing through Challenges and Implementation

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Variables with connected to attending school/attendance has made several strides as we are halfway through the school year.

- The partnership with the DTA is back and here to stay until next school year with free rides for high school students and staff.
- School sites having their vans have helped to provide rides in the afternoon/evening from participating in extracurricular activities that could have been a challenge.
- ParentSquare communication is growing, and parents are gaining a better understanding of the program's role in connecting with families.

# Student Survey Says.....

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Students at both high and middle schools were informed about a “Cause of Absenteeism” survey and encouraged to share their feedback to help identify attendance issues.

There were 1,007 submissions completed. Some of the responses that stood out the most in response to were that students were missing school for serious illnesses, minor illnesses, and doctor appointments.

High school students did show an increase in response for feeling anxious or depressed.

# Progressing as a WHOLE

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Attendance is a measurement that can be evaluated from the beginning, half-way, and end of a school year. Each school site and grade level experience attendance concerns at different levels and have different techniques that they have helped with the challenges that they are presented with.

Every Monday at Lakewood Elementary, staff members wear attendance t-shirts to encourage students to come to school and show how they are happy to have them.

Myers-Wilkins' attendance has grown in level. However, they have dealt with a decrease in those numbers due to unseen circumstances with having some attendance record because they have consistently had school bus route canceled. They have had more than three cancellations in the past two months.



# Progressing as a WHOLE

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**Elementary Level:** Communication via ParentSquare (calls/texts), phone calls, sending letters and postcards as friendly reminders, and daily check-ins with students.



**Middle Level:** Communication through ParentSquare (calls and texts), sending out letters when students has three or more absences, counselors connecting with students, weekly one-on-one meetings with students and conducting meetings with families when attendance contracts are created and in general.

**High School Level:** Attendance letters are sent home along with follow-up phone calls. Building strong staff-student relationships and having heartfelt conversations about attendance issues, as well as concerns beyond school, is essential.

# Moving and Shaking on the District level

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On Monday, February 10th, I got the chance to attend several schools in St. Paul as a part of National African American Parent Involvement Day (NAPPID). On this day, schools hold different events, allowing parents/guardians to see what their children experience in their classrooms/schools. I visited three schools: Eastern Heights Elementary, Highland Park and Central High.

Another step comes in the form of going to different PTAs, Attendance Meetings, CIT Meetings, and ongoing Parent Advisory Meetings.

Community and School Engagement: One thing that has been heard and how the community would like to volunteer with our school sites and students. A [volunteer application](#) was created for individuals to fill out, and I will help to get them paired with school principals and find volunteer opportunities.

# Questions?

**COW Agenda Cover Sheet**

**Meeting Date: March 4, 2025**

**Topic: Recruitment and Retention Plan**

**Presenter(s): Theresa Severance and Charlie Cook**

**Attachment (yes) or (no) yes**

**Brief Summary of Presentation or Topic (no more than a few sentences):**

This presentation is designed to give the school board a clear and concise overview of the Duluth Public Schools Employee Recruitment and Retention Plan, which is currently in draft form.

**This Requires School Board Approval**     Yes     No

# Employee Recruitment and Retention Plan

Committee of the Whole  
March 2025



## OUR MISSION

Every student, every day will be empowered with learning opportunities for growth, creativity and curiosity, in preparation for their future in a global community.

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## OUR VISION

Duluth Public Schools provides an academically engaging, safe and inclusive environment with high expectations and responsible use of resources.

## OUR CORE VALUES

### Learning



Developing a love of learning through life-long inquiry.

### Excellence



Having high standards for all through accountability, integrity and authenticity.

### Equity



Creating conditions of justice, fairness and inclusion so all students have access to the opportunities to learn and develop to their fullest potential.

### Collaboration



Working in partnership with staff, families, students and community.

### Belonging



Providing a welcoming and accessible environment where everyone feels safe, seen and heard.

# Why this plan matters...

48

- Supporting Every Student
  - A blueprint for ensuring student success through dedicated employees.
- Advancing Equity
  - Our commitment to attracting and retaining top-quality, diverse staff.
  - Emphasis on hiring employees that are lifelong learners, and value diversity.
- Improving Systems
  - Multi-year development process: Attract, Develop, Retain.
  - Utilize data-driven strategies for continuous improvement.



# Commitment to Diversity, Equity and Inclusion

49

- Workforce reflecting our diverse student body.
- Recruiting racially, ethnically, culturally, and linguistically diverse educators.
- Creating an inclusive and supportive environment.
- Equal employment opportunities for all.



# Attracting and Retaining Talent

50

- Expanded advertising and partnerships.
- Participation in targeted job fairs.
- Comprehensive onboarding and mentorship.
- Professional development opportunities.
- Employee wellbeing initiatives.

32



# Streamlined and Equitable Hiring

51

- Openings advertised on diverse platforms.
- Applicant tracking system for efficiency.
- Diverse interview committees with bias training.
- Culturally sensitive interview questions.
- Follow-up communication for all candidates.

33



# Supporting our American Indian Staff

52

- Formal partnerships with tribal bands.
- Culturally responsive hiring practices.
- Mentorship programs and resource groups.
- Dedicated budget for targeted efforts.
- Clear discrimination complaint procedure.

34

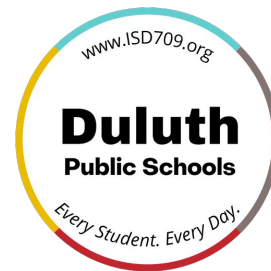


# Measuring Our Success

53

- Quarterly data analysis and action planning.
- Regular evaluation of program effectiveness.
- Using data to refine strategies.
- EEOC data analysis for equity.

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# Moving Forward Together

54

- Implementation of the plan and ongoing monitoring.
- Continued collaboration with stakeholders.
- Commitment to building a strong, diverse, and supportive workforce.
- Questions and Discussion.

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# Duluth Public Schools

## Employee Recruitment and Retention Plan

### Introduction

The Duluth Public Schools Employee Recruitment and Retention Plan outlines our commitment to attracting, developing, and retaining a diverse and highly qualified workforce dedicated to student success.

### Purpose

The Duluth Public Schools Employee Recruitment and Retention Plan serves as the blueprint for hiring and retaining employees. This is a multi-year development process of attracting, developing and retaining highly qualified employees throughout the district. A key element to student success is highly qualified and dedicated employees focused on educating the whole child. Duluth Public Schools is dedicated to recruiting the best employee for the job.

The Duluth Public Schools is committed to hiring the best employees to work with our students. Our employees:

- Are life-long learners
- Have high expectations for students and themselves
- Are open to change
- Have a positive attitude and work ethic
- Have a sense of responsibility.
- Are driven and focused on helping students be successful
- Are team players who are helpful to others
- Collaborate effectively within their department/school site
- Value diversity

### Core Values:

- Learning: Developing a love of learning through life-long inquiry.
- Excellence: Having high standards for all through accountability, integrity and authenticity.
- Equity: Creating conditions of justice, fairness and inclusion so all students have access to the opportunities to learn and develop to their fullest potential.
- Collaboration: Working in partnership with staff, families, students and community.
- Belonging: Providing a welcoming and accessible environment where everyone feels safe, seen and heard.

### Mission Statement:

Every student, every day will be empowered with learning opportunities for growth, creativity and curiosity, in preparation for their future in a global community.

**Vision Statement:**

Duluth Public Schools provides an academically engaging, safe and inclusive environment with high expectations and responsible use of resources.

**Human Resources Department Workforce Equity Statement**

A key District priority is to recruit and retain a workforce that reflects the diversity of our student body and community. The District is committed to recruiting, hiring, developing, and retaining racially, ethnically, culturally, and linguistically diverse educators who center their work on student success. We believe that every student’s learning experience should be fostered in an inclusive and safe environment. We are committed to hiring staff who reflect our students’ beliefs and experiences.

**District Diversity, Equity, and Inclusion Statement**

Duluth School District deeply values and is committed to promoting cultural diversity. We embrace and respect the diversity of individuals, identities, and cultures. We strive to foster an inclusive organizational culture.

We believe a diverse staff is crucial to our mission of educating students. Therefore, we are committed to promoting diversity in recruitment and hiring practices. We provide equal employment opportunities to all individuals, regardless of race, ethnicity, gender, religion, sexual orientation, national origin, age, disability, or veteran status.

We value the diversity of our job candidates, staff, board, and volunteers. We are dedicated to preventing harassment, discrimination, and retaliation. We encourage respectful communication and cooperation. Our organization is committed to sustaining and promoting diversity throughout the entire employee lifecycle, from recruitment to termination.

**Hiring Process**

We are committed to a fair, transparent, and efficient hiring process that attracts and selects the best candidates for our students. Our goal is to recruit and retain top-quality employees while creating a collaborative and thoughtful experience for all stakeholders. This streamlined protocol ensures consistency and equity throughout the hiring journey.

**District Hiring Protocol**

Openings and Application:

- Open positions are created and advertised on various platforms, including K12JobSpot.com, EdPost.edu, Handshake.com, Indeed.com, social media, and through partnerships with educational institutions and community organizations.
- Interested candidates submit their applications through our applicant tracking system.

Screening and Interview Selection:

- Human Resources screens each application to ensure candidates meet the minimum job requirements.
- Human Resources contacts the relevant administrator/supervisor to determine which candidates will be invited for interviews.

- The administrator/supervisor forms an interview committee with diverse representation from relevant departments or roles.
  - *Note: Formal bias training on equitable interviewing practices will be provided to all interview committee members before they can serve on an interview panel. This training will be implemented by June 1, 2025, and will be conducted annually.*

Interview Process:

- Human Resources and the administrator/supervisor schedule interview dates.
- Candidates are scheduled for interviews, which may include virtual or in-person formats.
- Administrative candidates may have a second interview with the Superintendent and/or Cabinet Members.
- The interview committee reviews each application and asks each candidate the same predetermined, culturally sensitive questions.
- Each member of the interview committee ranks the candidates.
- The committee discusses the rankings and selects the top candidate(s).

Offer and Onboarding:

- Human Resources conducts reference checks and extends an official job offer. (For upper-level positions, an unofficial offer may precede the official one.)
- Human Resources conducts a background check and completes new hire paperwork.
- The selected candidate is submitted to the School Board for approval.
- Human Resources meets with all newly hired employees to complete the new hire orientation process.
- The supervisor meets with the newly hired employee to begin the onboarding process.
- All candidates who interview for a position will receive a follow up email within one week of the hiring decision. If a candidate is not selected, the email will thank them for their time, and encourage them to apply for future roles at Duluth Public Schools.

Communication to Not Selected Candidates:

- All candidates who interview for a position will receive a follow-up email within one week of the hiring decision.
- If a candidate is not selected, the email will:
  - Thank them for their time and interest in Duluth Public Schools.
  - Express appreciation for their participation in the interview process.
  - Encourage them to apply for future roles at Duluth Public Schools.

Technology and Efficiency:

- We utilize an applicant tracking system to streamline the hiring process, track candidate progress, and ensure efficient communication.
- We utilize online platforms for virtual interviews, expanding our reach to potential candidates and improving efficiency.

### **Advertising Positions**

We advertise open positions on various platforms, including:

- K12JobSpot.com, EdPost.edu, Handshake.com, and Indeed.com.

To reach a wider audience, we are increasing our social media presence on platforms like:

- Twitter, Facebook, and Instagram.

Additionally, we partner with organizations such as:

- Careers In Government, the National Diversity Network, and diverse teaching associations to identify and recruit qualified candidates.

We also email job postings to a network of educational institutions, community organizations, and government agencies to expand our outreach.

We currently email all of our job postings to:

- University of Minnesota Duluth, Itasca Community College, University of Wisconsin Superior, College of St. Scholastica, Fond Du Lac Community College, Minnesota North College and Leech Lake Tribal College.
- Fond Du Lac Reservation, Grand Portage Reservation, Minneapolis American Indian Center, Community Action Duluth, Center City Housing, Trillium Services, Minnesota Assistance Council for Veterans, Arrowhead Regional Development Commission, SOAR Career Solutions, and Human Development Center
- City of Duluth CareerForce, Minnesota Works Northwest Wisconsin CEP.

To further enhance our outreach to American Indian candidates, we implement targeted advertising strategies as detailed in the 'Targeted Recruitment for American Indian Staff' section, including partnerships with tribal organizations and participation in relevant cultural events.

### **Talent Recruitment**

We continue to strengthen partnerships with colleges and universities to develop a pipeline of future employees. We actively participate in college and local recruitment fairs to connect with potential candidates.

**Specific Job Fairs:** The district will attend a minimum of 8 job fairs each year including the Minnesota Education Job Fair, Fond du Lac Tribal and Community College and Lake Superior Job Fair, and other local job fairs through CareerForce and JET.

**Partnership Documentation:** A document outlining all active partnerships, including the goals, responsibilities, and contact information for each partnership, will be maintained and updated regularly. This document will be reviewed annually by the Human Resources department and the leadership team.

We actively seek individuals who resonate with our mission to "Make a difference in your community, one student at a time." We strive to attract candidates who are dedicated to student growth and development, offering them a rewarding career with competitive benefits and a positive work environment.

### **Talent Retention**

In alignment with the Minnesota Department of Education's (MN DOE) NextGen licensure initiatives, the District is actively exploring and implementing pathways to attract and retain diverse talent. This includes supporting 'Grow Your Own' programs that encourage and support current staff members to pursue teaching careers. As a successful example of this commitment, the district partnered with CareerForce, the College of St. Scholastica, and the University of Minnesota Duluth in the Drive for 5 grant, which provides educational opportunities for district employees to achieve their teaching degrees. The district is committed to continuing to develop and implement similar initiatives to foster a sustainable and diverse educator workforce. NextGen MN DOE focuses on modernizing teacher licensure to address workforce shortages and ensure equitable access to qualified educators. This includes:

- **Alternative Licensure Pathways:** We are investigating and supporting alternative licensure programs that allow individuals with relevant experience and expertise to transition into teaching roles, addressing barriers for potential educators who may not follow traditional routes.
- **Addressing Teacher Shortages in High-Need Areas:** We are working to identify and prioritize recruitment and retention efforts in high-need subject areas such as special education, as well as specific geographic locations within the district that experience higher teacher turnover rates, aligning with NextGen MN DOE's focus on equitable distribution of qualified educators. We will compile and publish a list of high-need areas annually.

### **New Employee Integration Process**

To foster a sense of belonging and set new employees up for success, we are developing a comprehensive integration process. This plan will ensure a smooth transition and provide access to essential resources.

**Planned Expanded Onboarding:** Beyond the new hire orientation, supervisors will implement a structured onboarding process, including a First Week Focus and a 30-60-90 day check-in plan, designed to deeply integrate new employees into the district's culture, specific job responsibilities, and available resources.

- **First Week Focus:**
  - Welcome and Introductions: A warm welcome from the supervisor and team members, including introductions to key personnel.
  - Workspace and Technology Setup: Assistance with setting up workspace, accessing necessary technology, and navigating district systems.
  - Initial Job Responsibilities and Expectations: A clear overview of immediate job responsibilities, performance expectations, and key deadlines.
  - District Culture and Values: Introduction to the district's mission, values, and culture, including key policies and procedures.
  - Team Integration: Opportunities to meet with team members, understand team dynamics, and build initial relationships.
  - Initial Questions and Support: Dedicated time for new employees to ask questions and receive support from their supervisor and team.

- **Planned 30-60-90 Day Check-in Plan:**
  - 30-Day Check-in: Will focus on introducing basic district and department procedures, providing access to necessary technology and tools, addressing initial questions, and establishing a foundation for the role. This includes understanding team dynamics and initial job responsibilities.
  - 60-Day Check-in: Will focus on reviewing progress on key tasks, addressing any emerging challenges, and ensuring the employee is integrating effectively with their team and work environment. For teachers, this may include curriculum implementation and initial student progress. For support staff, this may include reviewing workflow and project timelines.
  - 90-Day Check-in: Will focus on overall adjustment to the role and district culture, identifying professional development needs, discussing long-term goals, and ensuring the employee feels fully integrated into the school community. This includes reviewing performance expectations and setting goals for the next period.
- **Planned Resource Provision:** New employees will receive clear access to:
  - District and department-specific policies and procedures manuals.
  - Technology platforms, software, and support systems relevant to their role.
  - Access to necessary tools, equipment, and resources.
  - Introductions to key support staff, including IT, Human Resources, and department-specific personnel.
  - Information on available professional development opportunities.

### **Mentorship Program**

The district is committed to supporting all new employees through a comprehensive mentorship program.

- **Teacher Mentorship:** A structured mentorship program is currently in place for new teachers, pairing them with experienced colleagues. Mentors provide guidance, support, and feedback throughout the teacher's first year. Regular mentor-mentee meetings are scheduled, and program effectiveness is evaluated through ongoing feedback collection.
- **Expansion to All Staff:** The mentorship program will be expanded to include all new staff members, including paraprofessionals and support personnel. Experienced colleagues will be paired with new employees to provide guidance, support, and feedback during their initial year. Tailored training and support will be provided for each staff group.
- **Mentor Training and Expectations:** The district will provide comprehensive training for all mentors, focusing on effective mentoring strategies, communication skills, and district resources. Mentors will be expected to:
  - Conduct regular meetings with mentees.
  - Provide constructive and actionable feedback.
  - Assist mentees in understanding district culture, policies, and procedures.
  - Model effective professional practices.

The effectiveness of the mentorship program will be evaluated through annual surveys of mentors and mentees, as well as tracking new employee retention rates. Additionally, focus

groups will be conducted bi-annually with mentors and mentees to gather qualitative feedback and identify areas for program improvement.

In addition to our general mentorship program, we have established a targeted mentorship program for American Indian staff, as outlined in the 'Targeted Recruitment for American Indian Staff' section, to provide culturally specific support and guidance

### **Professional Development**

We offer comprehensive professional development opportunities throughout the year to support effective teaching and learning, enhance staff skills, and foster a culture of continuous improvement. By investing in our staff's knowledge and abilities, we aim to improve student achievement and prepare them for college and career readiness.

- **Diverse Offerings:** Professional development will cover areas such as culturally responsive Positive Behavior Interventions and Supports (PBIS), culturally responsive teaching and learning, restorative practices, de-escalation techniques, social-emotional support programs, and Indigenous history, culture, and current events.
- **Evaluation and Improvement:** The effectiveness of professional development programs will be evaluated through post-training surveys, participant feedback sessions, and analysis of student achievement data where applicable. Program evaluations will be conducted annually, and findings will be used to refine and improve future professional development offerings.
- **Accessibility:** We will strive to make professional development accessible to all staff, including those with diverse learning needs and schedules.
- **Partnerships:** When needed, we will partner with local tribes for customized training programs.

### **Culture and Climate**

Duluth Public Schools is committed to providing professional development opportunities for staff in areas such as culturally responsive Positive Behavior Interventions and Supports (PBIS), culturally responsive teaching and learning, restorative practices, de-escalation techniques, and other social-emotional support programs. These initiatives aim to enhance the school culture and climate.

District administrators provide extra support to students facing truancy or credit deficiency issues, helping them get back on track to graduate. District Social Workers offer a range of services to students and families in need, including counseling, referrals, and basic necessities like food and clothing. We recognize that a supportive work environment is essential for retaining staff.

### **Employee Wellbeing Initiatives**

We offer a comprehensive suite of resources to support our staff's physical, mental, and emotional health, including:

- **Mental and Emotional Wellbeing:**
  - **Calm Membership:** All staff have access to a complimentary Calm membership, providing tools for mindfulness, meditation, and stress reduction.
  - **Employee Assistance Program (EAP):** Confidential access to professional

counseling, resources, and support services is available through our EAP for employees and their families.

- **Physical Wellbeing:**
  - **Annual Wellness Fair:** We host an annual wellness fair, featuring health screenings, fitness demonstrations, and information on healthy lifestyle choices.
  - **Monthly Wellness Newsletter:** The Human Resources Department publishes a monthly newsletter, providing staff with valuable information on health tips, wellness resources, and upcoming events.
- **Ongoing Support:**
  - We are committed to continuously evaluating and expanding our wellness offerings to meet the evolving needs of our staff.
  - We will encourage feedback from staff regarding what other wellness initiatives

### **Employee Recognition and Appreciation**

We believe that recognizing and celebrating employee achievements is fundamental to a positive and productive work environment. This section outlines our strategies for showing appreciation and our plans for future development.

We are dedicated to exploring and implementing various forms of employee recognition to acknowledge their hard work and dedication.

#### **Existing Recognition Practices:**

- **Staff Shout-Outs:** The district currently features staff shout-outs in the regular District newsletter, providing peer-to-peer recognition.
- **Public Acknowledgment:** Employee achievements are regularly highlighted in various district newsletters, showcasing their contributions to the school community.

**Exploring Recognition Options:** We will actively investigate and evaluate diverse recognition strategies, including:

- Further development of peer-to-peer recognition programs, potentially through an online platform.
- Expanding public acknowledgment of achievements, such as featuring employee accomplishments in the school board meeting minutes.
- Supervisory recognition through personalized thank-you notes and verbal appreciation.
- Spotlighting employee successes on the district website and social media platforms.

**Focus on Appreciation:** We prioritize creating a work environment where employees feel valued and appreciated for their daily contributions.

**Future Development:** We will continue to evaluate and develop recognition programs that are both meaningful and sustainable within our current financial resources.

### **Data-Driven Approach**

We are developing a system to track key metrics and indicators related to our hiring practices. This data will help us measure our progress, identify areas for improvement, and make data-driven decisions to optimize our recruitment efforts.

Metric	Importance	Goal
Annual Retention Rates	Indicator of employee stability	Increase annual retention rates by 3% over the next two years
Percentage of Employee Evaluations Completed	Indicator of employee success and progress	Achieve 95% completion of employee evaluations by the end of each school year.
Number of Candidates per open position	Indicator of recruitment process	Maintain an average of 6 qualified candidates per open position.
Employee Attendance Rates	Indicator of employee stability and retention	Reduce employee absenteeism by 3% within the next year.
EEOC	Indicator of staff diversity	Increase the representation of racially diverse staff by 2% annually.

**Data Analysis and Action Planning:**

The Human Resources Department will compile and analyze the metrics outlined above on a quarterly basis. A report summarizing the findings will be presented to the district leadership team. Based on the analysis, action plans will be developed to address areas needing improvement. These plans will include specific strategies, timelines, and assigned responsibilities. Quarterly reviews will assess the effectiveness of these action plans and make adjustments as necessary. For example, if the annual retention rate falls below the goal, the Human Resources department will conduct a review of exit interview data and employee surveys to identify contributing factors and develop targeted interventions. The Human Resources department will review these metrics quarterly, and the findings will be presented to the leadership team.

In addition to these general metrics, we also track specific data related to the recruitment and retention of American Indian staff, including application rates, interview success rates, and retention rates, as outlined in the 'Targeted Recruitment for American Indian Staff' section. This data is analyzed to inform targeted interventions and ensure equitable outcomes.

**EEOC Data**

EEOC data refers to data collected by the Equal Employment Opportunity Commission, which helps track workforce diversity and identify potential discrimination.

Data will be analyzed to identify areas where targeted recruitment efforts are needed, and to determine if there are any areas of inequity within our hiring and promotion practices. Action

plans will be developed to address any disparities and promote a more diverse workforce. The district will also conduct periodic reviews of hiring and promotion practices to ensure compliance with equal employment opportunity guidelines. Annually, the Human Resources department will produce a report detailing the EEOC data analysis, and will include action plans to address any findings.

**Exit Interviews**

The Human Resources Department conducts confidential exit interviews with departing employees. This process gathers crucial feedback, which is then analyzed to identify trends, enhance employee experiences, and inform data-driven retention decisions. The Human Resources department will compile a bi-annual report of exit interview data, highlighting key themes and recommendations. This report will be shared with the district leadership team, and action plans will be developed to address identified areas for improvement.

**Timeline of Recruitment and Hiring Activities**

To ensure a proactive and organized approach to staffing, we establish a clear timeline for key recruitment and onboarding activities. This schedule guides our efforts throughout the year, ensuring efficiency and consistency.

Date/Month	Recruitment/Hiring Activity
Ongoing	<ul style="list-style-type: none"> <li>● Prepare for and attend job fairs with a focus on diversity</li> <li>● Revise and finalize all screening materials and data tools</li> <li>● Revise questions for in person and digital interviews</li> <li>● Share opportunities for employees to serve on interview committees</li> <li>● Advertise for and fill open positions</li> </ul>
Annually	<ul style="list-style-type: none"> <li>● Review staffing challenges/opportunities from the previous year</li> <li>● Review the onboarding for efficiency and made adjustments as necessary</li> <li>● Revise and publish recruitment brochures and fliers</li> </ul>
Winter	<ul style="list-style-type: none"> <li>● Meet with the administration to review needs for the upcoming school year</li> </ul>
Early Spring	<ul style="list-style-type: none"> <li>● Determine staffing needs for certified positions</li> <li>● Post all known vacancies for the upcoming school year</li> </ul>
Spring	<ul style="list-style-type: none"> <li>● Determine staffing needs for non-certified positions</li> <li>● Send letters for the following school year to all employees</li> <li>● Conduct interviews and onboard staff</li> </ul>
Summer	<ul style="list-style-type: none"> <li>● Conduct interviews and onboard staff</li> <li>● Conduct New Hire Orientation</li> </ul>

*The preceding sections of this plan outline our comprehensive recruitment and retention strategies for all employees, emphasizing our commitment to diversity, equity, and inclusion. Recognizing the historical and ongoing challenges faced by American Indian communities, and the importance of representation within our schools, we have developed targeted strategies to support American Indian staff. The following section details specific initiatives designed to address the unique needs and challenges related to recruiting and retaining American Indian educators and support personnel, ensuring their success and contributing to a culturally rich learning environment for all students.*

### **Targeted Recruitment for American Indian Staff**

We will continue to advertise open positions on various platforms and email our postings to educational institutions, community organizations, and government agencies. To reach a wider American Indian audience, we will also send job postings to the Minnesota Office of American Indian Education.

#### **1. Partnerships:**

- **Formal Partnerships:** We will establish formal partnerships with the Fond du Lac Band of Lake Superior Chippewa, the Grand Portage Band of Lake Superior Chippewa, and the Mille Lacs Band of Ojibwe to support recruitment events, job fairs, and newsletter/social media postings. These formal partnerships will be documented through Memorandums of Understanding (MOUs) outlining the specific roles, responsibilities, and goals of each collaboration.
- **Recruitment Events:** We will actively participate in recruitment events that focus on Native Americans, including tribal college career fairs, community gatherings, and cultural festivals. We will report to AIPAC on our attendance and outcomes at these events. A budget of \$1500 will be allocated annually for these recruitment activities.
- **Community Collaboration:** We will collaborate with the American Indian Parent Advisory Committee (AIPAC) and other community organizations, such as the Minneapolis American Indian Center and the Duluth Indigenous Commission, to identify potential candidates, collaborate on recruitment events and workshops, and spread awareness about job openings.
- **Networking:** We will actively network with tribal members and community leaders through community events and direct outreach.
- **Cultural Events:** We will participate in powwows, cultural festivals, and other events to connect with potential candidates and build relationships.

#### **2. Culturally Responsive Practices:**

- **Culturally Responsive Job Descriptions:** We will develop culturally responsive job descriptions that highlight the unique opportunities and challenges of working in a diverse school district. We will emphasize the importance of understanding diverse cultures, actively seeking individuals with experience working with diverse populations, and explicitly stating a commitment to equity and inclusion. Examples of phrases to be included are: "demonstrated ability to build relationships across cultures," "knowledge of cultural nuances," and "commitment to anti-bias practices." To ensure cultural sensitivity

and accurate reflection of student needs, AIPAC will review all job descriptions for positions impacting American Indian students.

- **Job Description Review:** We will review current job descriptions annually to ensure the requirements are reflective of the work needed and are free of unintentional bias.
- **Cultural Competency Training for Hiring Managers:** We will train hiring managers on cultural competency and bias-free interviewing. We will adapt interview questions to be culturally sensitive and create a welcoming interview environment.
- **AIPAC Involvement in Interviews:** When possible, AIPAC members will participate as members of interview committees for positions that directly impact American Indian students. Their responsibilities will include reviewing candidate applications, developing culturally relevant interview questions, participating in interviews, and providing feedback on candidates' cultural competency. A formal agreement outlining these responsibilities will be established.

## Retention Strategies for American Indian Staff

### 1. Cultural Competency Development:

- **Regular Training:** We will offer all staff regular cultural competency training on an annual basis, and partner with local tribes for customized training programs when needed.
- **Professional Development:** We will provide professional development opportunities on Indigenous history, culture, and current events.

### 2. Supportive Work Environment:

- **Mentorship Program:** We will establish a mentorship program pairing new American Indian staff with experienced mentors. Mentors will receive training on effective mentoring strategies. The mentorship program will include regular meetings between mentors and mentees, at least once a month, for the first year of employment.
- **Career Development:** We will offer coaching for career development and advancement.
- **Resource Group:** We will create an American Indian Resource Group for networking, support, and cultural exchange.

### 3. Competitive Compensation and Benefits:

- **Competitive Packages:** We will offer competitive salaries and benefits to attract and retain top talent.

### 4. Community Engagement:

- **Cultural Events:** We will organize cultural events and celebrations honoring American Indian heritage and traditions, encouraging staff participation. American Indian staff will have a significant role in the planning and execution of these events.
- **Tribal Partnerships:** We will build strong partnerships with local tribes and community organizations to support American Indian staff.

### 5. Data-Driven Decision Making:

- **Data Collection and Analysis:** We will track and analyze data related to the recruitment, hiring, retention, and promotion of American Indian staff, including application rates, interview success rates, and retention rates. This data will be reviewed quarterly by the Human Resources department and presented to the district leadership team.
- **Data Utilization:** We will utilize data to refine recruitment strategies, retention initiatives, and professional development opportunities.

## 6. Discrimination Complaint Procedure:

- **Formal Complaint Process:** Duluth Public Schools is committed to providing a discrimination-free environment for all staff, including American Indian employees. To ensure a thorough and consistent investigation, the district requires that all discrimination complaints be submitted using the official complaint form available on the Duluth Public Schools website.
- **Accessing the Complaint Form:** The complaint form can be found on the Duluth Public Schools website at <https://www.isd709.org/families/forms>. This form is designed to capture all necessary information to facilitate a complete investigation.
- **Submitting the Complaint:** Completed complaint forms should be submitted online. Staff members who require assistance in completing the form may contact the Human Resources Department for support.
- **Investigation and Confidentiality:** The district will conduct a thorough and impartial investigation of all complaints submitted using the official form, adhering to established timelines and procedures. The investigation will begin within 10 business days of receiving the complaint. The investigation will be completed within 45 business days, unless extenuating circumstances require additional time. All complaints will be handled with confidentiality to the extent possible.
- **Additional Resources:** While the formal complaint form is the preferred method for reporting discrimination, staff members may also seek information or guidance from the Superintendent's Office at (218) 336-8752 or the district's Title IX Coordinator at [anthony.bonds@isd709.org](mailto:anthony.bonds@isd709.org). Complaints may also be filed with external agencies, such as the Minnesota Department of Human Rights or the U.S. Department of Education, Office for Civil Rights.

## Conclusion

Duluth Public Schools believes that our employees are our most valuable asset. The strategies detailed in this plan reflect our dedication to creating a supportive and equitable environment where every individual can thrive. By investing in our workforce, we are investing in the future of our students and our community. We are committed to the ongoing implementation and refinement of this plan, ensuring that Duluth Public Schools remains a destination for talented and passionate educators and support staff.

**COW Agenda Cover Sheet**

**Meeting Date: March 4, 2025**

**Topic: Budget Update**

**Presenter(s): Simone Zunich**

**Attachment (yes) or (no) No**

**Brief Summary of Presentation or Topic (no more than a few sentences): Simone Zunich, Executive Director of Finance & Business Services, will provide a brief verbal budget update as realignment continues.**

**This Requires School Board Approval  Yes  No**

**HR / Business Services Committee**

Duluth Public Schools, ISD 709

Agenda

Monday, March 10, 2025

District Services Center

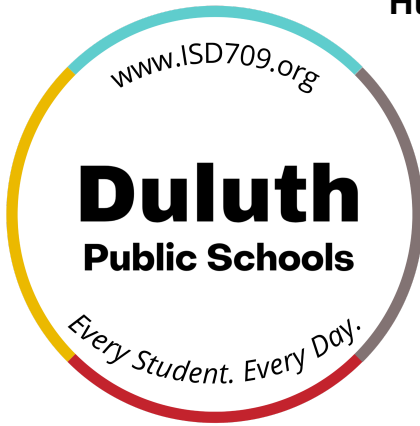
709 Portia Johnson Dr.

Duluth, MN 55811

4:30 PM

<b><u>1. Guest Presentations for this Meeting</u></b>	
<b><u>2. Department Reports</u></b>	
<b>A. Human Resources</b>	
1) HR Monthly Department Summary Report	2
<b>B. Business Services</b>	
1) Enrollment Report	4
2) Child Nutrition Department Report	9
3) Facilities Department Report	11
4) Technology Department Report	14
5) Transportation Department Report	15
<b><u>3. Recommended Resolutions</u></b>	
A. B-3-25-4091 - Acceptance of Donations to Duluth Public Schools	16
<b><u>4. Consent Agenda</u></b>	
A. HR Staffing Report	18
B. Finances	
1) Financial Report	20
2) Fundraisers	21
C. Bids, RFPs, and Quotes	
1) BID #1337 - General Construction Lowell ES	22
2) BID #1338 - Glazing Work Lowell ES	24
D. Contracts, Change Orders and Leases	
1) LEASE - Arvig Building 05.01.25 - 04.31.26	26
2) CONTRACT - DSC Transportation Building Addition (BID #1333 Transportation Building Addition approved 12.17.24)	37
<b><u>5. Miscellaneous Informational Items (no action required)</u></b>	
A. Expenditure Contracts	146
B. No Cost Contracts	211
C. Revenue Contracts - None	
D. Grant Applications	214

# Human Resources Report for March 2025 School Board Meeting Highlighting February 2025 Activities



Department: Human Resources  
HR|Business Services Committee: 03.10.2025  
Regular Board Meeting: 03.18.2025  
Report Prepared By: Theresa Severance

## Manager's Minutes:

- In February, HR Partnered with the Duluth Federation of Teachers leadership to hold a Q&A session with displaced teachers.
- On February 13, HR Leadership attended the Public Employee Labor Relations Associations annual winter conference. Topics presented were focused primarily on the upcoming Minnesota Paid Leave and on using artificial intelligence in public sector HR and Labor Relations.
- On February 26, members of the HR team participated as interview panelists for high school seniors at the Imagine It! Job Seeking Experience at Esko High School. The seniors interviewed were interested in pursuing careers in Early Childhood and Elementary Education.
- The negotiations with the DDWIAA group have completed and we are hopeful to have an approved final contract for the Board in March.

## What We're Working On:

- March springs the start of a very busy job fair schedule for the HR Team. We are currently signed up for fairs at Fond Du Lac Tribal and Community College, Lake Superior College, MN Education Career Expo in Eden Prairie, the St. Cloud State University Job Fair, Virginia JET Job Fair, Black Bear Job Fair, and East and Denfeld High Collaborative Job Fairs.

## Upcoming Changes/Improvements to the Department:

- A draft Recruitment and Retention Plan is being finalized. This plan is crucial for ensuring we can attract and retain high-quality staff to ensure consistent and effective instruction and support for our students.
- The HR Team will be losing their HRIS Analyst position on March 14, and are working closely to ensure a smooth transition of duties.
- The HR team, along with district leadership and principals decided to move to a new system to conduct all employee evaluations. Starting next school year, most staff evaluations will be completed using the Vector Evaluation+ system. This will allow for job-specific evaluations for all employees and supervisors.

**Staffing Report:**

- Certified Appointments - 7
- Certified Leaves - 8
- Certified Resignations - 3
- Certified Retirements - 11

- Non-Certified Appointments - 32
- Non-Certified Leaves - 4
- Non-Certified Resignations - 16
- Non-Certified Retirements - 5

71

**Open Positions:**

Certified:

Teachers (9)

*Middle School (2)*

*High School (1)*

*Special Education (5)*

*Adult Basic Education (1)*

Summer School (15)

Principal (1)

Non-Certified:

Child Nutrition (3)

Maintenance (5)

*Master Electrician (1)*

*Engineer II (1)*

*Second Shift Engineer II (3)*

Playground/Cafeteria Monitor (7)

Transportation (2)

*School Bus Driver II (2)*

Technology (1)

Paraprofessionals (9)

*Certified Lifeguard (1)*

*Cultural Immersion Program Para (1)*

*Educational Sign Language Facilitators (1)*

*Sp. Ed. Building Wide Para (1)*

*Sp. Ed. Program Para LPN (1)*

*Sp. Ed. Program Para LTS (1)*

*Sp. Ed. Paraprofessional Student Specific Setting III (3)*

\*\*\*Additional Department Attachments to Follow this Report on Board Book

2024-2025	Total	Total	K	1	2	3	4	5	6	7	8	9	10	11	12
School	Enroll	Gr 1-5													
Congdon Park 435	473.00	397.00	76.00	78.00	78.00	68.00	83.00	90.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Homecroft 475	451.00	374.00	77.00	68.00	77.00	75.00	76.00	78.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lakewood 500	254.00	211.00	43.00	34.00	43.00	49.00	46.00	39.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lester Park 510	513.00	439.00	74.00	81.00	99.00	77.00	91.00	91.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lowell 520	311.00	253.00	58.00	51.00	47.00	56.00	45.00	54.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lowell Sp Immersion 521	328.00	268.00	60.00	52.00	59.00	61.00	50.00	46.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MacArthur 525	271.00	233.00	38.00	42.00	46.00	54.00	44.00	47.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Myers Wilkins 540	311.15	254.15	57.00	62.00	43.00	53.15	51.00	45.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Piedmont 550	392.00	321.00	71.00	76.00	68.00	60.00	64.00	53.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Stowe 565	231.00	196.00	35.00	43.00	45.00	33.00	38.00	37.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Lincoln Middle 225	671.61	0.00	0.00	0.00	0.00	0.00	0.00	0.00	249.87	242.00	179.74	0.00	0.00	0.00	0.00
Ordean East Middle 335	1077.86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	345.41	377.33	355.12	0.00	0.00	0.00	0.00
AE Online 650	183.79	720 students 46 Open Enrolled, 39 FT Residents, 635 PT Residents average enrollment 0.26 or less than 2 classes						0.00	0.85	0.57	1.28	23.32	53.94	67.65	36.18
Denfeld 215	918.82							0.00	0.00	0.00	0.00	249.28	245.90	246.28	177.36
East 220	1387.08							0.00	0.00	0.00	0.00	397.41	348.73	316.31	324.63
Merritt Creek Academy 81	88.00	34.00	3.00	2.00	8.00	6.00	13.00	5.00	6.00	10.00	10.00	12.00	8.00	4.00	1.00
ALC 611	94.86	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	23.00	31.86	39.00
Chester Creek Academy 575	32.00	20.00	0.00	2.00	1.00	6.00	8.00	3.00	1.00	4.00	1.00	4.00	1.00	1.00	0.00
Rock Ridge Academy 580	40.00	12.00	2.00	1.00	2.00	3.00	2.00	4.00	3.00	3.00	3.00	5.00	6.00	4.00	2.00
Arrowhead Academy 605	13.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.00	3.00	1.33	4.00	2.00
Bethany Crisis Shelter 615	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Hospitals 630	20.00	2.00	0.00	0.00	0.00	1.00	1.00	0.00	2.00	2.00	3.00	2.00	8.00	1.00	0.00
The Bridge 950	21.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	21.00
<b>Total:</b>	8083.50	3014.15	594.00	592.00	616.00	602.15	612.00	592.00	608.13	638.90	556.14	697.01	695.90	676.10	603.17

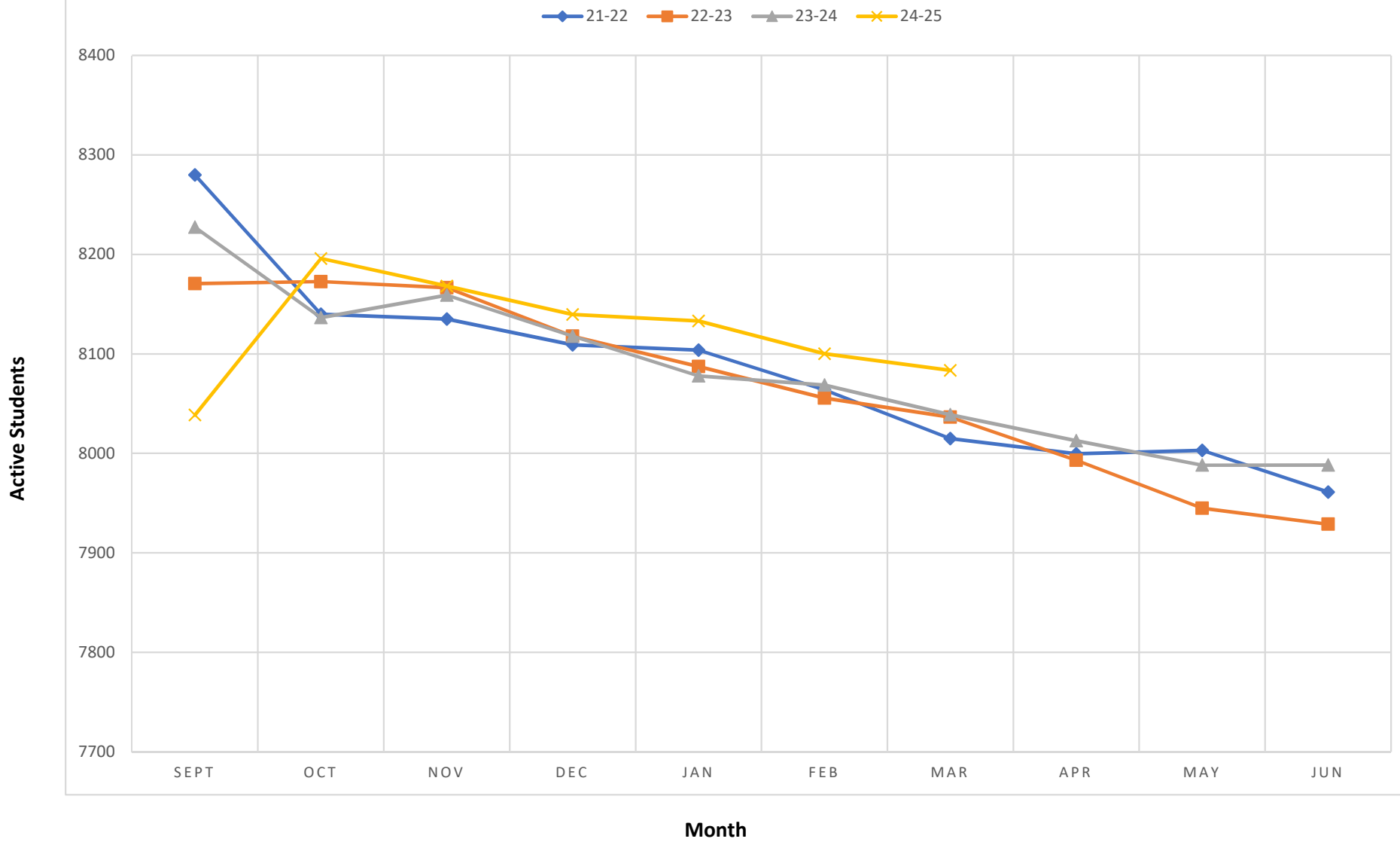
**2024-2025**  
**Month to Month Enrollment Changes by School**

Month to Month	EOY	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Current	MtoM	YTD	FROM
2024-2025	23-24	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Month Dif	Net		Current Month-EOY
Congdon Park 435	478.00	471.00	476.00	476.00	472.00	468.00	471.00	473.00	0.00	0.00	0.00	2.00		2.00	-5.00
Homecroft 475	440.00	447.00	448.00	448.00	447.00	453.00	453.00	451.00	0.00	0.00	0.00	-2.00		4.00	11.00
Lakewood 500	246.00	253.00	254.00	256.00	255.00	254.33	256.33	254.00	0.00	0.00	0.00	-2.33		1.00	8.00
Lester Park 510	527.00	509.00	510.00	511.00	514.00	515.00	511.00	513.00	0.00	0.00	0.00	2.00		4.00	-14.00
Lowell 520	297.50	308.00	312.00	312.00	312.00	314.00	314.00	311.00	0.00	0.00	0.00	-3.00		3.00	13.50
Lowell Immersion 521	335.00	330.00	329.00	330.00	330.00	329.00	327.00	328.00	0.00	0.00	0.00	1.00		-2.00	-7.00
MacArthur 525	283.00	251.00	254.00	260.00	259.00	259.00	266.00	271.00	0.00	0.00	0.00	5.00		20.00	-12.00
Myers Wilkins 540	307.00	307.00	317.00	309.00	309.00	312.00	313.14	311.15	0.00	0.00	0.00	-1.99		4.15	4.15
Piedmont 550	395.00	388.00	394.00	391.00	393.00	394.00	396.00	392.00	0.00	0.00	0.00	-4.00		4.00	-3.00
Stowe 565	227.00	231.00	229.00	226.00	227.00	231.00	231.00	231.00	0.00	0.00	0.00	0.00	-3.32	0.00	4.00
Lincoln Middle 225	612.35	664.00	674.00	672.28	677.28	673.05	672.87	671.61	0.00	0.00	0.00	-1.26		7.61	59.26
Ordean East Middle 335	1095.25	1078.55	1085.41	1086.74	1085.74	1083.74	1082.86	1077.86	0.00	0.00	0.00	-5.00	-6.26	-0.69	-17.39
AE Online 650	179.76	81.37	123.51	122.08	138.29	136.56	186.56	183.79	0.00	0.00	0.00	-2.77		102.42	4.03
Denfeld 215	902.60	949.90	994.41	978.69	959.46	952.33	928.03	918.82	0.00	0.00	0.00	-9.21		-31.08	16.22
East 220	1386.45	1508.58	1505.05	1499.62	1470.04	1470.06	1388.36	1387.08	0.00	0.00	0.00	-1.28	-13.26	-121.50	0.63
Merritt Creek Academy 81	81.85	69.00	74.71	79.71	81.00	84.00	86.74	88.00	0.00	0.00	0.00	1.26		19.00	6.15
ALC Seat Based 611	71.55	73.86	88.58	87.86	85.00	86.01	88.01	94.86	0.00	0.00	0.00	6.85		21.00	23.31
Chester Creek Academy 575	32.00	27.00	31.00	31.00	30.00	29.00	31.00	32.00	0.00	0.00	0.00	1.00		5.00	0.00
WHA RRA 580	35.18	34.00	36.00	39.00	40.00	44.00	37.00	40.00	0.00	0.00	0.00	3.00		6.00	4.82
Arrowhead Academy 605	18.00	17.00	18.00	15.00	14.33	11.00	14.33	13.33	0.00	0.00	0.00	-1.00		-3.67	-4.67
Bethany Crisis Shelter 615	0.25	0.25	0.25	0.25	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00		-0.25	-0.25
Hospitals 630	22.66	15.00	17.00	13.00	16.00	11.00	25.00	20.00	0.00	0.00	0.00	-5.00		5.00	-2.66
The Bridge 950	14.85	25.00	25.00	24.00	24.00	23.00	21.00	21.00	0.00	0.00	0.00	0.00	6.11	-4.00	6.15
<b>Total:</b>	<b>7988.25</b>	<b>8038.51</b>	<b>8195.92</b>	<b>8168.23</b>	<b>8139.64</b>	<b>8133.08</b>	<b>8100.23</b>	<b>8083.50</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>		<b>-16.73</b>	<b>44.99</b>	<b>95.25</b>
<b>Change</b>		50.26	157.41	-27.69	-28.59	-6.56	-32.85	-16.73	0.00	0.00	0.00				
<b>Adult Learners</b>			541.00	588.00	652.00	750.00	841.00	881.00				40.00			

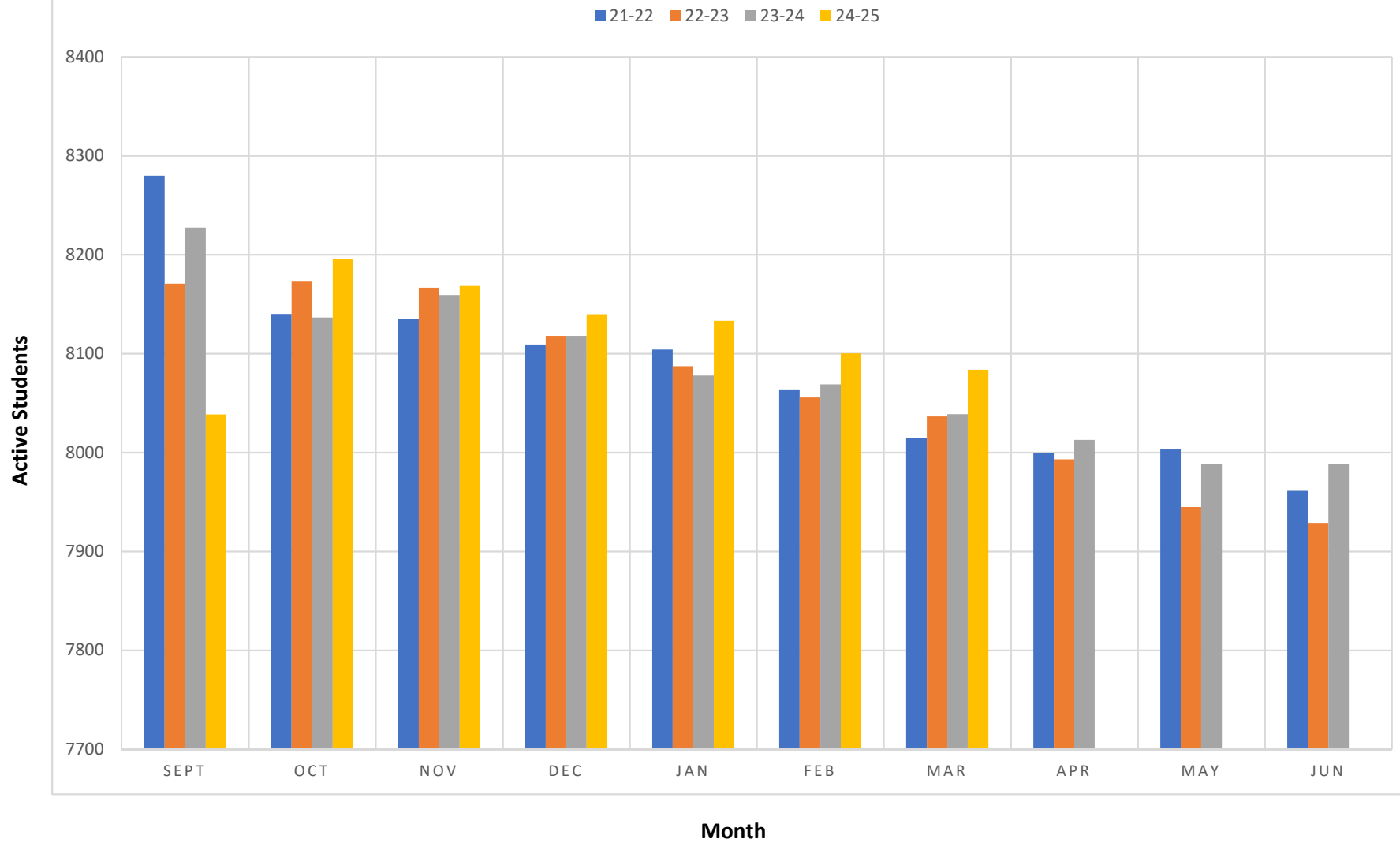
**2024-2025**  
**Month to Month Enrollment Changes by Grade**

Month to Month	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Current	MtoM	YTD	Current
2024-2025	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Month Dif	Net		Avg
EC	114.00	258.00	269.00	290.90	307.90	335.33	356.49	0.00	0.00	0.00	21.16		242.49	275.95
PK	0.00	59.00	73.00	73.10	72.10	70.67	71.51	0.00	0.00	0.00	0.84	22.00	71.51	59.91
KA	140.00	143.00	142.00	142.00	143.00	147.00	146.00	0.00	0.00	0.00	-1.00		6.00	143.29
KG	436.25	448.00	448.00	448.00	447.00	450.00	448.00	0.00	0.00	0.00	-2.00		11.75	446.46
1	585.00	587.00	591.00	590.00	592.00	594.00	592.00	0.00	0.00	0.00	-2.00		7.00	590.14
2	610.00	614.00	616.00	612.00	615.00	615.00	616.00	0.00	0.00	0.00	1.00		6.00	614.00
3	599.00	605.00	601.00	605.00	605.33	603.33	602.15	0.00	0.00	0.00	-1.18		3.15	602.97
4	604.00	608.00	609.00	603.00	607.00	608.14	612.00	0.00	0.00	0.00	3.86		8.00	607.31
5	579.00	586.00	583.00	585.00	590.00	597.00	592.00	0.00	0.00	0.00	-5.00		13.00	587.43
6	606.41	611.41	612.41	616.41	609.28	608.28	608.13	0.00	0.00	0.00	-0.15	-6.47	1.72	610.33
7	626.00	641.00	633.94	639.94	641.94	638.90	638.90	0.00	0.00	0.00	0.00		12.90	637.23
8	551.28	551.28	554.95	550.95	551.85	556.14	556.14	0.00	0.00	0.00	0.00	0.00	4.86	553.23
9	680.99	698.28	692.28	696.00	694.57	696.58	697.01	0.00	0.00	0.00	0.43		16.02	693.67
10	663.81	697.57	693.82	694.10	692.43	694.61	695.90	0.00	0.00	0.00	1.29		32.09	690.32
11	686.87	724.99	717.41	697.26	690.27	678.85	676.10	0.00	0.00	0.00	-2.75		-10.77	695.96
12	669.90	680.39	673.42	659.98	653.41	612.40	603.17	0.00	0.00	0.00	-9.23	-10.26	-66.73	650.38
<b>K 12 Total:</b>	8038.51	8195.92	8168.23	8139.64	8133.08	8100.23	8083.50	0.00	0.00	0.00	-16.73	-16.73	44.99	8122.73
<b>Change</b>		157.41	-27.69	-28.59	-6.56	-32.85	-16.73	0.00	0.00	0.00				

### ISD 709 ACTIVE ENROLLMENT BY MONTH



### ISD 709 ACTIVE ENROLLMENT BY MONTH





## Child Nutrition Report for March 2025 School Board Meeting Highlighting February 2025 Activities<sup>77</sup>

Department:	Child Nutrition
HR Business Services Committee:	03.10.2025
Regular Board Meeting:	03.18.2025
Report Prepared By:	Sheila Oak

### What We're Working On:

- Planning menus for next year and purchasing commodity food products from USDA

### Upcoming Changes/Improvements to the Department:

- Working on health department requirements to bring meals to the ALC students

### Staffing Report:

- Moving a currently vacant job from Lowell to Myers Wilkins in anticipation of more students next year at Myers.

### Stats in the Spotlight:

- Year to date meal counts on additional page.

\*\*\*Additional Department Attachments to Follow this Report on Board Book

Monthly counts 2024 2025	Breakfast										Daily	
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	TOTALS	Average
Congdon	2014	2237	2194	1715	2035	1424					11619	110
Denfeld	3568	4330	3784	2997	3619	2848					21146	199
East High	4171	4834	4194	3209	3807	3154					23369	220
Homecroft	2691	3040	2706	2052	2647	2010					15146	78 143
Lakewood	1906	2035	1908	1553	1862	1362					10626	100
Lester Park	2758	3240	2883	2206	2858	1972					15917	150
Lincoln park Middle	3581	4273	3789	3385	3870	3121					22019	208
Lowell	5091	6988	6637	4363	5553	4162					32794	309
Laura Macarthur	3547	2729	3269	2717	3266	2480					18008	170
Myers-Wilkins	3388	3559	3097	2407	3887	2282					18620	176
Ordean/East Middle	2464	3122	2625	2076	2265	1759					14311	135
Piedmont	5707	5489	4619	3712	440	3297					23264	219
Rockridge	435	384	416	352	4449	320					6356	60
Stowe	3165	3357	2797	2415	160	2251					14145	133
ALC	236	271	220	140	155	103					1125	11
	<b>44722</b>	<b>49888</b>	<b>45138</b>	<b>35299</b>	<b>40873</b>	<b>32545</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>248465</b>	<b>2345</b>
	Lunch										Daily	
	Sept	October	Nov	Dec	Jan	Feb	Mar	April	May	June		Average
Congdon	6426	6800	6140	5149	6242	4718					35475	335
Denfeld	10485	10449	9042	7433	9128	6847					53384	504
East High	10680	12267	10578	9298	11711	8771					63305	597
Homecroft	6524	6939	6136	5321	6528	4893					36341	343
Lakewood	3580	3927	3325	3178	3610	2668					20288	191
Lester Park	7101	7738	7046	6024	7065	5334					40308	380
Lincoln park Middle	9659	9505	8214	6873	8141	6059					48451	457
Lowell	9358	10118	8898	7456	9333	6906					52069	491
Laura Macarthur	4132	4244	3785	3107	3889	2903					22060	208
Myers-Wilkins	5222	5322	4565	3826	4730	3717					27382	258
Ordean/East Middle	13664	13504	11187	10531	12827	9931					71644	676
Piedmont	6871	5645	5724	4702	5749	4307					32998	311
Rockridge	490	498	522	400	546	368					2824	27
Stowe	3340	3587	3154	2603	3311	2441					18436	174
ALC	471	458	484	279	268	261					2221	21
											<b>527186</b>	<b>4973</b>
Supper	0	1184	987	960	1124	788					5043	75
Harbor City	1611	1784	1570	1274	1408	1243					8890	84
	<b>99614</b>	<b>103969</b>	<b>91357</b>	<b>78414</b>	<b>95610</b>	<b>72155</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1068305</b>	<b>10106</b>
Head Start	Breakfast											
Congdon	19	73	50	57	72	60					331	
Homecroft	38	150	137	114	159	98					696	
Lester Park	45	135	97	113	143	91					624	
Lowell	88	385	353	266	344	239					1675	
Laura Macarthur	39	368	299	262	377	256					1601	
Myers-Wilkins	157	710	616	503	697	474					3157	
Piedmont	47	265	233	221	255	191					1212	
Stowe	25	144	129	107	170	113					688	
	<b>458</b>	<b>2157</b>	<b>1864</b>	<b>1586</b>	<b>2145</b>	<b>1462</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	9984	
Head Start	Lunch											
Congdon	38	150	99	113	136	109					645	
Homecroft	38	149	137	114	171	98					707	
Lester Park	26	249	185	192	242	159					1053	
Lowell	88	1154	353	266	343	237					2441	
Laura Macarthur	38	375	385	264	384	259					1705	
Myers-Wilkins	157	710	616	503	670	474					3130	
Piedmont	59	380	353	365	372	260					1789	
Stowe	25	141	118	102	157	113					656	
	<b>469</b>	<b>3158</b>	<b>2147</b>	<b>1806</b>	<b>2339</b>	<b>1600</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
AFTERSCHOOL SNACK												
Congdon	2030	2188	1905	1590	2022	840					10575	
Lincoln park Middle	667	926	910	728	1111	750					5092	
Lowell	2153	2486	2148	1775	2057	1728					12347	
Laura Macarthur	322	615	456	384	690	305					2772	
Myers-Wilkins	319	578	608	449	446	628					3028	
Piedmont	912	553	757	721	746	645					4334	
Stowe	450	490	473	356	429	326					2524	
	<b>6853</b>	<b>7836</b>	<b>7257</b>	<b>6003</b>	<b>7501</b>	<b>5222</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
Total meals/snacks	<b>152,116</b>	<b>167,008</b>	<b>147,763</b>	<b>123,108</b>	<b>148,468</b>	<b>112,984</b>	-	-	-	-	<b>851,447</b>	
Days of service	20	20	18	15	19	14						106
Average meals per day	7,606	8,350	8,209	8,207	7,814	10 8,070	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!		
2023 2024 school year												
Total meals/snacks	<b>146,876</b>	<b>167,167</b>	<b>167,232</b>	<b>111,724</b>	<b>165,368</b>	<b>130,783</b>	<b>143,844</b>	<b>137,096</b>	<b>181,297</b>	<b>19,559</b>	<b>1,370,946</b>	
Days of service	19	20	20	14	20	16	18	17	22	3		172
Average meals per day	6,676	8,358	8,362	7,980	8,268	8,174	7,991	8,064	8,241	6,520		

# Facilities Report for March 2025 School Board Meeting Highlighting February 2025 Activities



Department:	Facilities
HR Business Services Committee:	03.10.2025
Regular Board Meeting:	03.18.2025
Report Prepared By:	Jeremy DeGraef   Corey Karren

## Manager's Minutes:

Over the February break, the district Building Operations staff executed a widespread plan encompassing a wide range of essential tasks across the district. Preventive maintenance checks and repairs were prioritized, alongside the replacement of numerous light bulbs and fan filters, ensuring optimal building functionality. Equipment repairs were addressed promptly, and new staff members received thorough training. Intensive cleaning efforts included carpet and entry rug extraction, deep cleaning of classrooms, hallways, stairways, bathrooms, and gyms, and a complete remodel and cleanup of a computer lab. Throughout this period, the team successfully maintained the building operations for scheduled events, KeyZone and community educational programs, demonstrating a commitment to both proactive maintenance and seamless day-to-day service for our students and community.

## What We're Working On:

- Organized storage spaces, consolidating and discarding old, broken furniture.
- Conducted a thorough inventory and organization of cleaning products and supplies.
- Maintained safe building access by keeping sidewalks clear of ice and snow.
- Provided comprehensive training for new employees.
- Upheld consistent cleaning standards throughout all facilities
- Identified a shortage of student desks, encountering aging desks nearing the end of their usable life.
- Prepared for the kick-off of spring sports and the seasonal opening of the stadium.

## Upcoming Changes/Improvements to the Department:

- A new monthly meeting is being initiated with building engineers to facilitate discussions about building needs and issues.

## Staffing Report:

- We are successfully filling custodian openings, but continuing to face challenges in recruiting and filling Licensed Engineer positions.
- Jessica Davis, Custodian at East has been promoted to Second Shift Engineer 1 for Myers-Wilkins.
- New employees: Nick Murray working as Floating Custodian, Sierra Murray Floating Custodian and Chris Thomson Custodian at Ordean.
- Maintaining the quality standards of building cleanliness and safety.

# Safety Report for March 2025 School Board Meeting Highlighting February 2025 Activities<sup>80</sup>



Department: Safety  
HR|Business Services Committee: 03.10.2025  
Regular Board Meeting: 03.18.2025  
Report Prepared By: Lexie Neff, CSP

## Manager's Minutes:

- February was a quiet month in regards to safety updates. The annual staff safety survey was sent out, and some routine chemical pickups were completed.

## What We're Working On:

- **Audits & Inspections**
  - "Safe at Work" anonymous survey was sent to all ISD 709 employees to gather workplace safety and crisis plan opinions and opportunities for growth - 491 responses so far, closes March 31.
  - Congdon Park state fire inspection for HeadStart complete - Corrections completed. Waiting on confirmation of closure.
  - Denfeld Automotive lift inspections started - Inspections have all passed, waiting on final report
  - Obtaining quotes for additional asbestos identification at 1st St building.
  - Respirable dust testing being conducted in East HS woodshop Thursday 3/6.
- **Regulatory Reporting**
  - OSHA ITA data submitted
  - Community Right to Know Tier II report submitted for Lakewood Fuel Oil Tank
- **Systems & Technology Updates**
  - Radio repeater assessments at Lincoln Park Middle School and East High School in progress.
- **Training**
  - Hazard Prediction training including conducting a Job Hazard Analysis (JHA) was offered at Para professional development day on February 24th
- **Chemical and Hazardous Waste Disposal**
  - Hand sanitizer pickup from Laura MacArthur - Done
  - Paint Pickup from Facilities - Done
  - Paint pickup from Denfeld - to be done in March
  - Wet Specimen and chemical pickup for Ordean East - to be done in March
- **Document Updates**
  - Goal to complete a thorough review of all HSE procedure documents and policies in FY25.
    - Progress: 5/51 (1%)

- Lead Paint Management plan sent to Occupational Safety Committee and Facilities Manager for review and approval.

- **School Crisis Prevention**
  - Policy 806 finalized
  - Policy 903 being reviewed

**Stats in the Spotlight:**

- **Injury and Incident Statistics (2024 District summary)**
  - **OSHA recordable rate (TRIR) (Goal ≤ 1.0): 2.19**
  - Total OSHA recordable cases: 22
  - Days away cases: 4
  - Days away: 105
  - Work restriction cases: 4
  - Work restriction days: 404
  - DART Rate: 0.80
  - Other recordables: 14
  - First aid only injuries: 105
  - Hazard reports: 28
- **Injury and Incident Statistics (2025 District summary)**
  - **OSHA recordable rate (TRIR) (Goal ≤ 1.0): 4.23**
  - Total OSHA recordable cases: 8
  - First aid only injuries: 16
  - Hazard reports: 4

**Incidents - Employee Injuries by Cause of Injury (Primary)**



- Struck By
- Strain or Sprain
- Illness, Exposure to Bodily Fluids
- Injured by Student
- Fall, Slip, or Trip



# Technology Report for March 2025 School Board Meeting Highlighting February 2025 Activities<sup>82</sup>

Department:	Technology
HR Business Services Committee:	03.10.2025
Regular Board Meeting:	03.18.2025
Report Prepared By:	Peter Graves

### Manager’s Minutes:

- The technology department continues to work on providing a safe and stable environment for our staff, students, and community.

### What We’re Working On:

- Monitoring the current Chromebook Inventory. This inventory is aging and soon conversations will be needed to talk about future use.
- We continue to monitor our systems for efficiencies, making changes to keep up with dynamic use.

### Upcoming Changes/Improvements to the Department:

- The network team is in the process of upgrading equipment needed to stabilize the network. We’re hoping to see an improvement in performance.

### Staffing Report:

- Posted System Specialist Desktop position to fill vacated position.

### Cybersecurity:

- We continue to gather information and provide feedback to staff on possible threats received through email campaigns.
- Policy Blocked sites(Filter 1) - 4,090,065 (Jan)      2,983,173 (Feb)  
This is the number times a site is blocked based on the policy set for one of our filters.



## Transportation Report for March 2025 School Board Meeting Highlighting February 2025 Activities<sup>83</sup>

Department:	Transportation
HR Business Services Committee:	03.10.2025
Regular Board Meeting:	03.18.2025
Report Prepared By:	Jeremy Kasapidis

### Manager's Minutes:

- Despite limited staffing, we are maintaining daily student transportation services, including routing, bus operations, and safe transport. We are actively refining processes to improve staff efficiency, enhance student safety and alleviate the workload on staff with multiple responsibilities.

### What We're Working On:

- We're working to improve our systems by finishing up the backend data for our field trip software, finalizing the shift of misconduct reports over to Google Docs for easier handling and response, and planning for next school year.

### Upcoming Changes/Improvements to the Department:

- We are applying the principles of trust, teamwork, and professionalism from our recent workplace training. Staff members have been fostering a positive and community-oriented environment through initiatives such as group meals and holiday decorations in common areas

### Staffing Report:

- We are still running on an average of 14% absenteeism with our drivers and helpers
- Voyageur has been helping as much as they can
- Our Van driver has been driving routes daily and we continue to refine his schedule to serve more students
- Our driver trainee has passed her permit and is waiting on the state for the card. Once received she will begin the driving portion of her training. In the meantime, she is acting as a substitute helper which also helps train her for dealing with students on the bus.

### Stats in the Spotlight:

- Average mileage this month is 91,066. Our goal is to have an average of 50-60k miles.

## RESOLUTION

### Acceptance of Donations to Duluth Public Schools

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

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

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

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

SCHOOL	DONOR	AMOUNT	RESTRICTION	COMMENTS
Denfeld HS	Jodi Bergh	\$765.00	Track Team	Memorial donation on behalf of her late husband Roger -
Denfeld HS	Dale & Jennifer Kukiela	\$20.00	Track Team	Roger Burgh memorial donation
Denfeld HS	Jessica Manor	\$50.00	Debate Team	GiveMN
Denfeld HS	Joan Hesin	\$5.00	Debate Team	GiveMN
Denfeld HS	Cheryl Ward	\$25.00	Debate Team	GiveMN
Denfeld HS	Henry Eichman	\$5.00	Debate Team	GiveMN
Denfeld HS	Anonymous	\$5.00	Debate Team	GiveMN
Denfeld HS	Anonymous	\$5.00	Debate Team	GiveMN
Denfeld HS	Ron and Theresa Lorentz	\$1,800.00	The donation is designated to be used for Denfeld's DCD/ASD Setting 3 programs.	
Head Start	Jane Killough	\$50.00	Head Start Fuel Cards	
Lincoln Park MS	Christine Good	In-kind	Clothes Closet	Christine stated that these yearly donations are in memory of her husband Sam Good.
Lincoln Park MS	Dave Broska	In-kind		Various Art, Gym, Math items for students
Myers-Wilkins ES	Phi Sigma Sigma	\$3,206.28	Sources of Strength	We have the invoice for \$3000 for the curriculum. The other \$206.28

	Foundation		Curriculum	is for a para reimbursement. 85
Myers-Wilkins ES	Toppers Pizza	\$36.26		
Washington Center ECFE	Whole Foods Coop	\$200.00	ECFE Family Resource Navigation / Help Me Connect \$5 Incentive Gift Cards	

**HUMAN RESOURCES ACTION ITEMS FOR: March 10, 2025**

<b><u>CERTIFIED APPOINTMENT</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
BROMAN, NANCY E	MATH INTERVENTIONIST TOSA/MYERS WILKINS, (MA+45) IV 9, 0.6, GALLINGER C. RETIRED	01/16/2025
DOWNEY, ASHLEY M	SPED SOCIAL WORKER/DISTRICT WIDE, (MA+45) IV 9, 1.0, JARVIS H. TRANSFER	02/24/2025
JACKSON, GARY A	LTS VOCAL MUSIC TEACHER/ORDEA EAST, (BA+45) III 8, 1.0, Rodrigues G. LOA	02/24/2025
KEENEY, MCKENZIE K	LTS SPED RESOURCE TEACHER/EAST, (BA) III 1.0, SWANSON S. MATERNITY LEAVE	01/08/2025
NIELSEN, JULIA J	SPED EBD RESOURCE TEACHER/DENFELD, (BA) III 1, 1.0, NETTLETON J. RESIGNED	02/24/2025
PETRICH, HOLLY C	SPED ASD SETTING III TEACHER/PIEDMONT, (MA) IV 5, 1.0, JORGENSEN M. TRANSFER	01/22/2025
SOINE, VICTORIA L	LTS SEB SPECILAIST TOSA/MYERS-WILKINS, (BA) III 1, 1.0, FRISCHMANN B. LOA	02/26/2025
<b><u>CERTIFIED LEAVES</u></b>	<b><u>POSITIONS</u></b>	<b><u>EFFECTIVE DATES</u></b>
CARLAND, DANIEL J	SPED ELEMENTARY RESOURCE/PIEDMONT	05/19/2025 06/06/2025
LONG, CATHERINE G	PAWS PROG COORD - DENFELD HS	02/28/2025 04/11/2025
PIERRE, MARGARET L	PREKINDERGARTEN/MYERS WILKINS	08/25/2025 06/05/2026
ROSS, SYDNEY P	SPED RESOURCE TEACHER/DENFELD	08/25/2025 11/14/2025
SUNDELL, VICTORIA L	MENTAL HEALTH COORDINATOR/DW	02/25/2025 02/25/2026
TEMPLE-RHODES, VIRGINIA S	ADULT BASIC ED - DAE	01/02/2025 03/02/2025
WADE, MATTHEW P	READING INTERVENTIONIST/HOMECROFT	08/25/2025 06/05/2026
WOHLWEND, ALEXANDRA A	SPED SCHOOL NURSE/DISTRICT WIDE	08/25/2025 11/17/2025
<b><u>CERTIFIED RESIGNATION</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
BORAK, CHARLES E	DEAN OF STUDENTS - ORDEAN-EAST MS	03/28/2025
HUGHES, KIM M	SPED SETTING III/IV - DENFELD HS	06/06/2025
MIX, JODI A	SPED ECSE - DW	06/06/2025
<b><u>CERTIFIED RETIREMENT</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
BEAUDRY, MELINDA L	GRADE 4 - LAKEWOOD ES-REVISED FROM 7/1/25	06/06/2025
BEETCHER, CHERYL L	KINDERGARTEN - STOWE ES	06/06/2025
BERGMAN, HELEN E	GRADE 2 - STOWE ES	06/06/2025
HANNU, DEBRA A	VISUAL ARTS - ORDEAN-EAST MS	06/06/2025
JOHNSTON, DAN L	SPED SEC SETTING III/IV - EAST HS	02/14/2025
KOLAR, PATRICIA J	GRADE 2 - CONGDON PARK ES	06/06/2025
MILLER, JENNIFER E	CTE GRAPHIC ARTIST TEACHER- EAST & DENFELD HS	06/06/2025
PAQUETTE, BARBARA A	SPED RESIDENTIAL - MERRITT CREEK ACADEMY	07/11/2025
VAN DRUTEN, SUSAN K	ENGLISH - EAST HS	08/26/2025
VAN LOH, JANE F	PRE K - HOMECROFT ES	06/06/2025
VICHE, LEIGH ANN	SPED DAPE - LESTER PARK ES	06/06/2025
<b><u>NON-CERT APPOINTMENT</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
ANDERSEN, MISTY D	CERTIFIED LANGUAGE INTERPRETER PARA/DISTRICT WIDE, 31.25/38WKS, \$36.88/HR	02/24/2025
ARVIDSON-HICKS, KAELENE E	HOURLY MONITOR/LAKEWOOD, 23/38WKS, \$15.00/HR	01/06/2025
BAER, APRIL N	BUS HELPER/TRANSPORTATION, 25/38WKS, \$16.90/HR	01/21/2025
BURGOON, JERAMIE M	SUPERVISORY PARA/LINCOLN PARK, 33.75/38WKS, \$20.37/HR, DEHNKE K. LEAVE FOR STUDENT TEACHING	02/03/2025
CHASTEY, KELLY M	ECFE PARAPROFESSIONA/PIEDMONT, 8/38WKS, \$19.54/HR, GEER M. TRANSFER	01/28/2025
CHUDOMELKA, ANTONIN J	HOURLY MONITOR/LAURA MACARTHUR, 23/38WKS, \$15.00/HR	02/03/2025
COBB, SCOTT S	HOURLY PAINTER/DISTRICT WIDE, 23/UP TO 67 WORKING DAYS, \$27.14/HR	02/03/2025
FOLDESI, MARK T	SPED STUDENT SPECIFIC PARA/LINCOLN PARK, 33.75/38WKS, \$21.42/HR	02/24/2025
GRAMS, ADELINE G	ECSE PARAPROFESSIONAL/DISTRICT WIDE, 25.25/38WKS, \$19.74/HR, GERSICH B. TRANSFER	02/24/2025
GROSS, MOLLY J	SPED PROGRAM PARA/PIEDMONT, 31.25/38WKS, DECAMBALIZA S. RESIGNED	01/21/2025
HABBERSTAD, PAIGE E	SPED KEYZONE PARA/PIEDMONT, 15/38WKS, \$19.88/HR	01/21/2025
HARYU, RIAN A	CUSTODIAN I/EAST, 40/52WKS, \$17.52/HR, HAKALA W. RESIGNED	02/18/2025
HATHAWAY, ANGEL R	HOURLY DISHWASHER/MYERS-WILKINS, 12/38WKS, \$14.00/HR	02/03/2025
HELGESON, SARA T	SPED PROGRAM PARA/CHESTER CREEK, 31.25/38WKS, \$21.07/HR, LAUDERBAUGH G. RESIGNED	01/21/2025
KOCHEVAR, PETER G	VAN DRIVER/TRANSPORTATION, 40/38WKS, \$20.03/HR	02/10/2025
LAYMAN, ANTHONY J	SUPERVISORY PARA/EAST, 33.75/38WKS, \$20.34/HR, TROMBLEY M. RESIGNED	01/28/2025
LOFALD, ERIK C	SUPERVISORY PARA/DENFELD, 33.75/38WKS, FLORESTANO M. TRANSFER	01/06/2025
LYONS, MICHELLE R	HOURLY MONITOR/MYERS-WILKINS, 23/38WKS, \$15.00/HR	01/28/2025
MCGUIRE, PEGGY S	NUTRITIONAL SERVICE ASST/LINCOLN PARK, 30/38WKS, \$15.68/HR, PAULSON L. RESIGNED	01/28/2025
MIELKE, KRISTA E	HOURLY MONITOR/LAURA MACARTHUR, 23/38WKS, \$15.00/HR	01/03/2025
MILLER, DILLEYONA D	BUS DRIVER/TRANSPORTATION, 25/38WKS, \$23.08/HR, JOHNSON J. RESIGNED	02/03/2025
MURRAY, NICHOLAS E	FLOATING CUSTODIAN/DISTRICT WIDE, 40/52WKS, \$18.49/HR,	02/12/2025
MURRAY, SIERRA L	FLOATING CUSTODIAN/DISTRICT WIDE, 40/52WKS, \$18.49/HR	02/12/2025
NELSON, EMILY A	SPED BUILDING WIDE PARA/LESTER PARK, 31.25/38WKS, \$20.04/HR, SPECHT D. TERM	02/10/2025
PRICE, MELISSA A	EXECUTIVE ASSISTANT/TLE, 40/52WKS, \$22.70/HR, BRAUN W. RETIRED	03/03/2025
ROSS, ELIZABETH S	SPED BUILDING WIDE PARA/MYERS-WILKINS, 31.25/38WKS, \$20.04/HR, LONGAKER S. RESIGNED	02/24/2025
RYZAK, WILLIAM J	HOULRY DISHWASHER/DISTRICT WIDE, 12/38WKS, \$14.00/HR	01/06/2025
SIEMSEN, MARY B	SPED PROGRAM PARA/DISTRICT WIDE, 31.25/38WKS, \$22.49/HR, BECKER A. RESIGNED	03/10/2025
TERESI, WENDY L	PRESCHOOL PARA/PIEDMONT, 23/38WKS, \$21.35/HR, CURNOW L. TRANSFER	01/09/2025
THOMSON, CHRISTOPHER J	CUSTODIAN I/ORDEAN EAST, 40/52WKS, \$17.52/HR, THOMPSON E. RESIGNED	02/24/2025
WHITE, SHEILA L	COORDINATOR OF INDIAN ED/DISTRICT WIDE, \$1,979/WEEK, 48 WKS, GARBOW J. RESIGNED	01/13/2025
WORGREN, JOSHUA S	NETWORK ENGINEER 1/TECHNOLOGY, \$1,456/WK, LITWIN D.	02/24/2025
<b><u>NON-CERT LEAVES</u></b>	<b><u>POSITIONS</u></b>	<b><u>EFFECTIVE DATES</u></b>
BLACK, NEIL J	OSSS - DSC	02/12/2025 05/12/2025
ECKSTROM, ALYSSA M	OFFICE SUPPORT SPECIALIST SENIOR/DSC	04/16/2025 07/07/2025
JOHNSON, ELIZABETH A	PRE SCHOOL PARA - STOWE ES	03/26/2025 05/07/2025
RYME, ROBIN A	DIGITAL INNOVATION SPECIALIST/DW	04/23/2025 07/16/2025

**NON-CERT RESIGNATION**

BECKER, ADAM J  
 BERGESON, JOSEPHINE M  
 COMPO, BERAM L  
 GUY, TONY R  
 JOY, STEPHANIE G  
 KALWITE, MICHELLE R U  
 LOCHNER, HALIE M  
 LONGAKER, SCOTT J  
 LUOTO, KIMBERLY S  
 MCGUIRE, PEGGY S  
 RUSSELL, KEVIN M  
 RYME, EMILY M  
 SHATTO, MILLI  
 THOMPSON, MIRANDA  
 WALLER, DEEDRA E  
 WITUCKI, ASHLEY M

**POSITION**

SPED PROG PARA SETTING III/IV - DW  
 SPED CHILD SPECIFIC SETTING III/IV - CHESTER CREEK ACADEMY  
 BUS DRIVER II - TRANSPORTATION  
 CHILD NUTRITION ASST - LINCOLN PARK MS  
 OSSS - HOMECROFT ES  
 CHILD NUTRITION ASST - LINCOLN PARK MS  
 SPED BW PARA - LAKEWOOD ES  
 SPED BW PARA - MYERS-WILKINS ES  
 SECOND SHIFT ENGINEER 1 - LESTER PARK ES  
 CHILD NUTRITION SERVICE ASST - LINCOLN PARK MS  
 LIFEGUARD PARA - ORDEAN-EAST MS  
 SYSTEM SPECIALIST DESKTOP 1 - DW  
 HOURLY MONITOR - PIEDMONT ES  
 HRIS SPECIALIST - DSC  
 PRE-SCHOOL PROG PARA - STOWE ES  
 PRE K PARA - PIEDMONT ES

**EFFECTIVE DATES**

02/14/2025  
 03/07/2025  
 03/03/2025  
 02/03/2025  
 06/06/2025  
 01/15/2025  
 03/07/2025  
 01/28/2025  
 02/12/2025  
 01/30/2025  
 02/19/2025  
 02/27/2025  
 02/14/2025  
 03/14/2025  
 02/24/2025  
 03/07/2025

**NON-CERT RETIREMENT**

COTTINGHAM, JANE M  
 HALLFRISCH, MONICA M  
 JAZDZEWSKI, MARK W  
 LUOMA, DERYN R  
 MCEWEN, TERRY L

**POSITION**

SPED PROG PARA SETTING III/IV - LAURA MAC ES  
 COMMUNITY LIAISON PARA - STOWE ES  
 UTILITY PERSON II - FACILITIES  
 SPED PROG PARA SETTING III/IV - MYERS-WILKINS ES  
 PRINT SHOP COORD/PRINTER - FACILITIES

**EFFECTIVE DATES**

06/06/2025  
 09/02/2025  
 04/25/2025  
 06/06/2025  
 06/30/2025



**\*\*\*REVISED BUDGET**

**HR/BS Services Committee Monthly Fund Balance Report  
MARCH 10, 2025 Committee Meeting**

**BUDGET SUMMARY**

1/10/2025 Percent spent

REVENUES	24-25		24-25		24-25		24-25		24-25		
	CURRENT YEAR ADOPTED BUDGET		CURRENT YEAR REVISED BUDGET adj		RECEIVED TO YEAR TO DATE		RECEIVED ENCUMBERED		BUDGET BALANCE		
	FUND	Jul-24	JULY 24-25	July -June	July -June	July -June					
General	01	\$ 121,223,653.72	\$ 121,764,312.65	\$ 64,506,116.33	\$ 9,349.24	\$ 57,267,545.56	53%				
<b>REVISED REVENUE- Special Education</b>			<b>\$ 3,759,110.84</b>								
<b>REVISED REVENUE - +32 adm adjustment</b>			<b>\$ 288,000.00</b>	<b>TOTAL REVISED REV = \$4,408,650.74</b>							
<b>REVISED REVENUE- St Louis County tax adj</b>			<b>\$ 361,539.90</b>								
Food Service	02	\$ 6,000,000.00	\$ 6,000,000.00	\$ 2,839,288.00	\$ -	\$ 3,160,712.00	47%				
Transportation	03	\$ 6,332,190.85	\$ 6,332,190.85	\$ 2,057,813.79	\$ -	\$ 4,274,377.06	32%				
Community Ed	04	\$ 8,577,600.00	\$ 8,662,818.02	\$ 4,072,210.20	\$ -	\$ 4,590,607.82	47%				
Operating Capital	05	\$ 2,772,175.43	\$ 2,772,175.43	\$ 736,470.64	\$ -	\$ 2,035,704.79	27%				
Building Construction	06	\$ -	\$ -	\$ -	\$ -	\$ -					
Debt Service Fund	07	\$ 28,067,285.00	\$ 28,067,285.00	\$ 2,413,402.82	\$ -	\$ 25,653,882.18	9%				
Trust Fund	08	\$ 276,100.00	\$ 276,100.00	\$ -	\$ -	\$ 276,100.00	0%				
Dental Insurance Fund	20	\$ 950,000.00	\$ 950,000.00	\$ 755,774.44	\$ -	\$ 194,225.56	80%				
Student Activity	79	\$ 276,264.00	\$ 276,264.00	\$ 286,178.69	\$ -	\$ (9,914.69)	104%				
<b>REVENUES</b>	<b>TOTALS:</b>	<b>\$ 174,475,269.00</b>	<b>\$ 179,509,796.69</b>	<b>\$ 77,667,254.91</b>	<b>\$ 9,349.24</b>	<b>\$ 97,443,240.28</b>	<b>43%</b>				

EXPENSES	24-25		24-25		24-25		24-25		24-25		
	CURRENT YEAR ADOPTED BUDGET		CURRENT YEAR REVISED BUDGET adj		EXPENSES TO YEAR TO DATE		EXPENSES ENCUMBERED		BUDGET BALANCE		
	FUND	Jul-24	JULY 24-25	July - June	July - June	July - June					
General	01	\$ 122,071,417.00	\$ 123,151,409.84	\$ 77,851,987.71	\$ 2,621,395.99	\$ 42,678,026.14	65%				
<b>REVISED EXPENDITURE REDUCTION ESTIMATE ONLY</b>			<b>(\$2,600,000)</b>								
Food Service	02	\$ 6,055,998.00	\$ 6,055,998.00	\$ 3,316,937.07	\$ 1,283,438.62	\$ 1,455,622.31	76%				
Transportation	03	\$ 6,783,799.00	\$ 6,783,799.00	\$ 5,843,791.09	\$ 374,934.82	\$ 565,073.09	92%				
Community Ed	04	\$ 7,817,759.00	\$ 7,926,977.02	\$ 4,680,005.57	\$ 26,469.18	\$ 3,220,502.27	59%				
Operating Capital	05	\$ 6,720,958.43	\$ 6,908,621.43	\$ 5,908,463.44	\$ 546,648.00	\$ 453,509.99	93%				
Building Construction	06	\$ 993,431.57	\$ 993,431.57	\$ 629,028.81	\$ 11,985.00	\$ 352,417.76	65%				
Debt Service Fund	07	\$ 27,393,530.00	\$ 27,393,530.00	\$ 27,392,333.10	\$ -	\$ 1,196.90	100%				
Trust Fund	08	\$ 263,733.00	\$ 263,733.00	\$ -	\$ -	\$ 263,733.00	0%				
Dental Insurance Fund	20	\$ 929,564.00	\$ 929,564.00	\$ 921,313.76	\$ -	\$ 8,250.24	99%				
Student Activity	79	\$ 379,993.00	\$ 379,993.00	\$ 206,323.34	\$ 12,205.24	\$ 161,464.42	58%				
<b>EXPENSES</b>	<b>TOTALS</b>	<b>\$ 179,410,183.00</b>	<b>\$ 178,187,056.86</b>	<b>\$ 126,750,183.89</b>	<b>\$ 4,877,076.85</b>	<b>\$ 49,159,796.12</b>	<b>74%</b>				

Extra Curricular Fund 01 Prog 298  
Revenue \$ 349,001.29  
Expense \$ 376,389.78

**Fundraisers Reported  
February 2025**

The following fundraisers were reported in the above timeframe and per Policy 511–Fundraising, require School Board approval:

<b>School</b>	<b>Organization Fundraising</b>	<b>Estimated Profit</b>	<b>Description of Fundraiser</b>
East HS	Track & Field	\$7,800.00	Email Donations

3/3/2025

Duluth Public Schools  
709 Portia Johnson Drive  
Duluth, MN 55811



1331 Tyler Street NE, Suite 101  
Minneapolis, MN 55413  
ics-builds.com  
(763) 354-2670

**Re:** Lowell Elementary School Misc. Remodeling - REBID  
Duluth, MN 55811

Dear Board Members:

ICS has reviewed the bids that were received on Thursday, February 27, 2025, for the above-referenced project. Our recommendation for award is as follows:

**Work Scope 1 – General Construction**  
Donald Holm Construction – Duluth, MN  
**BASE BID:**

*Bid 1337*

**\$765,710.00**

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**TOTAL**

**\$765,710.00**

**Work Scope 2 – Openings**  
St. Germain’s Glass – Duluth, MN  
**BASE BID:**

**\$135,100.00**

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**TOTAL**

**\$135,100.00**

Based on the recommendations above, we recommend that the District enter into a contract with the above-mentioned contractors for the total bid amount of Nine Hundred Thousand, Eight Hundred Ten Dollars and No/100 Cents (\$900,810.00).

Upon Board action, we will draft a contract reflecting this amount to each of the respective Contractors.

Enclosed are copies of the official bid tabulation, bid forms and bid securities. Please contact us at 763-354-2670 should you have any questions regarding our recommendation.

Sincerely,

Jason Filipek  
ICS Project Manager

**Lowell Elementary School Misc. Remodeling**

OWNER: Duluth Public Schools #709

CONSTRUCTION MANAGER: ICS Consulting, Inc.

ARCHITECT: DSGW Architects



Thursday, February 27, 2025 @ 10:00 a.m.

WORK SCOPE 1 - General Construction

	BIDDER	BIDDER	BIDDER	BIDDER
	Donald Holm Construction Co., Inc. 3211 West 3rd Street Duluth, MN 55806 218-628-2257	Gardner Builders Duluth, LLC 2 West 1st Street, Suite #133 Duluth, MN 55802 218-428-1752	Johnson Wilson Constructors, Inc. 4431 West Michigan Street Suite 1 Duluth, MN 55807 218-626-0202	Intercon Group Inc. 1775 Shilhon Road Duluth, MN 55804 218-464-2876
BID SECURITY	X	X	X	X
ADDENDA REC'D.	X	X	X	X
Acknowledged MN Responsible Contractor:	X	X	X	X
BASE BID:	\$765,710.00	\$799,476.00	\$982,299.00	\$1,264,147.00
COMBINED WS BID:	\$916,848.00	\$939,195.00	N/A	N/A

3/3/2025

Duluth Public Schools  
709 Portia Johnson Drive  
Duluth, MN 55811



1331 Tyler Street NE, Suite 101  
Minneapolis, MN 55413  
ics-builds.com  
(763) 354-2670

**Re:** Lowell Elementary School Misc. Remodeling - REBID  
Duluth, MN 55811

Dear Board Members:

ICS has reviewed the bids that were received on Thursday, February 27, 2025, for the above-referenced project. Our recommendation for award is as follows:

**Work Scope 1 – General Construction**

Donald Holm Construction – Duluth, MN

**BASE BID:** \$765,710.00

---

**TOTAL** **\$765,710.00**

**Work Scope 2 – Openings** *Bid 1338*

St. Germain's Glass – Duluth, MN

**BASE BID:** \$135,100.00

---

**TOTAL** **\$135,100.00**

Based on the recommendations above, we recommend that the District enter into a contract with the above-mentioned contractors for the total bid amount of Nine Hundred Thousand, Eight Hundred Ten Dollars and No/100 Cents (\$900,810.00).

Upon Board action, we will draft a contract reflecting this amount to each of the respective Contractors.

Enclosed are copies of the official bid tabulation, bid forms and bid securities. Please contact us at 763-354-2670 should you have any questions regarding our recommendation.

Sincerely,

Jason Filipek  
ICS Project Manager

**Lowell Elementary School Misc. Remodeling**

OWNER: Duluth Public Schools #709

CONSTRUCTION MANAGER: ICS Consulting, Inc.

ARCHITECT: DSGW Architects



Thursday, February 27, 2025 @ 10:00 a.m.

**WORK SCOPE 2 - Openings**

	BIDDER	BIDDER	BIDDER	BIDDER	BIDDER	BIDDER
	St. Germain's Glass 212 North 40th Avenue West Duluth, MN 55807 218-628-0221	Superior Glass Inc. 7500 Tower Avenue Superior, WI 54880 218-451-6501	United Glass Inc. 1402 Progress Parkway Suite C Eveleth, MN 55734 651-633-2529	Donald Holm Construction Co., Inc. 3211 West 3rd Street Duluth, MN 55806 218-628-2257	Mesabi Glass Window & Door Inc. 510 West 25th Street Hibbing, MN 55746 218-262-2010	Murphy Window and Door 12356 314th Avenue NW Princeton, MN 55371 320-980-1987
BID SECURITY	X	X	X	X	X	X
ADDENDA REC'D.	X	X	X	X	X	X
Acknowledged MN Responsible Contractor:	X	X	X	X	X	X
BASE BID:	\$135,100.00	\$141,600.00	\$149,887.00	\$151,138.00	\$151,480.00	\$242,935.00
COMBINED WS BID:	N/A	N/A	N/A	\$916,848.00	N/A	N/A

**THIS LEASE AGREEMENT**, made and entered into this 21<sup>st</sup> day of February, 2025, by and between Infotel Investments, L.L.C. (hereinafter referred to as "Lessor"), and Independent School District No. 709 (hereinafter referred to as "Lessee", whether one or more).

**WITNESSETH:**

1. **PREMISES & TERMS:** In consideration of the obligation of Lessee to pay rent as herein provided, and in consideration of the other terms, provisions and covenants hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, certain premises (hereinafter referred to as the "Leased Premises" or "premises") situated within the County of St. Louis, State of Minnesota, identified as Suite 300 in the building commonly known as the Arvig Building, consisting of approximately 3,501 usable square feet, as outlined on the floor plan attached hereto as Exhibit A, (hereinafter referred to as the "Building") located at 325 West First Street, Duluth, together with all rights, privileges, easements, appurtenances and immunities belonging to or in any way pertaining to the Leased Premises, and together with the right to use in common with Lessor and other Lessees in the Building, and its and their employees, agents, representatives and invitees, any common areas and facilities of the Building.

To have and to hold for a term of 1 year, commencing on the 1<sup>st</sup> day of May 2025, and ending on the 30<sup>th</sup> day of April, 2026. Lessee acknowledges that it has inspected the Leased Premises and accepts them in their present condition as suitable for the purpose for which they are leased, and further acknowledges that no representations as to the repair of the Leased Premises nor promises to alter, remodel or improve the Leased Premises have been made by Lessor.

**ACCEPTANCE OF PREMISES:** If Lessor does not complete leasehold improvements, if any to be completed by Lessor, and deliver possession of the Leased Premises on or before said commencement date, or if Lessor is unable for reasons beyond its control to deliver possession of the Leased Premises by such date, Lessor shall not thereby be deemed to be in default hereunder, and shall not thereby be liable to Lessee for any loss, damage, cost and expense suffered or incurred by Lessee, nor shall the commencement date of the Lease or the term of the Lease be affected or changed thereby, and Lessee agrees to accept possession of the Leased Premises at such time as Lessor is able to tender the same; provided, however, Lessor hereby waives payment of rent covering any period prior to the tendering of possession to Lessee hereunder.

2. **RENT:** Lessee shall pay to the Lessor as a monthly rent for said premises \$5,707.00, said monthly rent to be paid in advance on the first day of each and every month during the initial term and any extension terms to the initial lease, at the office and to the order of ONEIDA REALTY COMPANY at 1605 Alworth Building, Duluth, Minnesota 55802, or payable to such other person or entity or at such other place as may from time to time be designated by the Lessor in writing. A prorated monthly installment shall be paid at the then current rate for any fraction of a month if the term shall begin on any day except for the first day or shall be terminated on any day except the last day of any month.

3. **ADJUSTMENTS TO RENT:** Effective May 1<sup>st</sup> of each year of this Lease Lessor shall have the right to increase the rent by the same percentage increase in the CPI-U (Consumer Price Index for all urban consumers and for urban wage earners), or a similar index if the CPI-U has been discontinued, from the preceding calendar year. Lessor shall have the further right, and with sixty (60) days written notice, to increase Lessee's rent on May 1<sup>st</sup> of each year of this Lease, by a proportionate share of any increase in ad valorem taxes that are payable for the Building and land in such year in excess of the taxes paid in the immediately preceding calendar year. The proportionate share increase shall be an amount determined by a fraction, the numerator of which shall be the square feet of the Leased Premises, and the denominator being the net rentable area of the Building. The result shall be added to the rent otherwise payable hereunder, and shall be paid in twelve (12) equal monthly amounts commencing at May 1<sup>st</sup>. Lessor shall provide evidence supporting increased rent calculation resulting from CPI increase and/or tax increase.

4. **USE:** The Leased Premises shall be used for the purpose of a general office or school space only. No part of the Leased Premises shall be used for any purpose which constitutes a nuisance or which is illegal, offensive, termed extra hazardous by insurance companies or which may make void or voidable any insurance on the Building or which may increase the premiums therefore, or which will interfere with the general safety, comfort and convenience of the Lessor and

other Lessees of the Building. There shall be no sale of food or beverages by any means without the prior written consent of Lessor. Lessee shall not permit intoxicating liquors to be kept or sold in the Leased Premises. 95

5. **BUSINESS HOURS:** Usual business hours as used herein shall mean the hours between 7:00 A.M. and 5:00 P.M., Monday through Friday, holidays excepted. Lessee shall also have access to the Building between the hours of 5:00 P.M. and 7:00 A.M., Monday through Friday, Saturday, Sundays and holidays but may be required to comply with reasonable security precautions imposed by Lessor.

6. **REPAIRS BY LESSOR:** Lessor shall at its expense maintain the roof, foundation and the structural soundness of the exterior walls of the Building and the heating, air conditioning, plumbing, elevator and electrical systems in good repair, reasonable wear and tear excepted. Lessee shall repair and pay for any damage caused by the act or negligence of Lessee or Lessee's employees, agents, representatives or invitees, or caused by Lessee's default hereunder. Lessee shall immediately give Lessor written notice of defect or need for repairs, after which Lessor shall have reasonable opportunity to repair same or cure such defect. Lessor's liability hereunder shall be limited to the cost of such repairs or curing such defect.

7. **REPAIRS BY LESSEE:** Lessee shall at its own cost and expense maintain all other parts of the Leased Premises in good repair, reasonable wear and tear excepted, and shall take good care of the Leased Premises and its fixtures and permit no waste. Lessee will keep the whole of the Leased Premises in a clean, sanitary and safe condition, and will at the expiration of the term of this Lease or other termination of the term of this Lease, surrender the same to Lessor, broom clean, and in the same order and condition as they were in at the commencement of the term of this Lease, reasonable wear and tear excepted.

8. **ALTERATIONS BY LESSOR:** Lessee shall permit Lessor to make such alterations, renovations, improvements, restorations and/or repairs as, in the judgment of Lessor, may be deemed necessary or desirable for the Leased Premises, for any other premises in the Building, or for the Building itself (Including access to distribution systems above the ceiling of the Leased Premises). Lessor shall use reasonable efforts to not unreasonably interfere with the conduct of Lessees' business, but Lessor shall in no event be liable to Lessee for any damages in connection with such entry.

9. **ALTERATIONS BY LESSEE:** Lessee shall not make any alterations of, or additions to, the Leased Premises without the prior written consent of Lessor. Lessee will not permit any mechanics', laborers' or materialmen's liens to stand against the Leased Premises or the Building for any labor or material furnished to or for the account of Lessee, or claimed to have been so furnished in connection with any work performed or claimed to have been performed in, on or about the Leased Premises.

At the termination of this Lease, Lessee shall, if Lessor so elects, remove all alterations and additions erected by Lessee and restore the Leased Premises to their original condition; otherwise such improvements shall be delivered up to the Lessor with the Leased Premises. All movable office furnishings and trade fixtures installed by Lessee may be removed by Lessee at the termination of this Lease if Lessee so elects, and shall be removed if required by Lessor. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to damage the primary structure or structural qualities of the Leased Premises. Personal property remaining in the Leased Premises at the expiration or termination of the term of this Lease shall be deemed abandoned, and Lessor may dispose of the same as Lessor deems expedient, and at Lessee's expense.

Notwithstanding anything to the contrary contained in this Lease, Lessor shall in all events have the right to prescribe the weight and position of any safes and other heavy equipment placed in or on the Leased Premises by Lessee. Any and all damage or injury to the Leased Premises or the Building caused by moving the property of Lessee in or out of the Leased Premises, or due to the same being in or on the Leased Premises, shall be repaired by Lessee at its sole cost and expense. No equipment, fixtures, furniture or other bulky matter will be received into or carried in the Building, except in or at such places and in such manner as are approved by Lessor, and all moving of Lessee's property in or out of the Leased Premises shall be done only under the direct control and supervision of Lessor; provided, however, that Lessor shall not be responsible for any damage to, or charges for moving such property.

10. **SIGNS:** The Lessee shall not display, inscribe, print, maintain, or affix on any place in or about the Building any sign, notice, legend, direction, figure or advertisement, except on the doors of the Leased Premises

and on the Building Directory, and then only such name(s) and matter, and in such color, size, style, place and materials, as shall first have been approved by the Lessor. The listing of any name other than that of the Lessee<sup>26</sup>, whether on the doors of the Leased Premises, on the Building Directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Leased Premises or be deemed to be written consent of the Lessor, it being expressly understood that any such listing is a privilege extended by Lessor revocable at will by written notice to Lessee. Lessor shall designate all sources furnishing sign painting and lettering, used on the Leased Premises or in the Building. The Lessor also reserves the right to name the Building and to change the name or street address of the Building. Further, Lessor shall have the right to install and maintain a sign or signs on the exterior or interior of the Building.

11. **ACCESS BY LESSOR:** Lessor, its agents and representatives shall be entitled to keep pass keys to the Leased Premises and shall have the right to enter and inspect the Leased Premises at any time for the purpose of ascertaining the condition thereof or in order to make such repairs as may be required to be made by Lessor under the terms of this Lease or as Lessor may deem necessary. During the period that is six (6) months prior to the end of the term hereof, Lessor and Lessor's agents and representatives shall have the right to enter the Leased Premises at reasonable times for the purpose of showing the Leased Premises and shall have the right to erect on the Leased Premises a suitable sign indicating that the Leased Premises are available. Any such entry by Lessor shall never be deemed an eviction or disturbance of Lessee's possession of the Leased Premises, or render Lessor liable to Lessee for damages, or relieve Lessee from the performance of Lessee's obligations under this Lease. The right of entry reserved shall not be deemed to impose any greater obligation on Lessor to clean, maintain, repair or change the Leased Premises than is specifically provided in this Lease. The Lessor, its agents and representatives may at any time in case of emergency enter the Leased Premises and do such acts as Lessor may deem proper in order to protect the Leased Premises, the Building, or any occupants of the Building.

## 12. UTILITIES AND SERVICES

a. **AIR CONDITIONING AND HEAT:** Lessor shall furnish air conditioning, if available to the Leased Premises, and heat for normal purposes only, to provide in Lessor's judgment comfortable occupancy Monday through Friday from 8:00 A.M. to 5:00 P.M., holidays excepted. Lessee agrees not to use any apparatus or device, in or upon or about the Leased Premises, which in any way may increase the amount of such services usually furnished or supplied to the Leased Premises, and Lessee further agrees not to connect any apparatus or device with the conduits or pipes, or other means by which such services are supplied, for the purpose of using additional or unusual amounts of such services, without written consent of Lessor. Should Lessee use such services to excess or request the use of such services at other than operating hours listed above, Lessor reserves the right to charge for such services. The charge shall be payable as additional rental. Should Lessee fail to make payment upon demand of Lessor, such failure shall constitute a breach of the obligation to pay rent under this Lease and shall entitle Lessor to the rights hereinafter granted for such breach. Nothing contained herein shall be construed to require Lessor to furnish air conditioning to the Leased Premises or any portion of the Building not currently served by air conditioning.

b. **ELECTRICAL SERVICE:** Lessor shall maintain electrical facilities to provide sufficient power for lighting, typewriters and other office machines of similar low electrical consumption, but not including electricity required for electronic data processing equipment, special lighting in excess of building standard, and any other item of electrical equipment which (singly) consumes more than .5 kilowatts per hour at rated capacity or requires a voltage other than one hundred twenty (120) volts single phase; and provided that if the installation of said electrical equipment requires additional air conditioning capacity above that provided by the building standard system, then the additional air conditioning installation and Operating Costs will be the obligation of Lessee. Lessee shall pay to Lessor, in addition to the monthly rent, the submetered cost of Lessee's electrical consumption, or, at Lessor's option, one-twelfth (1/12) monthly of an amount equal to one dollar (\$1.00) per square foot of Lessee's occupied space. At the same time and manner as Lessor may increase the monthly rent the Lessor may also increase this fixed rate charge by an amount not greater<sup>26</sup> than five percent (5%) of the amount in effect immediately prior to the effective date of the increase. It is understood that Lessee will use reasonable judgment

in preventing waste. It is understood that Lessor does not warrant that any of the services referred to above will be free from interruption from causes beyond the reasonable control of Lessor. Such interruption of service shall<sup>97</sup> never be deemed an eviction or disturbance of Lessee's use and possession of the Leased Premises or any part thereof or render Lessor liable to Lessee for damages by abatement of rent or otherwise or relieve Lessee from performance of Lessee's obligations under this Lease.

c. **LIGHTING:** Lessor shall supply initial lamps, bulbs, starters and ballasts used on the Leased Premises; Lessee agrees to reimburse Lessor for the cost and expense of maintaining and replacing such lamps, bulbs, starters and ballasts.

d. **KEYS:** Lessor shall furnish Lessee with two (2) keys for each corridor door entering the Leased Premises, and additional keys ordered by Lessee at a charge by Lessor. All such keys shall remain the property of Lessor. No additional locks shall be allowed on any door of the Leased Premises without Lessor's written permission, and Lessee shall not make, or permit to be made, any duplicate keys, except those furnished by Lessor. Upon termination of this Lease, Lessee shall surrender to Lessor all keys to the Leased Premises, and give to Lessor the combination of all locks for safes, safe cabinets and vault doors, if any, in the Leased Premises.

e. **ELEVATORS:** Lessor shall furnish passenger elevator service whenever the Building is open. Lessor shall have the right to stop the operation of said elevators whenever alterations, improvements or repairs therein or in the machinery or appliances connected therewith shall be necessary or desirable and shall not be liable for damages for any such stoppage of service.

f. **JANITORIAL:** Lessee shall furnish such janitor service for Lessee's leased areas.

g. **WATER:** Lessor shall provide water for lavatory and toilet purposes.

h. **WASTE:** Lessee shall not waste electricity, water, heat or air conditioning or any other utility, and shall cooperate fully with Lessor to insure the most effective operation of the Building's heating and air conditioning, which shall include closing Venetian blinds and drapes and keeping all windows closed when air conditioning is in use and shall refrain from attempting to adjust any controls other than room thermostats, if any, installed for Lessee's use.

i. **TEMPORARY INTERRUPTION OF SERVICES:** Lessor shall not be liable to Lessee, its agents, employees, representatives, customers or invitees for any inconvenience, loss or damage or for any injury to any person or property caused by or resulting from any casualties, riots, strikes, picketing, accidents, breakdowns or any cause beyond Lessor's reasonable control, or from any temporary failure or lack of services and Lessee shall indemnify Lessor and hold Lessor harmless from any claim or damage because of such inconvenience, loss, damage or injury. No variation, interruption or failure of such services incident to the making of repairs, alterations or improvements or due to casualties, riots, strikes, picketing, accidents, breakdowns or any cause beyond Lessor's reasonable control or temporary failure or lack of such services shall be deemed an eviction of Lessee or relieve Lessee from any of Lessee's obligations hereunder.

13. **ASSIGNMENT AND SUBLETTING:** Lessee shall not have the right to assign, transfer, pledge, or otherwise encumber this Lease, or to sublet the whole or any part of the Leased Premises, without the prior written consent of Lessor. Upon each request made by Lessee to Lessor for Lessor's consent hereunder, Lessee shall pay to Lessor a processing fee not to exceed, in each instance, \$500.00. Notwithstanding any permitted assignment or subletting, Lessee shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Lessor shall have the right to assign any of its rights under this Lease, and upon any such assignment, and provided that the assignee assumes all of Lessor's obligations hereunder, Lessor shall be relieved of any and all such obligations.

14. **FIRE AND OTHER CASUALTY:** If the Building or any part thereof is damaged or destroyed by fire or other casualty, the Lessor shall have the right to terminate this Lease, provided it gives written notice thereof to

the Lessee within ninety (90) days after such damage or destruction. Such notice shall state Lessor's intention to terminate this lease not less than thirty (30) days after Lessee's receipt of such notice. If a portion of the Leased Premises is damaged by fire or other casualty and this Lease is not thereby terminated, the Lessor shall, at its expense, restore the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by the Lessee, to as near the condition which existed immediately prior to such damage or destruction as reasonably possible, and rent shall abate during such period of time as the Leased Premises are untenable in the proportion that the untenable portion of the Leased Premises bears to the entire Leased Premises. The Lessor shall not be responsible to the Lessee for damage to, or destruction of, any furniture, equipment, improvements or other changes made by the Lessee in, on or about the Leased Premises regardless of the cause of the damage or destruction.

#### 15. **SUBROGATION:**

a. Lessor and Lessee each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties covered by the insurance maintained hereunder, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such times as the releasor's policies shall contain a clause or endorsement to the effect that any release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. Lessor and Lessee each agrees that it will request its insurance carriers to include in its policies such a clause or endorsement.

b. Lessor covenants and agrees to maintain standard fire and extended coverage insurance covering the Building in an amount not less than eighty percent (80%) of the replacement cost thereof. Lessee covenants and agrees to maintain "All Risk" property insurance covering the full replacement value of all of Lessee's leasehold improvements, trade fixtures and personal property within the Leased Premises.

c. Lessee assumes responsibility for protecting the Leased Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Leased Premises closed and secured after normal business hours.

16. **LIABILITY:** With the exception of those claims arising out of Lessor's gross negligence or willful misconduct, neither Lessor nor any of Lessor's owners, members, shareholders, directors, officers, agents, or other representatives (collectively, with Lessor, the "Lessor Parties") shall be liable to Lessee, or those claiming through or under Lessee, for injury, death or property damage occurring in, on or about the Building and appurtenances thereto, and Lessee shall indemnify the Lessor Parties and hold them harmless from any claim or damage arising out of any injury, death or property damage occurring in, on or about the Leased Premises to Lessee or an employee, customer or invitee of Lessee. Without limiting Lessee's liability hereunder, Lessee agrees, at its own cost and expense to carry public liability insurance protecting Lessor and Lessee in a combined single limit amount of not less than One Million Dollars (\$1,000,000). All policies of insurance shall name both Lessor and Lessee as insured thereunder and shall protect the interests of Lessor. Certificates of said insurance providing for not less than fifteen (15) days notice to Lessor prior to cancellation thereof shall be furnished to Lessor prior to Lessee taking possession of the Leased Premises.

17. **EMINENT DOMAIN:** If the entire Building is taken by eminent domain, this Lease shall automatically terminate as of the date of taking. If a portion of the Building is taken by eminent domain, Lessor shall have the right to terminate this Lease by giving written notice thereof to Lessee within ninety (90) days after the date of taking. Such notice shall state Lessor's intention to terminate this lease not less than thirty (30) days after Lessee's receipt of such notice. If a portion of the Leased Premises is taken by eminent domain and this Lease is not thereby terminated, Lessor shall, at its expense, restore the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by Lessee, to as near the condition which existed immediately prior to the date of taking as reasonably possible, and rent shall abate during such period of time as the Leased Premises

are untenantable, in the proportion that the untenantable portion of the Leased Premises bears to the entire Leased Premises. If all or any portion of the Building is temporarily taken by eminent domain, this Lease shall remain<sup>99</sup> in full force and effect, and Lessee shall continue to pay rent and be responsible for all other obligations hereunder insofar as such obligations are not affected by the temporary taking. All damages awarded for a taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall belong to, and be the property of, Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold estate hereby created or to the fee of the Leased Premises provided, however, that Lessor shall not be entitled to any award made to Lessee for loss of business, fair value of, and cost of removal of stock and fixtures. The term "eminent domain" shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation.

18. **HAZARDOUS SUBSTANCES:** As used herein, the term "Hazardous Substance" shall mean and include any element, compound, mixture, solution or substance regulated by a federal, state or local law, rule or regulation because of its toxicity, corrosiveness, reactivity, ignitability or carcinogenic effect and shall include petroleum, natural gas and derivatives and synthetics thereof. Lessee shall not cause or permit any Hazardous Substance to be brought upon, kept, or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or invitees, except for such Hazardous Substance as is necessary to Lessee's business. Any Hazardous Substance permitted on the Leased Premises, as provided in the previous sentence, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state and local laws, rules and regulations applicable to the Hazardous Substance and Lessee shall not discharge, leak or emit any Hazardous Substance except in compliance with all federal, state and local laws, rules and regulations applicable to the Hazardous Substance. Lessee hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Substance kept or allowed on the Leased Premises by the Lessee and Lessee shall give immediate notice to the Lessor of any violation or potential violation of the provisions of this Article. Lessee shall defend, indemnify and hold Lessor and its agents harmless from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorneys' fees and consultants' fees, court costs and litigation expenses) of whatever kind or nature arising out of the violation of any provision of this Article. This provision shall survive the termination of this Lease. Lessee is not responsible for any preexisting hazardous substances and shall inform Lessor of any preexisting hazardous substances of which Lessee may be aware.

In the event any material and/or substance is discovered in the Building or premises which is deemed to be hazardous by any local or state law in which the premises is located or by any federal law, the Lessor, its agents, assigns, or employees will assume all liability for the removal and damage caused by the material and/or substance. In addition, upon discovery of the hazardous material and/or substance, Lessee will have a reasonable time in which to exercise the option to remain on the premises for the Lease term or to surrender the premises to the Lessor. In the event the premises are surrendered, Lessee shall pay rent only to time of such surrender and will not be liable for any cost of clean-up or damage to the premises caused by the material and/or substance. The provisions of this paragraph shall not apply if it is determined that the hazardous material and/or substance was introduced into the premises by Lessee.

19. **HOLDING OVER:** Should Lessee, or any of its successors in interest, hold over the Leased Premises or any part thereof, after the expiration of the term of this Lease, such holding over shall constitute and be construed as a tenancy from month to month only. The inclusion of the preceding sentence shall not be construed as Lessor's permission for Lessee to hold over. The monthly rent during any such unauthorized month-to-month tenancy shall be at one and one half (1 1/2) times the amount set forth in Article 2 "Rent" as most recently adjusted in accordance with Article 3. If Lessee holds over with the permission of Lessor, then the rent shall be as most recently adjusted in accordance with Article 3.

20. **QUIET ENJOYMENT:** Lessor represents and warrants that it has full right and authority to enter into this Lease and that Lessee, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from Lessor, subject to the terms and provisions of this Lease.

21. **EVENTS OF DEFAULT:** The following events shall be deemed to be events of default by Lessee under this Lease:

a. Lessee shall fail to pay any installment of the rent hereby reserved or any other charge payable hereunder within five days of the respective due date.

b. Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors. 100

c. Lessee shall file or have filed against it a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder.

d. A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee.

e. Lessee shall desert or vacate any substantial portion of the Leased Premises.

f. Lessee shall assign, transfer, pledge, or otherwise encumber this Lease, or sublet the whole or any portion of the Leased Premises, without Lessor's prior written consent.

g. Lessee shall fail to comply with any term, provision or covenant of this Lease (other than the foregoing in this Article 21) and shall not cure such failure within ten (10) days, after written notice thereof to Lessee.

22. **DEFAULT:** Lessee hereby agrees that in case Lessee shall default in making its payments hereunder or in performing any of the other agreements, terms, and conditions of this Lease, then, in any such event, in addition to all other rights and remedies available to Lessor by law or by other provisions hereof, at Lessor's option, Lessor may annul and cancel this Lease as to all future rights of Lessee. Lessee further agrees that in case of any such termination Lessee will indemnify the Lessor against all loss of rents and other damage which Lessor may incur by reason of such termination, including, but not limited to, costs of restoring and repairing the Leased Premises and putting the same in rentable condition, costs of renting the Leased Premises to another Lessee, loss or diminution of rents and other damage which Lessor may incur by reason of such termination and all reasonable attorney fees and expenses incurred in enforcing any of the terms of this Lease. Neither acceptance of rent by Lessor, with or without knowledge of breach, nor failure of Lessor to take action on account of any breach hereof, or to enforce its rights hereunder shall be deemed a waiver of any breach, and absent written notice or consent, said breach shall be a continuing one. Lessor's rights and remedies in the event of Lessee's default shall be deemed cumulative, and the exercise of any one or more of such remedies shall not operate to bar the exercise of any other rights or remedies of Lessor hereunder or available at law or in equity.

In the event Lessee fails to pay any installment of rent hereunder as and when such installment is due, or any other charge payable hereunder as and when such charge is due, Lessee, if permitted by law, shall pay to Lessor on demand a late charge in an amount equal to five percent (5%) of such installment or other such charge, and failure to pay such late charge within ten (10) days after demand therefor shall be an event of default hereunder. The provision for such late charge shall be in addition to all Lessor's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner.

23. **SUBORDINATION OF LEASE AND ATTORNMENT:** The rights of Lessee under this Lease shall be and are subject and subordinate at all times to all ground leases, and/or underlying leases, if any, now or hereafter in force against the Building, and to the lien of any mortgage or mortgages now or hereafter in force against such leases and/or the Building, and to all advances made or hereafter to be made upon the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that Lessee's rights under this Lease and possession of the Leased Premises shall not be disturbed so long as Lessee is not in default hereunder. If, by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or in any other manner, Lessor's interest in the Building is transferred to and owned by (a) the lessor under a ground lease or underlying lease now or hereafter in force against the Building, or (b) any mortgagee under a mortgage now or hereafter in force against any such lease and/or the Building, and such lessor or such mortgagee succeeds to Lessor's interest under this Lease, Lessee shall, at the option of such lessor or such mortgagee, be bound to such lessor or such mortgagee under all of the terms, covenants, and conditions of this

Lease for the balance of the term thereof remaining, and any extensions or renewals thereof, with the same force and effect as if such lessor or such mortgagee were the Lessor under this Lease, and Lessee does hereby attorn<sup>101</sup> to such lessor or such mortgagee as its landlord, with the respective rights and obligations of Lessee and such lessor or such mortgagee being the same as now set forth in this Lease. This Article 23 is automatically effective and self-operative, and no further instrument of subordination or attornment shall be required; provided, however, Lessee shall promptly execute such further instruments as may be requested by Lessor to further confirm such subordination and/or attornment. Failure of Lessee to execute any such instrument within thirty (30) days of Lessee's receipt of written request by Lessor shall constitute a breach of this Lease, upon which Lessor may, at its option, cancel this Lease and terminate Lessee's interest therein.

24. **NOTICES:** Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessor to Lessee or by Lessee to Lessor shall be deemed to be complied with, when and if, the following steps are taken;

a. All rent and other payments required to be made by Lessee to Lessor hereunder shall be payable to Lessor at the address hereinbelow set forth or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith.

b. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, certified or registered mail, addressed to the parties hereto at the respective addresses set out opposite their names below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith:

**Lessor:**

Oneida Realty Company  
1605 Alworth Building  
306 West Superior Street  
Duluth, MN 55802

AND TO

InfoTel Investments, L.L.C.  
36227 Fox Hunter Rd  
Pequot Lakes, MN 56472

**Lessee:**

Independent School District No. 709  
4316 Rice Lake Road  
Duluth, MN 55811

AND TO

Chief Financial Officer  
Independent School District No. 709  
4316 Rice Lake Road  
Duluth, MN 55811

c. Any notice or document required or permitted to be delivered hereunder by Lessor to Lessee also shall be deemed to be delivered if and when delivered personally to Lessee at the Leased Premises.

25. **LAWS, RULES AND REGULATIONS:** Lessee shall observe such laws, ordinances, rules and regulations which from time to time may be put in effect by Lessor or any government agency for the general safety, comfort and convenience of Lessor, occupants, invitees and lessees of said Building or the public at large.

26. **ENERGY; GOVERNMENTAL ACTION:** Wherever in this Lease any terms, covenants or conditions are required to be kept or performed by the Lessor, the Lessor shall be deemed to have kept and performed such terms, covenants and conditions notwithstanding any action taken by the Lessor, if such action is pursuant to any governmental regulations, requirements, directives or requests, or if the Lessor deems such action to be for the benefit of our national interest or the general public. Without limiting the generality of the foregoing, the Lessor may reduce the quantity and quality of all utility and other services and impose such regulations as the Lessor deems necessary in order to conserve energy, and may change the normal hours of operation of the Building. Utility in the sense of this paragraph includes, but is not limited to heating, cooling, electricity, water and all the sources of energy needed to provide such.

a. Throughout the Term of this Lease, Lessee shall observe and comply with all governmental codes, laws, requirements, rules, orders, ordinances and regulations, and orders or recommendations of insurance carriers or fire insurance

rating organizations applicable to the Leased Premises or the business conducted therein, hereinafter called "Legal Requirements", whether or not any work necessary to be done in order to comply with such Legal Requirements by ordinance, extraordinary or otherwise, is required by any existing or future Legal Requirement, or is within the present contemplation of Lessor and Lessee, including, but not limited to, any demolition, reconstruction, alteration or repair of any part of the Leased Premises. It is the intention of the parties that Lessee shall and does hereby assume the entire responsibility of complying with all Legal Requirements which affect the Leased Premises. If any alterations are required, they shall be completed in accordance with Article 9.

27. **LIGHT, AIR & VIEW:** Lessee has no right to light, air, or view over any premises adjoining the Building.

28. **LESSOR'S USE:** It is understood that Lessor may occupy portions of the Building in the conduct of the Lessor's business. In such event, all references herein to other lessee's of the Building shall be deemed to include Lessor as an occupant or lessee.

29. **MISCELLANEOUS TAXES:**

a. Lessee shall pay prior to delinquency all taxes assessed against or levied upon its occupancy of the Leased Premises, or upon the fixtures, furnishings, equipment and personal property of Lessee located in the Leased Premises, and when possible, Lessee shall cause said fixtures, furnishings, equipment and personal property to be assessed and billed separately from the property of Lessor. In the event any or all of Lessee's fixtures, furnishings, equipment and personal property, or Lessee's occupancy of the Leased Premises, shall be assessed and taxed with the property of Lessor, Lessee shall pay to Lessor its share of such taxes within ten (10) days after delivery to Lessee by Lessor of a statement in writing setting forth the amount of such taxes applicable to Lessee's fixtures, furnishings, equipment or personal property, or occupancy of the Leased Premises.

b. If, under the laws of the United States or the State of Minnesota or any political subdivision in which the Leased Premises are situated, a tax or excise on rents or other tax, however described, is levied or assessed against Lessor or the rent reserved hereunder, in lieu of or as a substitute in whole or in part for taxes and assessments commonly known as real estate taxes, Lessee shall pay and discharge such tax or excise on rents or other tax, but only to the extent of the amount thereof which is lawfully assessed or imposed upon Lessor, and which was so assessed or imposed as a direct result of Lessor's ownership of the Leased Premises or of this Lease, or of the rental accruing under this Lease.

30. **ESTOPPEL CERTIFICATE:** Lessee agrees, within ten (10) days after request of Lessor, to deliver to Lessor, or Lessor's designee, including without limitation, the present or any future holder of any mortgage(s) and/or deed(s) of trust and/or ground lease(s) and/or underlying lease(s) on the Leased Premises, or any prospective purchaser of the Leased Premises, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent and other charges have been paid, the unexpired term of this Lease, whether or not Lessor is in default hereunder, and the nature of any such default, and such other matters pertaining to this Lease as may be reasonably requested by Lessor.

31. **MISCELLANEOUS:**

a. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

b. The terms, provisions and covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors, permitted sublessees, and permitted assigns, except as otherwise herein expressly provided.

c. Failure of Lessor to insist, in any one or more instances, upon strict performance of any term, covenant or condition of this Lease, or to exercise any option herein contained shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition or option, but the same shall continue and remain

in full force and effect. The receipt by Lessor of rents with knowledge of a breach in any of the terms, covenants or conditions of the Lease to be kept or performed by Lessee shall not be deemed waiver of such breach, and 103 Lessor shall not be deemed to have waived any provision of this Lease unless expressed in writing and signed by Lessor.

d. The captions of this Lease are for convenience and reference only, and in no way define, limit or describe its scope or content.

e. All preliminary and contemporaneous negotiations are merged and incorporated into this Lease. This Lease contains the entire understandings between Lessor and Lessee and shall not be modified or amended in any manner except by an instrument in writing executed by Lessor and Lessee.

f. Time is of the essence.

g. Lessor and Lessee represent and warrant to the other that it has not engaged or dealt with any broker, finder, or like agent in connection with this Lease.

h. This Lease shall be subject to and governed by the laws of the State of Minnesota, and all questions concerning the making of this Lease, the meaning or intention of any of the terms of this Lease or concerning the validity thereof, and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of the State of Minnesota. All actions to enforce the terms and provisions of this Lease shall be brought and maintained only in St. Louis County District Court venued in Duluth, Minnesota. Nothing in this Section will prevent the docketing, registration, or enforcement of any judgment or order obtained in compliance with this Section in a court in another jurisdiction.

i. Lessee represents and warrants that the undersigned representative of Lessee is duly authorized to lease the Leased Premises and to engage in the transactions and bind Lessee to the obligations set forth in this Lease.

j. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument. The executed counterparts of this Lease may be delivered by electronic means, such as email and/or facsimile, and the receiving party may rely on the receipt of such executed counterpart as if the original had been received.

32. **INVALIDITY OF PARTICULAR PROVISIONS:** If any Article or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during its term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby unless such illegality, invalidity, or unenforceability is, in the sole determination of Lessor, essential to the rights of both parties in which event Lessor has the right to terminate this Lease on written notice to Lessee.

33. **PARKING:** During the initial term of this lease and during any and all extensions thereof, included in this lease are two (2) parking spaces. The parking spaces are located behind the building in an open air parking lot.

34. **BROKERAGE FEES:** Lessee represents and warrants that it has dealt with no broker, agent or other person in connection with this Lease other than Oneida Realty Company, and Lessee hereby indemnifies and holds Lessor harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Lessee with regard to this Lease. The provisions of this Article shall survive the expiration or termination of this Lease.

IN WITNESS WHEREOF, the Lessor and Lessee have duly signed and sealed these presents the day and year first hereinbefore written.

**INDEPENDENT SCHOOL DISTRICT NO. 709,  
LESSEE**

By: Simone Znuich  
Its: Exec. Dir. Business Services  
Date: March 3, 2025

**INFOTEL INVESTMENTS, L.L.C.,  
LESSOR**

By: \_\_\_\_\_  
Greg Arvig, President  
Date: \_\_\_\_\_

**FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between ISD 709 – Duluth Public Schools (“Owner”) and  
Donald Holm Construction Company, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

*Construction includes a 3,000-square-foot addition to the existing Transportation Building garage.*

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

*Project scope of work includes extension of existing utilities and services for plumbing and electrical, addition of new equipment for mechanical and related architectural, structural and civil modifications.*

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Design Tree Engineering and Land-Surveying (Engineer) and DSGW Architects (Architect), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before October 3, 2025, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before November 15, 2025.

## ARTICLE 4 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a lump sum of: \$ 820,733.00

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold in accordance with Paragraph 14.02 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

**ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 4.0 percent per annum.

**ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
  - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
  - F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.<sup>108</sup>
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 7, inclusive).
  2. General Conditions (pages 1 to 75, inclusive).
  3. Supplementary Conditions (pages 1 to 10, inclusive).
  4. Specifications as listed in the table of contents of the Project Manual.
  5. Drawings consisting of 33 sheets with each sheet bearing the following general title: ISD 709 Transportation Building Addition (General, Architectural, Structural, Civil, Plumbing, Mechanical & Electrical).
  6. Addenda (number 1, narrative pages 1 to 4 and associated attachments, inclusive).
  7. Exhibits to this Agreement (enumerated as follows):
    - a. Notice to Proceed (page 1, dated December 17, 2024, inclusive).
    - b. Contractor's Bid (pages 1 to 4, inclusive).
    - c. Attachment A – Prime Contractor Response and First-Tier Subcontractors List (pages 1 to 4, inclusive)
    - d. Bid bond (pages 1 to 4, inclusive).
  8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Performance bond. To be issued following receipt of executed contract.
    - b. Payment bond. To be issued following receipt of executed contract.
    - c. Work Change Directives.

- d. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value<sup>110</sup> likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been<sup>111</sup> delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on December 18, 2024 (which is the Effective Date of the Agreement).

OWNER:

ISD 709 – Duluth Public Schools

By: Bryan Brown

Title: Manager of Facilities

CONTRACTOR

Donald Holm Construction Co, Inc.

By: Ryker C. Holm

Title: Vice President

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

709 Portia Johnson Drive

Duluth, MN 55811

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

3211 West 3<sup>rd</sup> Street

Duluth, MN 55806

License No.: \_\_\_\_\_

(Where applicable)

Agent for service of process:  
\_\_\_\_\_

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*
    - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

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requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
  13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
  14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
  16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
  17. *Cost of the Work*—See Paragraph 13.01 for definition.
  18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
  19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
  20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2—PRELIMINARY MATTERS

### 2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### 2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
  - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

##### A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

##### B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

- conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
  - J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
  - K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

- Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
  - E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
  - F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
  - G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
  - H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

- Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

#### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  1. include at least the specific coverages required;
  2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

### **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

#### 7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design;
    - 2) be similar in substance to the item specified; and
    - 3) be suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

#### 7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

### 7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

### 7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

### 7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

#### 7.16 *Submittals*

##### A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
  8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.
- D. *Resubmittal Procedures for Shop Drawings and Samples*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
  2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.
- E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

**7.17 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  - 1. Observations by Engineer;
  - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4. Use or occupancy of the Work or any part thereof by Owner;
  - 5. Any review and approval of a Shop Drawing or Sample submittal;
  - 6. The issuance of a notice of acceptability by Engineer;
  - 7. The end of the correction period established in Paragraph 15.08;
  - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### 7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  2. An itemization of the specific matters to be covered by such authority and responsibility; and
  3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02 *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

### **9.03 *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

### 10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## ARTICLE 12—CLAIMS

### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

- and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

**ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 Defective Work

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

**14.07 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

**ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    - a. to supervise, direct, or control the Work;
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
    - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
    - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
    - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
    - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. *Payment Becomes Due*
1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- E. *Reductions in Payment by Owner*
1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
    - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

- submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
  - C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
  - D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
  - E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
  - F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

### 16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

### 16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

- attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
  - G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the dispute to another dispute resolution process; or
  3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### 18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

### 18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

### 18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

### 18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

### 18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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## SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

### ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

### ARTICLE 2—PRELIMINARY MATTERS

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor **4** printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and **none** in electronic portable document format (PDF).

### ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC-3.01 Delete Paragraph 3.01.C in its entirety.

### ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

No Supplementary Conditions in this Article.

### ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Geotechnical Evaluation Report	May 7, 2021, 2024	Subsurface Boring Logs

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		None

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer.

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		None

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		None

## ARTICLE 6—BONDS AND INSURANCE

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

- Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
- Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **None**

- E. *Workers' Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

<b>Workers' Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers' Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
<b>Employer's Liability</b>	
Each accident	\$1,000,000.00
Each employee	\$1,000,000.00
Policy limit	\$2,000,000.00

- F. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
  2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
  6. Any limitation or exclusion based on the nature of Contractor’s work.
  7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. *Commercial General Liability—Minimum Policy Limits*

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$2,000,000.00
Products—Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000.00

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Bodily Injury</b>	
Each Person	\$1,000,000.00
Each Accident	\$1,000,000.00

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Property Damage</b>	
Each Accident	\$1,000,000.00
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000.00

- K. *Umbrella or Excess Liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$5,000,000.00
General Aggregate	\$5,000,000.00

#### **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

- SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "...all Work at the Site must be performed during regular working hours, **Monday** through **Friday**. Contractor will not perform Work on a **Saturday, Sunday**, or any legal holiday."

#### **ARTICLE 8—OTHER WORK AT THE SITE**

- SC-8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:
- C. Owner intends to contract with others for the performance of other work at or adjacent to the Site.
1. **Design Tree Engineering, Inc.** shall have authority and responsibility for coordination of the various contractors and work forces at the Site.

#### **ARTICLE 9—OWNER'S RESPONSIBILITIES**

No Supplementary Conditions in this Article.

#### **ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

##### *10.03 Resident Project Representative*

- SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:
- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
  3. *Liaison*
    - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
  4. *Review of Work; Defective Work*
    - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
    - b. Observe whether any Work in place appears to be defective.
    - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
  5. *Inspections and Tests*
    - a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
    - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
  6. *Payment Requests:* Review Applications for Payment with Contractor.
  7. *Completion*
    - a. Participate in Engineer's visits regarding Substantial Completion.
    - b. Assist in the preparation of a punch list of items to be completed or corrected.
    - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
    - d. Observe whether items on the final punch list have been completed or corrected.
- D. The RPR will not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Authorize Owner to occupy the Project in whole or in part.

#### **ARTICLE 11—CHANGES TO THE CONTRACT**

No Supplementary Conditions in this Article.

#### **ARTICLE 12—CLAIMS**

No Supplementary Conditions in this Article.

#### **ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK**

No Supplementary Conditions in this Article.

#### **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

No Supplementary Conditions in this Article.

#### **ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD**

SC-15.01 Add the following new Paragraph 15.01.F:

- F. The Prime Contractor shall pay subcontractors within ten days of receipt of payment from the Owner or pay interest at the rate of 1 ½ percent per month for any part of the month.

#### **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

No Supplementary Conditions in this Article.

#### **ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES**

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 *Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
  2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
  3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and

4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

#### **ARTICLE 18—MISCELLANEOUS**

No Supplementary Conditions in this Article.

## ADDENDUM NO. 1

Date: November 13, 2024

Project: ISD 709 Transportation Building Addition

QuestCDN Project ID#9373790

Project Location: Duluth, Minnesota

Owner: Duluth Public School District 709

Architect: DSGW Architects

Bid Due Date: November 19, 2024, 10:00 am

This Addendum shall be considered part of the contract documents for the above-mentioned project. The following items modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. Where a portion of the Bidding Documents are modified by this Addendum, the unaltered portions of the Bidding Documents shall remain in effect. Receipt of this addendum must be acknowledged on bid form, failure to do so may subject Proposer to disqualification.

### CHANGES TO BIDDING REQUIREMENTS

#### **CHANGES TO PROJECT MANUAL AND DRAWINGS:**

##### Section 00 01 00 – Table of Contents:

- 1) Revised.

##### Section C410 – Bid Form for Construction Contract:

- 1) Revise dates for substantial completion and completed and ready for final payment/owner occupancy to Friday, October 3, 2025 and Monday, November 3, 2025, respectively.
- 2) Delete Item 4.03 regarding liquidated damages.

##### Section 09 90 00 – Painting and Coating:

- 1) Revised.

##### Section 21 13 13 – Wet-Pipe Sprinkler Systems:

- 1) Delete Section 21 13 13 in its entirety.

##### Section 21 13 16 – Dry-Pipe Sprinkler Systems:

- 1) Add Section 21 13 16.

##### Section 23 09 93 – Sequence of Operations for HVAC Controls:

- 1) Add Item 3.1 – A – 5. To read:
  5. BAS to monitor space temperature in new addition and MAU status.
    - a. If space temperature falls below 65°F, BAS shall send alarm to Owner's facilities team indicating low temperature condition.
    - b. MAU shall be enabled to operate in response to the low temperature alarm.

##### Section 31 22 00 – Grading:

- 1) Replace section 31 22 00 – Grading specification section with the attached specifications section.

Section 33 46 00 – Subdrainage:

- 1) Revised.

Appendix A – Geotechnical Evaluation Report:

- 1) Replace original Geotechnical Evaluation Report dated May 7, 2021 with new report dated November 8, 2024.

Drawing C101 – EXISTING CONDITIONS & REMOVALS:

- 1) Revise extents of landscaping and sidewalk removal as shown on the attached drawing.

Drawing C201 – SITE & GRADING PLAN:

- 1) Revise extents of sidewalk installation as shown on the attached drawing.
- 2) Revise keynote 7 as shown on the drawing.

Drawing C301 – UTILITY PLAN:

- 1) No revisions, shown for reference only.

Drawing C401 – EROSION CONTROL PLAN:

- 1) Revise extents of erosion control measures as shown on the attached drawing.
- 2) Revise silt fence quantity as shown on the attached drawing.

Drawing C501 – CIVIL DETAILS:

- 1) Remove notes referring to unit pricing from “PVC and corrugated polyethylene sewer pipe bedding” details as shown on the drawing.

Drawing S100 – GENERAL NOTES

- 1) Revise geotechnical report number:

Drawing S200 – FOUNDATION PLAN:

- 1) Delete section cut 12/S300
- 2) Revise Vapor retarder to 15mil thickness

Drawing S300 – FOUNDATION DETAILS - CIP:

- 1) Delete erroneous noted detail 5/S301
- 2) Revise insulation Thickness detail 8/S301
- 3) Delete detail 12/S301

Drawing M401 – LEVEL 1 MECHANICAL PLAN (Drawing Not Attached – Narrative Only)

- 1) Delete Keynote 1. This note is superseded by Keynote 8. Change the two Keynote 1 markings to Keynote 8.
- 2) Clarification for Keynote 8: “Extend existing dry-system fire protection line as needed for coverage of new addition.”



**Drawing E401 – LEVEL 1 MECHANICAL PLAN:**

- 1) Revised Keyed Notes as indicated on attached drawing.
- 2) Omitted Keyed Note 1 designation and existing door devices shown at existing Southeast door.
- 3) Omitted keyed Note 3 and new devices at new South door.
- 4) Added Keyed Note 3 and new door devices at new Southeast door.

**Architectural Addendum One:**

- 1) See attached architectural drawing sheets.:
  - a) Drawing G1.1 – LIFE SAFETY PLAN & SUMMARY
  - b) Drawing A2.1 – FIRST FLOOR PLAN
  - c) Drawing A4.1 – SCHEDULES & TYPES
  - d) Drawing A6.1 – WALL SECTIONS
  - e) Drawing A8.1 - DETAILS

**PRODUCT APPROVALS:**

Section / Drawing No. & Schedule	Material / Product / ID	Approved Manufacturer
23 09 00, 2.15	CO/NO2 Gas Monitor Sensors	CET; Brasch Env. Tech.
23 55 00, 2.2	Fuel-Fired Heaters	Advanced Radiant Systems

**QUESTIONS FROM PROPOSERS:**

Question 1: The spec book and bid form mention liquidated damages multiple times, are there any liquidated damages associated with this project?

Answer 1: Eliminate references to liquidated damages in the specifications and bid form.

Question 2: The bid form provided notes to provide a list of proposed subcontractors. Please confirm if there will be a form to provide this info.

Answer 2: The bidding contractor to provide a list of subcontractors in format at their discretion.

Question 3: Spec section 26 08 00 Testing and commissioning of electrical systems notes to provide 3<sup>rd</sup> party commissioning agent info with the bid. Please clarify if this is required.

Answer 3: The 3<sup>rd</sup>-party commissioning agent will be direct to Owner.

Question 4: Please clarify the use of the existing; water, sewer, electric, and gas services. Who will pay the cost of these items?

Answer 4: The school district will be paying for the cost of existing utility services during construction.



### **ATTACHMENTS:**

Addendum One – DSGW Architects Narrative pages

Section 00 01 00 – Table of Contents  
Section C410 – Bid Form for Construction Contract  
Section 09 90 00 – Painting and Coating  
Section 21 13 16 – Dry-Pipe Sprinkler Systems  
Section 23 09 00 – Instrumentation and Control for HVAC  
Section 23 09 93 – Sequence of Operations for HVAC Controls  
Section 23 55 00 – Fuel-Fired Heaters  
Section 31 22 00 – Grading  
Section 33 46 00 – Subdrainage  
Appendix A – Geotechnical Evaluation Report

Drawing G1.1 – LIFE SAFETY PLAN & SUMMARY  
Drawing A2.1 – FIRST FLOOR PLAN  
Drawing A4.1 – SCHEDULES & TYPES  
Drawing A6.1 – WALL SECTIONS  
Drawing A8.1 – DETAILS

Drawing C101 – EXISTING CONDITIONS & REMOVALS  
Drawing C201 – SITE & GRADING PLAN  
Drawing C301 – UTILITY PLAN  
Drawing C401 – EROSION CONTROL PLAN  
Drawing C501 – CIVIL DETAILS  
Drawing S100 – GENERAL NOTES  
Drawing S200 – FOUNDATION PLAN  
Drawing S300 – FOUNDATION DETAILS - CIP  
Drawing E401 – LEVEL 1 MECHANICAL PLAN:

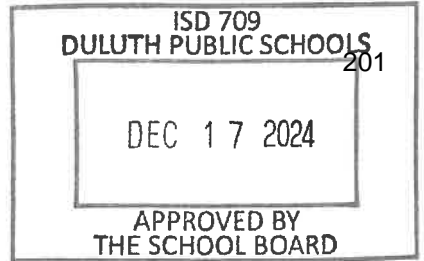
Pre-Bid Meeting Sign-In Sheet from 11/12/24

END OF ADDENDUM 1



**INDEPENDENT SCHOOL DISTRICT NO. 709**

Duluth Public Schools  
709 Portia Johnson Drive  
Duluth, Minnesota 55811  
218-336-8907



**MEMORANDUM**

**To:** Simone Zunich, Executive Director of Business Services  
**From:** Cathy Holman, Purchasing Coordinator  
**Subject:** Bid #1333 Transportation Building Addition  
**Date:** 12/2/2024

Five (5) vendors responded with the following results:

<u>VENDOR</u>	<u>TOTAL</u>
Nordic Group Inc	\$1,278,695.00
Max Gray Construction	\$912,000.00
Lake Head Construction	\$898,100.00
Johnson Wilson Construction	\$872,000.00
Donald Holm Construction	\$820,733.00

Bryan Brown and Jeremy DeGraef from the district Facilities Department reviewed the bids along with Paul Quirin from Design Tree Engineering.

Bryan Brown, Facilities Manager, and Paul Quirin from Design Tree Engineering recommend awarding Bid #1333 meeting specifications as submitted to Donald Holm Construction for the sum of \$820,733.00.

**Program:** Facilities

**Fund Custodian:** Bryan Brown Facilities

  
\_\_\_\_\_  
Jill Lofald, Board Chair

## BID FORM FOR CONSTRUCTION CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

### ARTICLE 1—OWNER AND BIDDER

- 1.01 This Bid is submitted to: **ISD 709 – Duluth Public Schools**
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

### ARTICLE 2—ATTACHMENTS TO THIS BID

- 2.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
  - B. List of Proposed Subcontractors;
  - C. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such authority within the time for acceptance of Bids;
  - D. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
  - E. Responsible contractor forms.

### ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES

- 3.01 *Lump Sum Bids*
- A. Bidder will complete the Work in accordance with the Contract Documents for the following lump sum (stipulated) price(s), together with any Unit Prices indicated in Paragraph 3.02:
    1. Lump Sum Price (Single Lump Sum)

Lump Sum Bid Price	\$820,733.00
--------------------	--------------

Eight Hundred Twenty Thousand Seven Hundred Thirty Three & 00/100 Dollars

### ARTICLE 4—TIME OF COMPLETION

- 4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 4.02 Bidder agrees that the Work will be substantially complete on or before August 29, 2025 October 3, 2025 and will be completed and ready for final payment (and Owner occupancy) in accordance with Paragraph 15.06 of the General Conditions on or before September 1, 2025 November 3, 2025. [Addendum #1 dated 11/13/24]

4.03 ~~*Bidder accepts the provisions of the Agreement as to liquidated damages, [Addendum #1 dated 11/13/24]*~~

**ARTICLE 5—BIDDER’S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA**

5.01 *Bid Acceptance Period*

A. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

5.02 *Instructions to Bidders*

A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

5.03 *Receipt of Addenda*

A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
1	11/13/2024

**ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS**

6.01 *Bidder’s Representations*

A. In submitting this Bid, Bidder represents the following:

1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the

effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's) safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### 6.02 Bidder's Certifications

##### A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:
  - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
  - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
  - c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
  - d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

---

EJCDC® C-410, Bid Form for Construction Contract.


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Page 3 of 4

BIDDER hereby submits this Bid as set forth above:

Bidder:

Donald Holm Construction Co., Inc.  
*(typed or printed name of organization)*

By:   
*(individual's signature)*

Name: Ryker C. Holm  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Date: 11/19/2024  
*(typed or printed)*

*If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.*

Attest:   
*(Individual's signature)*

Name: Ryker C. Holm  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Date: 11/19/2024  
*(typed or printed)*

Address for giving notices:  
3211 W 3rd Street, Duluth, MN 55806

Bidder's Contact:

Name: Ryker C. Holm  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Phone: 218-628-2257

Email: ryker@donaldholmconst.com

Address: 3211 W 3rd Street, Duluth, MN 55806

Bidder's Contractor License No.: (if applicable) N/A

**ATTACHMENT A  
PRIME CONTRACTOR RESPONSE**

**RESPONSIBLE CONTRACTOR VERIFICATION AND CERTIFICATION OF COMPLIANCE**

**PROJECT NUMBER:** 020116.5

**This form includes changes by statutory references from the Laws of Minnesota 2015, chapter 64, sections 1-9. This form must be submitted with the response to this solicitation. A response received without this form, will be rejected.**

Minn. Stat. § 16C.285, Subd. 7. **IMPLEMENTATION.** ... any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project...

Minn. Stat. § 16C.285, Subd. 3. **RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.** "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

- |     |   |
|-----|---|
| (1) | <p>The Contractor:</p> <ul style="list-style-type: none"> <li>(i) is in compliance with workers' compensation and unemployment insurance requirements;</li> <li>(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;</li> <li>(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and</li> <li>(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative.</li> </ul>   |
| (2) | <p>The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.03, 181.101, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:</p> <ul style="list-style-type: none"> <li>(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is "repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;</li> <li>(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;</li> <li>(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;</li> <li>(iv) has been found by the commissioner of Labor and Industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;</li> <li>(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or</li> <li>(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;*</li> <li>(vii) has been convicted of a violation of section 609.52, subd 2 (19).</li> </ul> |

(3)	The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;*
(4)	The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;*
(5)	The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;*
* Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.	
(6)	The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and
(7)	All subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

**Minn. Stat. § 16C.285, Subd. 5. SUBCONTRACTOR VERIFICATION.**

A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

**Subd. 5a. Motor carrier verification.** A prime contractor or subcontractor shall obtain annually from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each motor carrier. A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subdivision 3 after submitting its annual verification. A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet all the minimum criteria in subdivision 3. Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

**Minn. Stat. § 16C.285, Subd. 4. VERIFICATION OF COMPLIANCE.**

A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3, with the exception of clause (7), at the time that it responds to the solicitation document.

A contracting authority may accept a signed statement under oath as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required minimum criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section provided that it contains an electronic signature as defined in section 325L.02, paragraph (h).

**CERTIFICATION**

**By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:**

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. § 16C.285, and**
- 2) if my company is awarded a contract, I will submit Attachment A-1 prior to contract execution, and**
- 3) if my company is awarded a contract, I will also submit Attachment A-2 as required.**

**Authorized Signature of Owner or Officer:**

*Ryker C. Holm*

**Printed Name:**

Ryker C. Holm

**Title:**

Vice President

**Date:**

11/19/2024

**Company Name:**

Donald Holm Construction Co., Inc.

**NOTE: Minn. Stat. § 16C.285, Subd. 2, (c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.**

**ATTACHMENT A-1**

**FIRST-TIER SUBCONTRACTORS LIST**

**SUBMIT PRIOR TO EXECUTION OF A CONSTRUCTION CONTRACT**

**PROJECT NUMBER:** 020116.5

Minn. Stat. § 16C.285, Subd. 5. A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

<b>FIRST TIER SUBCONTRACTOR NAMES* (Legal name of company as registered with the Secretary of State)</b>	<b>Name of city where company home office is located</b>
Northern Concrete	Cotton, MN
M& J, LLC	Proctor, MN
A.G. O'Brien	Hermantown, MN
Belknap Electric	Superior, WI
FirePro Sprinkler Specialists, Inc.	Hermantown, MN
Doorco	Duluth, MN
CMC Construction	Duluth, MN
KTM Paving	Hermantown, MN

\*Attach additional sheets as needed for submission of all first-tier subcontractors.

**SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-1**

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

All first-tier subcontractors listed on attachment A-1 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.

**Authorized Signature of Owner or Officer:**

*Ryker C. Holm*

**Printed Name:**

Ryker C. Holm

**Title:**

Vice President

**Date:**

11/19/2024

**Company Name:**

Donald Holm Construction Co., Inc.

**Bid Bond**

**CONTRACTOR:**

*(Name, legal status and address)*  
Donald Holm Construction Co., Inc.  
3211 West Third Street  
  
Duluth, MN 55806

**SURETY:**

*(Name, legal status and principal place of business)*  
Granite Re, Inc.  
14001 Quailbrook Drive  
  
Oklahoma City, OK 73134

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**OWNER:**

*(Name, legal status and address)*  
ISD#709-Duluth Public Schools

**Bond Amount:** Five Percent of the Bid Amount ( 5% of Bid Amount)

**PROJECT:** Project No.- 020116.50- ISD 709 Transportation Building Addition

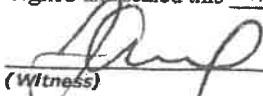

*(Name, location or address, and Project number, if any)*



The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 13th day of November, 2024

  
*(Witness)*  
  
*(Witness)*

Donald Holm Construction Co., Inc.  
*(Principal)*  *(Seal)*  
*(Title)*  
Granite Re, Inc.  
*(Surety)*  *(Seal)*  
*(Title)* Attorney-in-Fact Troy Staples

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

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**ACKNOWLEDGMENT OF PRINCIPAL (Individual)**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally come(s) \_\_\_\_\_ to me known and known to me to be the person(s) who (ls) (are) described in and executed the foregoing instrument and acknowledge(s) to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL (Partnership)**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

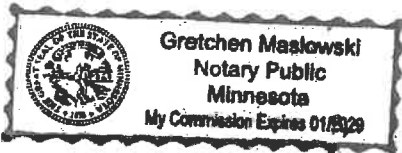
On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally come(s) \_\_\_\_\_ a member of the co-partnership of \_\_\_\_\_ to me known and known to me to be the person who is described in and executed the foregoing instrument and acknowledges to me that he/she executed the same as for the act and deed of the said co-partnership.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL (Corporation)**

State of Minnesota )  
County of Carlton )

On this 19th day of November in the year 2024 before me personally come(s) Ryker C. Holm to me known, who, being duly sworn, deposes and says that he/she is the Vice President of the Donald Holm Construction Co. Inc the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

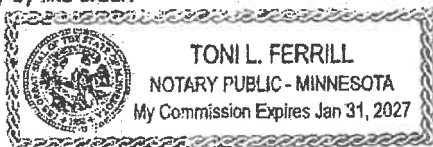


Gretchen Maslowski  
Notary Public

**ACKNOWLEDGMENT OF SURETY**

State of Minnesota )  
County of Dakota )

On this 13th day of November, in the year 2024, before me personally come(s) Troy Staples, Attorney(s)-in-Fact of Granite Re, Inc. with whom I am personally acquainted, and who, being by me duly sworn, says that he/she is (are) the Attorney(s)-in-Fact of Granite Re, Inc. company described in and which executed the within instrument; that he/she know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he/she signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Toni Ferrill  
Notary Public





**PATE  
BONDING  
INC.**

1276 So. Robert St. • West St. Paul, MN 55118 • Phone: (651) 457-6842 • Fax: (651) 457-7531 • Web Site: www.patebonding.com

Donald Holm Construction Co., Inc.  
3211 West Third Street  
Duluth, MN 55806

## Bid Bond Results Form

**PROJECT OWNER:** ISD#709-Duluth Public Schools

**BID DATE:** November 19th 2024

**PROJECT NAME:** Project No.- 020116.50- ISD 709 Transportation Building Addition

**APPROX. BID AMOUNT:** \*\$1,000,000.00

*\* If your bid increases by 10% or more from this estimate, please contact our office for approval prior to the bid letting.*

**BOND NUMBER:** RB0096148

General Agreement of Indemnity and Surety Recommends Updating Bank Letter Of Credit

PLEASE LIST THE FIRST THREE BIDDERS IF KNOWN

	Contractor's Name	Amount	Bid Security	
			Bid Bond	Check
Low	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
2nd	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
3rd	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
	Your Bid If Not Listed Above	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>

Comments

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

PLEASE RETURN THIS FORM TO PATE BONDING, INC.  
Your assistance in providing us with all of your bid results is appreciated

PBI-JP

Delivery Instructions: [ ] COURIER [ ] EMAIL [ ] FAX [ ] MAIL [ ] OVERNIGHT [ ] PICKUP [ ] OTHER \_\_\_\_\_

Please review your bond to ensure it is as you ordered and that it is in the proper form which includes the correct names, bond amounts and dates before you submit it. By affixing your signature, executing and providing this bond to the obligee you are verifying, and we will justifiably assume, the bond has been issued correctly with the best interests and requirements of all parties being considered. Contact us immediately if any correction is required.

**Expenditure Contracts Signed  
February 2025**

For your information, the Superintendent or the CFO, Executive Director of Business Services has signed the following expenditure contracts during the above timeframe.

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

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

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

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

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

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

<b>Name</b>	<b>Amount*</b>	<b>Contract Source**</b>	<b>Description</b>
TeamWorks	\$7,000.00*	Superintendent's Office (DU)	Cabinet Leadership Development
Finalsite	\$26,604.00	Communications Office (DU)	Website hosting service
Duluth Community School Collaborative	\$15,000.00*	TLE (DR)	After school summer programming to students at MWES
Carl Crawford	\$500.00*	TLE (DR)	Staff development presentations
Minnesota Education Equity Partnership	\$1,000.00*	TLE (DR)	Staff development presentations
Thomas Howes	\$750.00*	TLE (DR)	Staff development presentations
Westport Duluth Self Storage	\$326.00/month	Am. Indian Edu (DR)	Storage space for archived documents
Cassandra Seymour	\$750.00*	Office of Education Equity (DR)	Co-group leader and advisor for Diamond and Pearls Afterschool Mentoring Program
Xinyao Xu	\$320.00*	Office of Education Equity (DR)	Provide support for an after-school Mandarin Club with Chinese learning at Lowell ES
Mia Taggett	\$320.00*	Office of Education Equity (DR)	Provide support for an after-school Mandarin Club with Chinese learning at Lowell ES

Northland Learning Center	\$20,058.89*	Special Services (DU)	Services for vision teacher
EduHealthcare	\$25,350.00	Special Services (DU)	Contracted licensed practical nurse
School Mate	\$1,130.10*	Lester Park ES (DR)	Student planners for 2025/26 and 2026/27 school years
Lyric Opera of the North	\$625.00	Laura LacArthur ES (DU)	45-minute opera performance

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 10th day of February, 2025, by and between Independent School District #709, a public corporation, hereinafter called District, and TeamWorks, an independent contractor, hereinafter called Contractor.

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

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

1. **Dates of Service.** This Agreement shall be deemed to be effective as of 1/1/25 and shall remain in effect until 6/30/25, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.
2. **Performance.** *Cabinet Leadership Development*
3. **Background Check.** *(applies to contractors working independent with students*

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

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

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

**4. Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$350.00 hourly and \$ 7,000 in total.

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

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

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

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

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

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

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Superintendent's Office, 709 Portia Johnson Drive, Duluth, MN 55811.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to (mailing address with zip) TeamWorks, 7037 20th Ave S, Ste A, Centerville, MN 55038.

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

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

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

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

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

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

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

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

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

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

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

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

*Raymond C. Queener* \_\_\_\_\_ 39-  
 1829483 \_\_\_\_\_ 2/13/25 \_\_\_\_\_

**Contractor Signature** \_\_\_\_\_ **SSN/Tax ID Number** \_\_\_\_\_ **Date** \_\_\_\_\_  
*John Nagas* \_\_\_\_\_  
**Program Director** \_\_\_\_\_  
 Date \_\_\_\_\_

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

**This contract is funded by either:**

- 1. The following budget (include full 18 digit code); or
- 2. will be paid using Student Activity Funds; or
- 3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

X Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

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

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

01	E	005	020	000	305	000
XX	X	XXX	XXX	XXX	XXX	XXX

\_\_\_\_\_ *Imine Zurich* \_\_\_\_\_ 2.13.25

**Exec. Dir Finance & Business Services / Superintendent of Schools / Board Chair** \_\_\_\_\_ **Date** \_\_\_\_\_



This **Finalsite Order (the 'Order')** is entered into by and between Active Internet Technologies, dba Finalsite ('Finalsite') and Duluth Independent School District 709 ("Customer") and sets forth the terms of Customer's use of the products and services set forth below ("**Pricing Summary**"). This Order, together with the Master Terms and Conditions for Services (the "**Master Terms**") located at <https://www.finalsite.com/masterterms/useducationagencies> and incorporated herein by this reference, form the entire agreement between the parties in respect of the products and services set forth below. Each of the individuals executing this Order represent and warrant that he or she is authorized to execute this Order on behalf of Customer or Finalsite, as applicable. Unless otherwise specified herein, any capitalized terms used in this Order shall have the meaning defined in the Master Terms. The "**Effective Date**" of this Order is the date on which both parties have signed this Order as reflected in the signature lines below.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

**A. Products and Services Pricing Summary**

\* Indicates products added

[x] Indicates products removed

**CMS Platform**

Platform	
CMS Core (Website)	

Modules	
Advanced Search	Base SSO (Single Sign-On)
* Ask AI Setup	* Ask AI

Products Included in CMS Core	
Calendar	Roles & Permissions
Posts	Standard Search
Forms	People Manager
Payments	Resource Manager
Faculty Portals	MFA / Authentication
Staff Directories	24/7 Support
Crisis Mode	Social Media Feeds (21)
Page Pops	Number of Sites (21)
Cloud Storage 10 GB/Site	

The above products, to include but not limited to (modules, integration, design and consulting) will be billed upon contract signature.



Customer: Duluth Independent School District 709  
 Created By: Nicole Montgony  
 Renewal  
 2/25/2025  
 Proposal Valid for 30 days

**Application Services Subscriptions Costs:**

Total Cost/Year during the Initial Term of this Order, subject to adjustment for any renewal term as provided below.

Total Setup Cost (USD)
\$ 0

Schedule	Amount
Period 1 - Mar 01 2025	\$ 1,668
Period 2 - Jul 01 2025	\$ 24,936
Period 3 - Jul 01 2026	\$ 26,132
Period 4 - Jul 01 2027	\$ 27,400
Period 5 - Jul 01 2028	\$ 28,744
Period 6 - Jul 01 2029	\$ 30,169

**B. Additional Terms**

1. Initial Term: Unless otherwise specified in the Special Provisions above, the Initial Term shall be [6] years
2. Unless otherwise specified in the Special Provisions above, this Order Form shall be renewed automatically for successive periods of (5) years (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless Customer provides AIT, or AIT provides Customer, with a written notice to the contrary ninety (90) days prior to the end of the Initial Term or Renewal Term, as applicable.
3. Effective Date: Upon execution of this Order.
4. AIT standard maintenance and support is included in the subscription fees for Application Services set forth in this Order.
5. All Upgrades and Updates to the Application Services are included in the subscription fees for Application Services set forth in this Order.
6. Fees shall be subject to increase upon notice by AIT for any renewal term, provided that any annual increase in fees shall be limited to the greater of 6% or the increase in US CPI.
7. In addition to Customer's obligations to pay the fees described in the fee table above, Customer agrees to reimburse Finalsight for all travel and other out-of-pocket expenses reasonably incurred by Finalsight in rendering any services described in this Order.

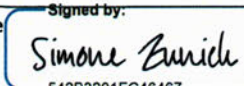



Customer: Duluth Independent School District 709  
Created By: Nicole Montgomery  
Renewal  
2/25/2025  
Proposal Valid for 30 days

**C. Payment Terms**

1. All fees for the initial year of this Order shall be due upon execution of this Order. Unless otherwise specified, all dollars (\$) are United States currency. All fees for subsequent years shall be due upon the annual anniversary of the effective date of this Order.
2. Customer shall be invoiced for amounts due in respect of the first year of the Initial Term upon execution of this Order Form.
3. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

Any SOWs to which links are provided above in Section A, "Pricing Summary," are incorporated into this Order by reference, and any professional services described therein are included as part of your software package. By signing below, Finalsite and Customer each agree to the terms and conditions of this Order, the Master Terms, and any SOWs incorporated by reference.

Customer: Duluth Independent School District 709	
Signed by:	
Signature	
Name (printed)	542B3201FC46467...
	Simone Zunich
Title (printed)	
	Exec. Dir. of Finance and Business Services
Date	
	2/25/2025

Active Internet Technologies ('AIT')	
DocuSigned by:	
Signature	
Name (printed)	59DAD97691BB4F7...
	Jim Calabrese
Title (printed)	
	Chief Financial officer
Date	
	2/25/2025



Customer: Duluth Independent School District 709  
 Created By: Nicole Montgery  
 Renewal  
 2/25/2025  
 Proposal Valid for 30 days

**D. Customer Contact Information**

Please fill out the following information, which will be used by our deployment & accounting teams.

<b>Billing Contact</b>	Sheila Stevens
<b>Title</b>	Finance Manager
<b>Address</b>	709 Portia Johnson Drive
<b>City, State Zip</b>	Duluth, MN 55811
<b>Phone</b>	2183368700
<b>Email</b>	sheila.stevens@isd709.org

<b>Project Contact</b>	Adelle wellens
<b>Title</b>	Communications Officer
<b>Phone</b>	2183368700
<b>Email</b>	adelle.wellens@isd709.org

<b>*Executive Sponsor (Head of School, Superintendent, Business Manager/CFO, etc.)</b>	Simone Zunich
<b>Title</b>	Exec Director of Business Services
<b>Email</b>	simone.zunich@isd709.org

\* The Executive Sponsor should be separate from the client contact and is typically the Head of School, Business Manager/CFO, etc.


## AGREEMENT

**THIS AGREEMENT**, made and entered into this 1 day of September, 2024, by and between Independent School District #709, a public corporation, hereinafter called District, and Duluth Community School Collaborative, an independent contractor, hereinafter called Contractor.

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

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

1. **Dates of Service.** This Agreement shall be deemed to be effective as of 9/1/2024 and shall remain in effect until 6/30/2025, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

 2. **Performance.** The Duluth Community School Collaborative will provide after school and summer programming to students at Myers-Wilkins Elementary. Programming will provide safe, nurturing, and enriching experiences designed to build students' academic, creative, and life skills. The Duluth Community School Collaborative will also support opportunities for Myers-Wilkins students and their families to connect to community resources and build deeper engagement in their school community.

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

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

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

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$15,000 in total.

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

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

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

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

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

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

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Anthony Bonds, 709 Portia Johnson Drive, Duluth, MN 55811.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Duluth Community School

Collaborative, 32 East 1st St. Suite 202, Duluth, MN 55802 ATTN: Kelsey Gantzer, Executive Director.

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

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

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

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

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

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

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

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

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

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

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

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

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

Kelley Justice 41-2002724 1/24/2025  
Contractor Signature SSN/Tax ID Number Date

A. Bon T 2/23/25  
Program Director Date

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

**This contract is funded by either:**

- 1. The following budget (include full 18 digit code); or
- 2. will be paid using Student Activity Funds; or
- 3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

\_\_\_ Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

01	E	540	203	313	305	324
XX	X	XXX	XXX	XXX	XXX	XXX

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

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

A. Bon T  
CFO / Superintendent of Schools / Board Chair

2/24/25  
Date

James Z...

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 02/18/2025 by and between Independent School District #709, a public corporation, hereinafter called District, and Carl Crawford an independent contractor, hereinafter called Contractor.

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

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

**1. Dates of Service.**

This Agreement shall be deemed to be effective on 02/24/2025 unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

**2. Performance.**

Carl Crawford will provide a presentation on Black History Month from 9:30-10:30 am, 02/24/2025 at East High School.

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

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

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

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

**4. Reimbursement.**

In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses a sum of \$500.

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

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

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

**6. Propriety of Expenses.**

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

**7. Ownership of Materials.**

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

**8. Independent Contractor.**

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

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

**9. Indemnity and defense of the District.**

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

**10. Notices.**

All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public

Schools, Attn: Annemarie Schilling , 709 Portia Johnson Drive, Duluth, MN 55811.  
 All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to St. Louis County attn: Carl Crawford, 320 West 2nd Street, Suite 301, Duluth, MN 55802

**11. Assignment.**

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

**12. Modification or Amendment.**

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

**13. Governing Laws.**

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

**14. Entire Agreement.**

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

**15. Cancellation.**

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

**16. Data Practices.**

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

**17. Insurance.** (If applicable)

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

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

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

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

**18. Conflict of Interest and Fiduciary Duty.**

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

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

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

Carol A. Fisher [Redacted] 2/18/25  
Contractor Signature SSN/Tax ID Number Date

[Signature]  
Program Director 2/19/2025  
Date

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

- This contract is funded by either:
- 1. The following budget (include full 18 digit code); or
  - 2. will be paid using Student Activity Funds; or
  - 3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

01	E	005	640	316	305	000
XX	X	XXX	XXX	XXX	XXX	XXX

Check if the contract will be paid using Student Activity Funds

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

Imine Zunic 2.24.25  
CFO / Superintendent of Schools / Board Chair Date

## **AGREEMENT**

**THIS AGREEMENT**, made and entered into this February 28, 2025, by and between Independent School District #709, a public corporation, hereinafter called District, and Minnesota Education Equity Partnership, an independent contractor, hereinafter called Contractor.

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

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

### **1. Dates of Service.**

This Agreement shall be deemed to be effective as of February 24, 2025 unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

### **2. Performance.**

Minnesota Education Equity Partnership will provide the following Professional Development presentations:

- “Connecting Through Culture” 8:15-9:15 am, 02/24/2025, East High School
- “Diversity Matters” 12:30-1:15 pm, 02/24/2025, East High School
- “Diversity Matters” 1:30-2:15 pm, 02/24/2025, East High School
- “Diversity Matters” 2:30-3:15 pm, 02/24/2025, East High School

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

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

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

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

### **4. Reimbursement.**

In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations a sum of \$1,000.

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

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

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

**6. Propriety of Expenses.**

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

**7. Ownership of Materials.**

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

**8. Independent Contractor.**

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

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

**9. Indemnity and defense of the District.**

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

**10. Notices.**

All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Annemarie Schilling , 709 Portia Johnson Drive, Duluth, MN 55811.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Minnesota Education Equity Partnership, 2223 Universtiy Ave W., Suite 220, St. Paul, MN 55114

**11. Assignment.**

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

**12. Modification or Amendment.**

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

**13. Governing Laws.**

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

**14. Entire Agreement.**

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

**15. Cancellation.**

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

**16. Data Practices.**

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

**17. Insurance.** (If applicable)

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

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

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

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

**18. Conflict of Interest and Fiduciary Duty.**

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

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



## AGREEMENT

**THIS AGREEMENT**, made and entered into this 02/18/2025 by and between Independent School District #709, a public corporation, hereinafter called District, and Thomas Howes, an independent contractor, hereinafter called Contractor.

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

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

**1. Dates of Service.**

This Agreement shall be deemed to be effective 02/24/2025, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

**2. Performance.**

Thomas Howes will provide 3 hours of Traditional Lacrosse instruction on 02/24/2025 from 12:30-3:30 pm at Denfeld High School

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

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

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

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

**4. Reimbursement.**

In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations a sum of \$750.

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

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

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

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

**6. Propriety of Expenses.**

The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to the Contractor. This clause shall

not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

**7. Ownership of Materials.**

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

**8. Independent Contractor.**

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

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

**9. Indemnity and defense of the District.**

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

**10. Notices.**

All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Annemarie Schilling , 709 Portia Johnson Drive, Duluth, MN 55811.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Thomas Howes, 1720 Big Lake Road, Cloquet, MN 55720.

**11. Assignment.**

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

**12. Modification or Amendment.**

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

**13. Governing Laws.**

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

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

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

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

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

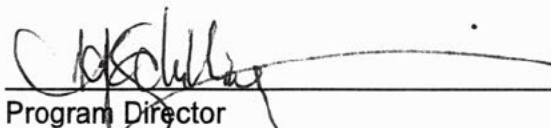
**18. Conflict of Interest and Fiduciary Duty.**

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

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

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

  
[REDACTED] \_\_\_\_\_ 2/18/25  
Contractor Signature SSN/Tax ID Number Date

  
\_\_\_\_\_ 2/19/2025  
Program Director Date

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

- This contract is funded by either:**
1. The following budget (include full 18 digit code); or
  2. will be paid using Student Activity Funds; or
  3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

01	E	005	640	316	305	000
XX	X	XXX	XXX	XXX	XXX	XXX

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

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

  
\_\_\_\_\_ 2.24.25  
CFO / Superintendent of Schools / Board Chair Date

MINNESOTA SELF STORAGE RENTAL AGREEMENT

3210 W. Michigan St  
Duluth, MN 55806

SPACE AND RENTAL INFORMATION:

Lease Date: February 6, 2025  
Administration Fee: \$29.00  
Monthly Rent: \$326.00

Lease #: 2769  
Unit #: 2H06  
Total Monthly Rental Rate + Tax: \$326.00

OCCUPANT INFORMATION:

Name: Sheila White  
Address: 709 Portia Johnson Dr.

ALTERNATE INFORMATION:

Name:  
Address:

City: Duluth State: MN Zip: 55811  
Home Phone: 2183368711  
Work Phone:  
E-Mail: sheila.white@isd709.org

City: State: Zip:  
Phone:

Initials: *sw*

EMERGENCY CONTACT:

Name:

Phone:

Initials: *sw*

**E-MAIL NOTIFICATION:** By choosing the option to receive e-mail communication in this agreement, the owner will provide you notices and other information regarding your account through the e-mail reflected in our records, or in a subsequent written change of e-mail address that has been given according to the facility's procedures. To indicate that you understand and accept the contents of this notice and agree to the option to receive electronic communication, you must check the box that appears next to this paragraph.

Initials: *sw*

**MILITARY STATUS:** Please state whether either you or your spouse is an active duty member of the uniformed services of the United States meaning a member of the armed forces; the commissioned corps of the National Oceanic and Atmospheric Administration; or the commissioned corps of the Public Health Service:

Yes  No

Initials: *sw*

**ALTERNATE INFORMATION:** Please provide the name and address of another person to whom lien notice may be sent (if none Occupant must initial):

None: *sw*

**LATE FEES AND OTHER SERVICE CHARGES:**

Any payments received from Occupant shall apply first toward any services charges due under this paragraph, second to rent in arrears and thereafter toward any other sums due pursuant to this Agreement.

**Late Fees:** A late fee of \$20 or 20% of the non-discounted monthly rent, whichever is greater, will be charged each month the rent payment is received fifteen (15) or more days after the due date.

**Notice of Lien Fee:** \$15.00 for each notice of lien sent to Occupant or to the alternative address given by

Occupant because Occupant has not paid rent or service charges due after 30 days.

**Vehicle Lien Fee:** \$100.00 for processing liens on vehicles.

**Advertising:** \$30.00 for each publication of an advertisement of the lien sale. It will be advertised twice.

**Inventory:** \$40.00 for Auction Lock Cut including inventory of goods and picture fees.

**Auction Fee:** \$25.00 Auction Fee added on day of the auction.

**Returned Payment:** \$25.00 for All Returned Payments

**NOTICE OF LIEN:** Pursuant to the Minnesota Liens on Personal Property in Self-Service Storage Act your property will be subject to a claim of lien for unpaid rent and other charges and may even be sold to satisfy the lien if rent and other charges due remain unpaid. In addition the Owner may deny Occupant access to certain property contained in the rented space when rent and other charges are in default. Owner does not provide any insurance on Occupant's stored property. Occupant must purchase any insurance covering stored contents at Occupant's sole expense.

**OWNER'S RIGHT TO TOW:** Pursuant to the Minnesota Liens on Personal Property in Self-Service Storage Act Owner also has the right to tow a vehicle, watercraft or trailer when rent and other charges are 60 or more days past due.

Westport Properties, Inc. property manager and USSC Admin LLC protection plan manager for Westport Duluth Self Storage, LLC dba: US Storage Centers - Duluth, (hereinafter collectively Owner), rents to Occupant the storage space indicated above pursuant to the following terms and conditions:

**TERM:** The term of the tenancy shall commence on the date indicated above and shall continue until terminated on a month-to-month basis. The minimum rental term is one month.

**RENT:** The rent shall be the amount stated above and paid to Owner at the address stated above. Rent is due each month on the FIRST day of the month, in advance and without demand. Owner reserves the right to require that rent and other charges be paid in cash, certified check or money order. Owner may change the monthly rent or other charges by giving Occupant thirty (30) days advanced written notice by first-class mail or email at the postal or email address stated in this agreement. The new rent shall become effective on the next date rent is due. If Occupant has made advanced rental payments, the new rent will be charged against such payments, effective upon giving notice of the new rate. Owner, at Owner's sole discretion, may accept or reject partial rent payments. Acceptance of partial payments of rent by Owner shall not constitute a waiver of Owner's rights and Occupant understands and agrees that acceptance of a partial rent payment made to cure a default for non-payment of rent shall not delay or stop foreclosure on Occupant's stored property as provided by the Minnesota Liens on Personal Property in Self-Service Storage Act.

**ADMINISTRATION FEE:** Occupant agrees to pay the indicated non-refundable administration fee.

**LATE FEES AND OTHER CHARGES:** Occupant agrees to pay Owner the indicated late fee if rent is received fifteen (15) or more days after the due date. Occupant will pay Owner the indicated fee for each letter sent to Occupant notifying Occupant of the default. Occupant agrees to pay Owner the indicated returned payment charge (e.g., a dishonored check or failed credit/debit transaction) plus any ancillary bank charges incurred by Owner as the result of the returned payment. These fees are considered additional rent and are to compensate Owner for labor and other costs of collection. In the event of default, Occupant agrees to pay all collection and lien costs incurred by Owner.

**CROSS COLLATERALIZATION OF STORAGE SPACES:** When Occupant rents more than one space at this facility the rent is secured by the property in all the spaces rented. Failure by Occupant to pay on any space shall be considered a default on all spaces rented. Owner may exercise all remedies including denial of access to the facility and sale of the property if all rent on all spaces is not paid when due.

**CIVIL RELIEF ACT:** In order to comply with SERVICE MEMBERS CIVIL RELIEF ACT of 2004, it is your obligation to notify this facility in writing, that you and any family member storing goods in this storage facility are in active military service, in order to determine your qualifications under this act. If your military status or your family member's military status changes, you are required to notify us in writing of this change immediately.

**USE OF STORAGE SPACE:** Occupant agrees to use the storage space only for the storage of property wholly owned by Occupant. Occupant shall not store food or any perishable items in the space. **Occupant agrees not to store collectibles, heirlooms, jewelry, works of art or any property having special or sentimental value to**

**Occupant. Occupant waives any claim for emotional or sentimental attachment to the stored property.**

Residential use of the Space by Occupant is prohibited.

**LIMITATION OF VALUE: Occupant agrees not to store property with a total value in excess of \$5,000 without the written permission of the Owner. If such written permission is not obtained, the value of Occupant's property shall be deemed not to exceed \$5,000.** Nothing herein shall constitute any agreement or admission by Owner that Occupant's stored property has any value, nor shall anything alter the release of Owner's liability set forth below.

**HAZARDOUS OR TOXIC MATERIALS PROHIBITED:** Occupant is strictly prohibited from storing or using materials in the storage space or on the facility classified as hazardous or toxic under any local, state or federal law or regulation, and from engaging in any activity which produces such materials. The storage and charging of lithium batteries is prohibited. Occupant's obligation of indemnity as set forth below specifically includes any costs, expenses, fines or penalties imposed against the Owner, arising out of the storage or use of any hazardous or toxic material by Occupant, Occupant's agents, employees, invitees or guests. Owner may enter the storage space at any time to remove and dispose of prohibited items.

**INSURANCE:** Occupant, at Occupant's expense, shall maintain a policy of insurance covering at least the actual cash value of all stored property against at least the following risks: fire, water damage, burglary, vandalism and malicious mischief. Insurance on Occupant's property is a material condition of this agreement and is for the benefit of both Occupant and Owner. Failure to carry the required insurance is a breach of this agreement. Occupant expressly agrees that the insurance company providing such insurance shall not be subrogated to any claim of Occupant against Owner, Owner's agent or employees for loss of or damage to stored property. This waiver of subrogation applies even if Occupant elects to participate in the Protection Plan Agreement described below.

**ALTERNATIVE TO INSURANCE:** Occupant may comply with the insurance requirement of this Rental Agreement by participating in the Protection Plan Agreement. The Protection Plan Agreement is not insurance. For additional rent the Owner will assume liability for and pay certain losses to Occupant's stored property resulting from Owner's negligence that would otherwise be borne solely by the Occupant. Occupant will be provided information on the Protection Plan Agreement at the time of rental. While an Occupant who participates in the Protection Plan Agreement is not required by this Rental Agreement to maintain insurance on stored property, but may wish to do so because insurance provides additional protection.

**RELEASE OF OWNER'S LIABILITY FOR PROPERTY DAMAGE:** All personal property stored within or upon the storage space by Occupant shall be at Occupant's sole risk. Owner and Owner's agents and employees shall not be liable for any loss of or damage to any personal property in the storage space or at the self storage facility arising from any cause whatsoever including, but not limited to, burglary, mysterious disappearance, fire, water damage, rodents, Acts of God, or the malfunction of any type of climate control system installed by Owner, Owner's agents or employees.

**RELEASE OF OWNER'S LIABILITY FOR BODILY INJURY:** Owner, Owner's agents and employees shall not be liable to Occupant for injury or death as a result of Occupant's use of the storage space or the self storage facility, even if such injury is caused by the active or passive acts or omissions or negligence of the Owner, Owner's agents or employees.

**INDEMNITY:** Occupant agrees to indemnify, hold harmless and defend Owner from all claims, demands, actions or causes of action (including attorneys' fees and all costs) that are hereinafter brought by others arising out of Occupant's use of the storage space and common areas, including claims for Owner's active negligence.

**OWNER'S RIGHT TO ENTER:** Occupant grants Owner, Owner's agents or representatives of any governmental authority, including police and fire officials, access to the storage space upon two (2) days advanced written notice to Occupant. In the event of an emergency, Owner, Owner's agents or representatives of governmental authority shall have the right to enter the storage space without notice to Occupant, and take such action as may be necessary or appropriate to protect the storage facility, to comply with applicable law or enforce Owner's rights.

**CLIMATE CONTROLLED SPACES:** Climate controlled spaces are heated or cooled depending on outside temperature. These spaces do not provide constant internal temperature or humidity control. Owner does not warrant or guarantee temperature or humidity ranges inside the space due to changes in outside temperature or humidity.

**CHANGE OF ADDRESS:** Occupant agrees to keep all mailing and email addresses provided in the Rental Agreement current. All postal and electronic mail address changes must be in writing and are effective when acknowledged by the Owner in writing.

**NOTICES FROM OWNER:** All notices required by this Rental Agreement shall be sent by first-class mail postage prepaid to Occupant's postal address or to the electronic mail address provided by Occupant. Notices shall

be deemed given when deposited in the United States mail or sent to the electronic mail address provided. **All statutory notices shall be sent as required by law.**

**NOTICES FROM OCCUPANT:** Occupant shall send notices by certified mail or first-class mail postage pre-paid or electronic mail to the Owner's postal or electronic mail address provided in this Agreement or written change thereto.

**COMMUNICATION:** Occupant understands that Owner and Occupant are entering into a business relationship. Occupant agrees to keep at least one valid and working phone number on file with Owner at all times for the purposes of contact by Owner. Occupant authorizes and consents to Owner contacting Occupant at Occupant's residence, email box, cell phone, through social media and by automated telephone calls or texts. Such automated calls or messages may be used for conveying important facility information, marketing or collection purposes.

**LOCKS:** Occupant shall provide, at Occupant's own expense, a lock that Occupant deems sufficient to secure the space. If the space is found unlocked Owner may, but is not obligated to, take whatever measures Owner deems reasonable to re-secure the space, with or without notice to Occupant.

**RULES AND REGULATIONS:** Owner shall have the right to establish or change the hours of operation for the facility and to promulgate rules and regulations for the safety, care and cleanliness of the storage space or the preservation of good order on the facility. Occupant agrees to follow all rules and regulations now in effect, or that may be put into effect from time to time.

**NO ALTERATIONS:** Occupant shall make no alterations to the interior or exterior of the space without the written permission of the Owner authorizing such alterations.

**NO SUBLETTING:** Occupant shall not assign or sublease the storage space without the written permission of the Owner. Owner may withhold permission to sublet or assign for any reason or for no reason in Owner's sole discretion.

**NO ORAL AGREEMENTS:** This rental agreement contains the entire agreement between Owner and Occupant, and no oral agreements shall be of any effect whatsoever. Occupant acknowledges that no representations or warranties have been made with respect to the safety, security or suitability of the storage space for the storage of Occupant's property, and that Occupant has made his own determination of such matters solely from inspection of the storage space and the facility. Occupant agrees that he is not relying, and will not rely, upon any oral representation made by Owner or by Owner's agents or employees purporting to modify or add to this rental agreement. Occupant understands and agrees that this agreement may be modified only in writing, signed by both parties.

**OCCUPANT ACCESS:** Occupant's access to the storage facility may be conditioned in any manner deemed reasonably necessary by Owner to maintain order. Such measures may include but are not limited to, limiting hours of operation, requiring verification of Occupant's identity and inspecting vehicles that enter the storage facility. The property has not undergone an inspection by a Certified Access Specialist (CASp).

**DENIAL OF ACCESS:** When rent or other charges remain unpaid for fifteen (15) consecutive days, Owner may deny Occupant access to the storage space.

**NO WARRANTIES:** No expressed or implied warranties are given by Owner, Owner's agents or employees as to the suitability of the storage space for Occupant's intended use. Owner disclaims and Occupant waives any implied warranties of suitability or fitness for a particular use.

**SUCCESSION:** All provisions of this rental agreement shall apply to and be binding upon all successors in interest, assigns or representatives of the parties hereto.

**ENFORCEMENT:** If any part of this rental agreement is held to be unenforceable for any reason, in any circumstance, the parties agree that such part shall be enforceable in other circumstances, and that all the remaining parts of this agreement will be valid and enforceable.

**NO WAIVER OF RIGHTS:** The Owner's exercise or of failure to exercise any remedy provided herein for any default shall not be deemed a waiver of the Owner's right to exercise that or any other remedy. Owner's failure to exercise any remedy provided herein for any default shall not be deemed a waiver under this agreement or the Owner's acceptance of money after any default shall not be considered or construed to waive any of the owner's rights or to affect any notice or legal proceedings given or commenced.

**PROPERTY LEFT IN THE STORAGE SPACE:** Owner may dispose of any property left in the storage space or on the storage facility by Occupant after Occupant has terminated his or her tenancy. Occupant shall be responsible for paying all costs incurred by Owner in disposing of such property.

**TIME TO MAKE CLAIM OR BRING SUIT:** Occupant must bring any claim that arises out of this rental agreement, the negotiations that proceeded this tenancy, or for loss of or damage to stored property within twelve

(12) months after the date of the acts, omissions, or inactions that gave rise to such claim or suit or twelve (12) months after the termination of this rental agreement, whichever occurs first.

**TERMINATION:** Occupant may terminate this Rental Agreement at any time if all Rent and charges are paid in full through the end of the Term and Occupant notifies Owner in writing. Owner may terminate this Rental Agreement by giving Occupant Thirty (30) days written notice prior to the end of the Term. Owner may give shorter termination notice for illegal activity by Occupant, or Occupant's guests at the Property, or if Occupant's Space becomes infested, if Occupant or Occupant's guests or invitees are interfering with the Owner's operation of the Property, or if Occupant, Occupant's guests are residing in the Space, or if Occupant or guests are violating general rules and regulations of the Property. Except as set forth in the Rules and Regulations, no refunds of partial months are made if Occupant vacates the Space before the end of the Term. The Space shall be left broom clean, free of trash, Occupant shall remove all Personal Property (or Rent will continue to accrue), and the Occupant's lock must be removed. Keeping Occupant's lock on the Space or keeping any Personal Property in the Space past the end of any Term shall result in another month of Rent being charged, no matter how early Occupant vacates in the next month. Occupant shall fully vacate by the date stated in Occupant's or Owner's Notice. Owner charges and Occupant is responsible for Fifty Dollars (\$50.00), or more, plus cost of disposal fees for cleaning the Space if Owner must remove Personal Property and/or clean the Space.

**FACILITY MANAGER:** Westport Properties, Inc. has been authorized by Westport Duluth Self Storage, LLC dba: US Storage Centers - Duluth, the facility owner, to manage this facility and the owner agrees to accept service of process and other notices at the following address: 3210 W. Michigan St, Duluth, MN 55806.

**APPROXIMATE SIZE:** Space sizes are approximate and for comparison purposes only. Spaces may be smaller than indicated in advertising or other size indicators.

**OFAC REPRESENTATION:** By executing below, Occupant represents and warrants that he/she/it is not in violation of any applicable law relating to anti-money laundering or anti-terrorism, including, without limitation, those related to transacting business with Embargoed Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations (collectively, as the same may be amended from time to time, the **Patriot Act**).

**Do not sign this agreement until you have read it, including all the provisions on pages subsequent to the current page, and fully understand them. This agreement limits the Owner's liability for loss of or damage to your stored property. If you have any questions concerning its legal effect, consult your legal advisor.**

**Occupant hereby consents to the enforceability of his/her/its electronic signature on this Lease. Occupant understands that by providing his/her/its electronic signature on this Lease, that: (i) Occupant intends to create a contract, and (ii) upon electronic execution the Lease will constitute a legally binding contract that is enforceable against the parties thereto.**



\_\_\_\_\_  
Occupant's Signature  
**OCCUPANT'S NAME:** Sheila White  
**LEASE DATE:** February 4, 2025



\_\_\_\_\_  
Agent for Owner-Westport Properties  
**LEASE #:** 2769  
**UNIT #:** 2H06

**MINNESOTA  
Mandatory Binding Arbitration of Claims  
Addendum to Rental Agreement**

This addendum is between Sheila White (Occupant) and Westport Properties, Inc. property manager for Westport Duluth Self Storage, LLC dba: US Storage Centers - Duluth, (hereinafter collectively Owner) and is made a part of the Rental Agreement for Space(s) number 2H06 and the parties agree as follows:

**MANDATORY BINDING ARBITRATION:** In the event of any dispute or claim between Occupant and Owner arising from or relating to Occupant's rental or use of the facility, the storage space, and/or this Rental Agreement, any and all such disputes or claims shall be submitted to binding arbitration upon the request of either party. The parties agree that the arbitration shall be conducted and heard by a single arbitrator to resolve the claim or dispute and that the arbitrator's decision shall be final and binding.

**CLASS ACTION WAIVER:** THE ARBITRATION MUST BE CONDUCTED ON AN INDIVIDUAL BASIS AND OCCUPANT AND OWNER AGREE NOT TO ACT AS A CLASS-REPRESENTATIVE OR ON BEHALF OF ANY CLASS.

**EXCEPTION FOR SMALL CLAIMS:** Owner and Occupant agree that any claims subject to the jurisdiction of a small claims court shall not be subject to arbitration. However, if such a small court claim is transferred, removed or appealed to a different court, either party may then choose to arbitrate.

**GOVERNING LAW AND RULES:** The arbitration must be brought within the time set by the applicable statute of limitations or within two years of Occupant vacating the premises, whichever occurs first. The Federal Arbitration Act (FAA) shall govern this arbitration agreement. Subject to the FAA, the Arbitration shall be conducted by the American Arbitration Association (AAA) under its applicable rules, which may be found at [www.adr.org](http://www.adr.org) <<http://www.adr.org>>. Unless otherwise agreed by the parties, the arbitration shall take place within the county where the self-storage unit last used by Occupant is located. Each party to the arbitration shall pay his, her, or its own costs of arbitration. If Occupant cannot afford the costs of arbitration, he or she may qualify and/or apply for a waiver under the relevant rules.

**EFFECT OF YOUR AGREEMENT TO ARBITRATION:** IF OWNER CHOOSES ARBITRATION, OCCUPANT SHALL NOT HAVE THE RIGHT TO LITIGATE SUCH CLAIM OR LAWSUIT IN A COURT OF LAW OR TO HAVE A JURY TRIAL. OCCUPANT IS ALSO GIVING UP OCCUPANT'S RIGHT TO PARTICIPATE IN A CLASS-ACTION OR ON BEHALF OF A CLASS.



Occupant's Signature  
**OCCUPANT'S NAME:** Sheila White  
**LEASE DATE:** February 4, 2025  
#pb

Agent for Owner-Westport Properties  
**LEASE #:** 2769  
**UNIT #:** 2H06

**US Storage Centers - Duluth  
RULES AND REGULATIONS**

**OFFICE HOURS:** See <<http://www.USStorageCenters.com>> for hours  
**ACCESS HOURS:** See <<http://www.USStorageCenters.com>> for hours

**YOU MUST EXIT THE FACILITY BY CLOSING TIME OR YOUR VEHICLE WILL BE LOCKED IN.**

- 1. RENTAL PAYMENT:** Rent is due on the **FIRST of each month** following the move in date. The minimum term of rental is one month, paid in advance. **No bill will be sent to you** unless requested at a fee of \$1.00 per month. **No Refunds-except full months of prepaid rent** less any discounts or credits received. Refunds will be paid (if any) by a check issued from the corporate office within 60 days of termination of the Rental Agreement. All payments received are applied first towards all service charges or fees due, second to any late rent payments and thereafter to any other sums due.

- 2. **VACATING:** Only Occupants who vacate before the 5th day after the due date may pay a pro-rated amount if a- written notice was given. Move-out payments must be made in cash or credit cards only. **NO PERSONAL CHECKS** will be accepted for a move out payment! Any outstanding balance due may be sent to a collection agency.
- 3. **ACCESS:** Access to your storage unit will be denied if the Occupant is 15 days or more delinquent. **Information regarding access to the facility will be given to the Occupant only**, in person with valid identification. We cannot give out access information over the phone or to anyone other than the Occupant named on the lease agreement as the Occupant. For a company's personnel and/or delivery personnel to have access to the unit, written documentation must be on file with the management. Access to your vehicle parking is during regular access hours unless you have prior written permission from the management.
- 4. **CHANGE OF ADDRESS OR PHONE NUMBER:** Occupant is required to update any change in address or phone numbers to either Occupant or alternate contact, in writing within 10 days of the actual change.
- 5. **LATE COLLECTION AND LIEN FEES:** Occupants will pay all late and letter fees associated with the default process. These fees and any service charges will be paid first before all rent charges when a payment is received. Late fees will continue to incur monthly until the balance is paid in full. **CASH, MONEY ORDER, OR CREDIT CARD PAYMENTS ONLY WILL BE ACCEPTED FOR UNITS IN LIEN STATUS.**
- 6. **RETURNED PAYMENT CHARGES:** All returned payments (e.g., a dishonored check or failed credit/debit transaction) will incur a RETURNED PAYMENT FEE of \$25.00, in addition to any ancillary bank charges incurred by Owner as the result of the returned payment. Tenant may be required to pay in Cash, Credit Card, Money Order or Cashier's Check when a check is returned/dishonored. Fees and Charges will incur on all accounts that are put into late or lien status due to returned payment.
- 7. **MISCELLANEOUS RULES AND REGULATIONS:**
  - ANY PERSONS FOUND ON THE PROPERTY AFTER HOURS ARE CONSIDERED TRESPASSING.
  - CHILDREN ARE NOT TO BE LEFT UNSUPERVISED AT ANY TIME WHILE ON THE PROPERTY.
  - NO BIKE RIDING, SKATEBOARDING, SCOOTER RIDING OR RUNNING ON THE PROPERTY.
  - NO ANIMALS OR PETS ARE ALLOWED ON THE PROPERTY AT ANY TIME, EXCEPT SEEING EYE DOGS AND AUTHORIZED SERVICE ANIMALS.
  - NO ALCOHOL OR DRUGS ARE ALLOWED ON THE PROPERTY.
  - NO SMOKING INSIDE ANY BUILDING, ELEVATOR, HALLWAY OR STORAGE UNIT.
  - NO FLAMMABLES, HAZARDOUS WASTE, ILLEGAL SUBSTANCES OR FOOD ITEMS ARE TO BE STORED IN YOUR UNIT AT ANY TIME.
  - NO DUMPING OR DISPOSAL OF ANY ITEM ALLOWED ON THE PROPERTY.
  - TRASH CONTAINERS ARE FOR STORAGE FACILITY USE ONLY.
  - SPEED LIMIT AT ALL FACILITIES IS 5 MPH
- 8. **LOCK INFORMATION:** Occupant has the option to provide a lock of their own or purchase a lock from this facility. If the Occupant neglects to put a lock on their unit, a lock will be placed on the unit and Occupant's account will be charged for the lock and the key will be mailed to the Occupant.
- 9. **ONE LOCK PER SPACE:** Only one customer lock per unit is allowed. All other locks will be cut off and Occupant will be charged a \$40.00 per lock removal fee which will be added to Occupant's account.
- 10. **THE FOLLOWING ARE OTHER CHARGES FOR SERVICES RENDERED:**
  - \$40.00 Lock Cutting Fee (Customer Requested with Identification) Up to 48 hours may be required to schedule a lock cut
  - \$25.00 or more for excessive disposal or for abuse of the trash container
  - \$50.00 or more for cleaning fee for an extremely dirty unit after vacating or items left behind
- 11. **LOITERING:**  
All Occupants must be actively loading, unloading, or sorting through their items while at the facility. Prolonged lengths of stay on the property without a storage related purpose will not be tolerated. Occupants found to be loitering on the property will be asked to leave the premises and are subject to eviction

**ADDITIONAL RULES FOR VEHICLE STORAGE:**

- Occupants may only park one vehicle in their parking space without written permission from the management.
- Vehicles must be registered to the person renting the parking space and registration must be valid.
- Vehicles must remain in drivable condition. No Flat Tires, Broken Windows or Leaks of any type.
- No Loose items are to be left around the stored vehicle. All loose items will be discarded.
- No repairs of any kind are allowed on the property. The area around the vehicle must be kept clean at all times.
- Trailers wheels must be blocked and trailer tongues must be on wood to prevent asphalt damage.
- Occupant will notify management if the vehicle, boat or trailer is to be out of the space for more than 24 hours.
- Occupant's rent at their own risk and insurance is not provided by the facility. You must provide valid insurance for your vehicle at all times.

Violations and/or non-compliance with the above RULES AND REGULATIONS will result in immediate eviction from the unit(s). I understand and agree to the contract as well as the Rules and Regulations as presented to me.



Occupant's Signature  
OCCUPANT'S NAME: Sheila White



Agent for Owner-Westport Properties  
UNIT #: 2H06

This is not a contract of insurance, and the facility Owner is not an insurance company.

**Protection Plan Addendum to Self Service Storage Rental Agreement**

Tenant: Sheila White  
February 4, 2025

Storage Space #: 2H06

Date:

Pursuant to the terms and conditions of your Rental Agreement, Owner is not liable for the loss of or damage to its Tenant's stored goods. As the Tenant, your goods are stored at your sole risk and you must insure your personal property while it is on the premises. Owner is offering a Protection Plan (Protection Plan). The Protection Plan provides an option that may not require you to insure your stored goods and offers reimbursement to you for certain losses.

<b>PROTECTION PLAN LIMIT</b>	<b>\$2,500</b>	<b>Additional Fee: \$15.00</b>
	<b>\$5,000</b>	<b>Additional Fee: \$28.00</b>

The Protection Plan Limit cannot exceed \$5,000 unless confirmed in writing by Owner. An increase in the Protection Plan Limit will result in a higher Rental Fee per month.

1. The Protection Plan Offer: In consideration of the payment of the Additional Rental Fee per month, Owner waives the release of liability for property damage in your rental agreement up to the PROTECTION PLAN LIMIT indicated above. This limited assumption of liability is a modification to the waiver of liability in the Rental Agreement that it forms a part.

Owner's responsibility is limited to the liability for losses that occur as a result of Owner's negligence or as a result of acts or omissions for which Owner is liable under the law, including, but not limited to, vicarious liability, intentional tort, strict liability, and breach of common law or statutory duty. Owner's liability will arise **ONLY IF** Owner is negligent or breaches some other duty to you as Occupant **AND** you suffer a loss.

**Examples of when Owner would be liable include, but are not limited to:** **IF** Owner is negligent by not repairing the roof, **AND** you suffer a loss due to water damage, **THEN** Owner will be liable for your loss, subject to the limitations below; or, **IF** a fire occurs as a result of Owner's negligence or other breach of his duty, **AND** you suffer a loss due to fire or smoke damage or water damage, **THEN** Owner will be liable for your loss, subject to the limitations below; or, **IF** theft or vandalism occurs because of Owner's negligence or other breach of his duty, **AND** you suffer a loss due to theft or vandalism damage to your property, **THEN** Owner will be liable for your loss, subject to the limitations below. Owner is not liable for loss in excess of the amount Occupant requests in this Addendum and which is set forth as the limit of Owner's liability.

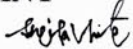
2. Protection Plan Limit: The most the Owner will pay for loss or damage to your stored goods under this Protection Plan is the PROTECTION PLAN LIMIT above. The Owner has no liability for loss of or damage to Tenant's stored goods beyond the PROTECTION PLAN LIMIT agreed to by Owner under the Protection Plan purchased by you. This is the most the Owner shall pay for any loss for any reason.
3. Goods Not Covered under the Protection Plan: The Owner will not pay for loss of or damage to goods that are in the open and not in a locked fully enclosed Storage Space; accounts, bills, currency, deeds, evidence of debt, securities, money, or notes; any goods you are not permitted to store under the terms of the Rental Agreement; jewelry, watches, precious or semi-precious stones and stamps (exceeding \$500 combined total); furs, antiques, works of art, mobile phones, perfumery, wines, cigars, spirits and the like (exceeding \$5,000 combined total but still subject to the PROTECTION PLAN LIMIT); consumer and commercial electronic items (exceeding \$5,000 combined total but still subject to the PROTECTION PLAN LIMIT); stolen goods or contraband; livestock, explosives and flammables.
4. Losses Not Covered under the Protection Plan:
  - a. Loss or damage to Tenant's stored goods caused by flood; surface water, underground water, storm surge, waves, tidal water or overflow from any body of water; water that backs up through or overflows from a sewer drain or sump.
  - b. Mold, mildew, or wet or dry rot.
  - c. Terrorist attack, war or military action.

- d. Loss or damage resulting from unknown or mysterious causes.
  - e. Consequential loss of any kind or description.
  - f. Nuclear reaction, radiation or radioactive, biological or chemical contamination.
  - g. Moths, insects, rodents or vermin damage (covered up to \$500).
  - h. Loss of data records other than the cost of blank data carrying materials.
  - i. Loss or damage from earthquake, unless fire or explosion ensues, and then we will pay only for the ensuing loss.
  - j. Loss from theft without forcible and violent signs of entry into a securely locked Storage Space and accompanied by a police report.
  - k. Loss or damage occurring during loading and/or unloading and/or not contained within the Storage Space at the time of the loss.
5. Protection Plans for Outdoor/Covered Parking Spaces for Boat/RV/Auto, etc: The Owner will not pay for loss of or damage to property that is in the open and/or covered space and not in a locked, enclosed storage facility. Items that are protected under the Protection Plan include: damage to the vehicle's exterior (i.e. dings, dents, scrapes, and scratches), external damage to the vehicle from a burglary or attempted burglary (police report/photos required), items stored inside a locked vehicle (police report/photos/inventory list required along with forcible signs of entry), and theft and/or damage to OEM (Original Equipment Manufacturer) parts. The Protection Plan will not cover items that are not permanently attached to the vehicle (i.e. grill, propane tank, generator, etc). The most the Owner will pay for loss or damage to your stored property under this Protection Plan is the Protection Plan Limit, not to exceed \$5000. The Owner has no liability for loss of or damage to Tenant's stored property beyond the Protection Plan Limit agreed to by Owner under the Protection Plan purchased by you. This is the most the Owner shall pay for any loss for any reason. The Owner reserves the right to cancel a tenant's Protection Plan at any time so as the Owner provides the tenant with a written, 30-day notice.
6. The Amount Owner Will Pay if there is a Loss: For any single loss or damage covered under this Protection Plan, Owner will be required to repair the item if repair is possible and where it is economical to do so. In the event of the total loss or destruction of any item, the basis of payment shall be the cost of replacing the item as new provided that the item is substantially the same as but not better than the original when new. Owner may decide to offer payment instead of cost to repair or replace. In no event will Owner pay more than the PROTECTION PLAN LIMIT.
- a. Household linen and clothing: Owner will not pay for new replacement and will take into consideration the age, quality, degree of use and market value of any lost or damaged item(s)
  - b. Documents: Where there is loss of or damage to documents, Owner will pay the reasonable costs of reprinting and/or reasonable costs of reissue and or reconstitution including, where applicable fresh research or exploration to obtain essential information.
  - c. Pairs and sets: Where any items are part of a pair or of a set, payment shall only be for the actual items which are lost or damaged. No payment will be made for any items which are part of a pair or set which are not lost or damaged.
7. Failure to Pay Rent: The Protection Plan may not cover any damages or losses for any month that the Protection Plan is not timely paid in full for the month. At Owner's sole discretion, your participation in the Protection Plan may be reinstated upon payment of all rent and other charges due and owing, unless any loss or damage has occurred during the period of non-payment.
8. Participation Termination: Participation in this Protection Plan may be canceled by you upon ten (10) days written notice to Owner. This Protection Plan may be canceled by Owner upon thirty (30) days written notice to you (unless terminated earlier by rent non-payment).
9. Time Limit for Notice: Notice of loss and/or damage must be made to Owner no later than 45 days after the discovery of loss or damage to your property or at the time of the removal of your property from the Storage Space, whichever is the soonest.
10. Modifications to Protection Plan: The terms and conditions of this Protection Plan are subject to change at the option of Owner upon thirty (30) days prior written notice. If so changed, the Tenant may terminate the Protection Plan on the effective date of such change by giving the Owner ten (10) days prior written notice of termination after receiving notice of the change. If the Tenant purchases a Protection Plan the next month, the change shall become effective on the date stated in the Owner's notice and shall apply thereafter. Tenant is obligated to notify Owner if there is any change to the PROTECTION PLAN LIMIT otherwise Tenant warrants that the value is accurate.

- 11. Cooperation: As a condition to any payment under the Protection Plan, Tenant must cooperate with any licensed adjuster appointed by Owner to review Tenant's alleged loss or damage.
- 12. The Rental Agreement: All terms and conditions of the Rental Agreement not specifically modified by this Addendum are in effect and binding on both Owner and you and are incorporated by reference herein.

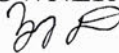
***NOTICE: This is not an insurance policy and the Owner is not an insurance company. The Owner shall perform the obligations described in this addendum. The Owner assumes this business risk on its own, but it may purchase insurance coverage at a discounted rate in an effort to transfer part or all of the liability retained under this Protection Plan. The consumer acknowledges that the Owner may profit from the sale of the Protection Plan.***

TENANT



Occupant's Signature

OWNER



Sign your name

OCCUPANT'S NAME: Sheila White  
 RENTAL AGREEMENT #: 2769  
 RENTAL AGREEMENT DATE: February 4, 2025  
 STORAGE SPACE #: 2H06

# Signature Certificate



Document Title: **Lease #1**

Document Reference: 7a7f81a8-e33e-46a0-a240-f887d4f34ec2

Status: **Signed**



**Authorized Signatory**  
Manager

IP Address:  
10.192.19.59



**Sheila White**  
Tenant

IP Address:  
10.192.19.59

## Timestamp

## Audit

05-Feb-2025 7:09:37 PM	Created by webadmin webadmin
05-Feb-2025 7:09:40 PM	Viewed by Sheila White
05-Feb-2025 7:16:16 PM	Signed by Sheila White
05-Feb-2025 10:11:41 AM	Viewed by Manager
05-Feb-2025 10:12:32 AM	Signed by Manager

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 16 day of December, 2024, by and between Independent School District #709, a public corporation, hereinafter called District, and Cassandra Seymour, an independent contractor, hereinafter called Contractor.

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

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

1. **Dates of Service.** This Agreement shall be deemed to be effective as of January 8th and shall remain in effect until June 1st 2025, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** *Co-Group leader and Advisor for Diamond and Pearls Afterschool Mentoring Program. This group will focus on competencies in following areas for young women, Cultural Diversity, Self awareness skills, Volunteerism, building life skills, peer support. [REDACTED] will meet with every Monday after school using pathways 2 success curriculum.*

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

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

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

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

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$50 hourly and \$ 750 in total.

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

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

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

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

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

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

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

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

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

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

**10. Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Office Education Equity , 709 Portia Johnson Drive, Duluth, MN 55811.

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

Cassandra Seymour:

4314 west 7th street  
Duluth, mn 55807

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cassandra Seymour



1-2-25

**Contractor Signature**

SSN/Tax ID Number

Date

**Program Director**

Date

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

**This contract is funded by either:**

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

\_\_\_\_\_ Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

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

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

01	E	005	605	313	305	311
xx	x	xxx	xxx	xxx	xxx	xxx

A. Burt

2/4/25

**Exec. Dir Finance & Business Services / Superintendent of Schools / Board Chair**

Date

Tommy Zwick

AGREEMENT

THIS AGREEMENT, made and entered into this 7th day of October , 2021 , by and between Independent School District #709, a public corporation, hereinafter called District, and Xinyao Xu (Jackson), an independent contractor, hereinafter called Contractor.

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

The terms and conditions of this Agreement are as follows: The mission of the Chinese after-school program is to develop global competence in students, parents, and community members as the foundation for understanding cultures and people in the U.S., China, and throughout the world. This program strives to work with parents and students to ensure that they have the tools and support to be better prepared as young leaders for their future as world citizens.

1. **Dates of Service.** This Agreement shall be deemed to be effective as of January 2, 2025 and shall remain in effect until June 15th, 2025, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Contractor will provide support for an after-school Mandarin club with Chinese learning to a group of up to 20-25 Lowell Elementary students. Students will have 12 times of language and culture exploration in the 2024-25 school year. Students will learn to speak and write basic Chinese characters and sentences, such as numbers, greeting words and colors. Students will also get access to Chinese culture through activities such as dance, songs, etc.

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

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

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

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

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$20 hourly and \$320 in total.

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

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

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

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

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

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

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Anthony Bonds, 709 Portia Johnson Drive, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to:

2124 Rice Lake Rd, Duluth MN # 55811

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

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

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

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

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

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

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

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

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

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

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

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

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

Xinyu Xie [Redacted] 2/4/25  
Contractor Signature SSN/Tax ID Number Date

\_\_\_\_\_  
Program Director Date

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

**This contract is funded by either:**

- 1. The following budget (include full 18 digit code); or
- 2. will be paid using Student Activity Funds; or
- 3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

X Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

01	E	005	605	313	305	311
XX	X	XXX	XXX	XXX	XXX	XXX

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

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

Simone Zwick 2.27.25  
CFO / Superintendent of Schools / Board Chair Date

## AGREEMENT

**THIS AGREEMENT**, made and entered into this 7th day of October , 2021 , by and between Independent School District #709, a public corporation, hereinafter called District, and Mica Taggett, an independent contractor, hereinafter called Contractor.

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

**The terms and conditions of this Agreement are as follows:** The mission of the Chinese after-school program is to develop global competence in students, parents, and community members as the foundation for understanding cultures and people in the U.S., China, and throughout the world. This program strives to work with parents and students to ensure that they have the tools and support to be better prepared as young leaders for their future as world citizens.

1. **Dates of Service.** This Agreement shall be deemed to be effective as of January 2, 2025 and shall remain in effect until June 15th, 2025, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Contractor will provide support for an after-school Mandarin club with Chinese learning to a group of up to 20-25 Lowell Elementary students. Students will have 12 times of language and culture exploration in the 2024-25 school year. Students will learn to speak and write basic Chinese characters and sentences, such as numbers, greeting words and colors. Students will also get access to Chinese culture through activities such as dance, songs, etc.

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

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

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

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

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$20 hourly and \$320 in total.

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

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

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

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

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

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

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

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

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

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: Anthony Bonds, 709 Portia Johnson Drive, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to:

1521 Jefferson St., Duluth, MN, 55812

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature] \_\_\_\_\_ [Redacted] \_\_\_\_\_ 2/3/2025  
Contractor Signature SSN/Tax ID Number Date

\_\_\_\_\_  
Program Director Date

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

**This contract is funded by either:**

- 1. The following budget (include full 18 digit code); or
- 2. will be paid using Student Activity Funds; or
- 3. is no cost contract (e.g. Memorandum of Understanding).

**Please check the appropriate line below:**

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

01	E	005	605	313	305	311
XX	X	XXX	XXX	XXX	XXX	XXX

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

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

[Signature] \_\_\_\_\_ 2/27/25  
CFO / Superintendent of Schools / Board Chair Date



RECEIVED  
 FEB 21 2025  
 BY: \_\_\_\_\_ 270

1201 S 13<sup>th</sup> Ave Virginia, MN 55792 - 218-741-9201  
 Jackie Ward – NLC Executive Director

**INDIVIDUAL OR AGENCY – CONSULTANT AGREEMENT**

This consultant Agreement is by and between Northland Learning Center (NLC) and the Agency or Individual(s) named. Services to be provided and other details have been listed below.

Name / Agency:	Duluth Public Schools ISD #709
Address:	709 Portia Johnson Drive, Duluth MN, 55811
Telephone #(s):	218-336-8700
Social Security or Federal ID Number:	41-6003776 <span style="float: right;">W-9 Must be Attached</span>
Description of Service To be Performed:	Services for Vision Teacher - [REDACTED] - 0.18 FTE
Population to be Served:	Duluth ISD #709
Location of Service:	Duluth Area School District
Required Qualification:	MN Teaching License – Vision <span style="float: right;">File Folder if Needed: 1012316</span>
Date(s) of Services:	2024-2025 School Year
Rate of Pay:	.018 FTE Salary: \$ 14,180.40 Benefits: \$5,878.49 Total: \$20,058.89
Invoicing Procedures:	Quarterly invoices will be sent with an EOY settle up invoice.
Cancellation Requirements:	

**Relationship:** The parties hereto are independent contractors. Nothing in this Agreement shall be understood or construed to create or imply any relationship between the parties in the nature of any joint venture, employer/employee, principal/agent or partnership. The provider shall not become an employee of the Agency (NLC) by acting under this Agreement and the provider shall be responsible for the payment of any taxes, fees or costs resulting from the above compensation.

**Miscellaneous:** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of MN. This Agreement may not be assigned without the written consent of the other part. Any scope of this document shall be considered to have the binding and legal effect of an original document.

**SIGNATURES**

Northland Learning Center, Executive Director	Date	Consultant / School District	Date
<i>Jackie Ward</i>	2/21/25	<i>Jason Crum</i>	2/25/25



**ACCOUNT SERVICE CONTRACT - SCHEDULE A**

This Schedule A is part of the Account Services Contract entered by and between EDU HEALTHCARE, LLC ("EDU HEALTHCARE") and the Account identified below.

**PROVIDER PLACEMENT DETAILS:**

Provider Name: Bonnie Arnold

Term: 3/3/25 - 6/5/25

Services Provided: Licensed Practical Nurse

Hours: 32.5 Hrs Per Week

**RATE AND PAYMENT DETAILS:**

Bill Rate: \$60 Per hr

Payment: Due Thirty (30) Days from invoice date

**ADDITIONAL INFORMATION:**

Comments:

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**ACCOUNT**

Account: Duluth Public School District

Signature: Simone Zunich

Date: 03/04/2025

**EDU HEALTHCARE, LLC**

By: \_\_\_\_\_

Matthew Lewis, VP

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

Lynne Nicol

Account Initials SHZ Date 03/04/2025



## TRANSMISSION COVER SHEET

**Attention:** TRACY THOMPSON

**From:** Rachel -SchoolMate Customer Service

**Fax/Email:** tracy.thompson@isd709.org

**# Pages:** 3

**Re:** School Mate Quotes #PQ03032578485, #PQ03032599698

**Date:** 3/5/2025 10:08:42 AM

*If you receive this transmission in error or if you do not receive all pages, please contact us toll free at 800-516-8339. The information in this fax is **time-sensitive**. Please deliver immediately to the party named in the attention line above. Thank you.*

### NOTES

Tracy,  
Here are the revised quotes you requested for the planners.  
Please review, sign/date and return to place the orders. If you have any questions please let me know.  
Thank you  
Rachel

# 25/26 PLANNER QUOTE



Order online, or complete, sign, and email order form to purchaseorders@schoolmate.com, or fax to 800-570-1767. Call 800-516-8339 with questions. Phone orders not accepted.

**For Office Use Only – 1/25 online**  
 Order # \_\_\_\_\_  
 Date Rec'd \_\_\_\_\_ 273  
 Quote # PQ03032578485

**School Name** LESTER PARK ELEMENTARY  
**District Name** ISD709 DULUTH MN  
**Contact Name** TRACY THOMPSON Title ADMIN ASST  
**School Mailing Address** 5300 GLENWOOD ST  
**City, State, Zip** DULUTH, MN 55804  
**Ship Address (If different. No PO Boxes)** 5300 GLENWOOD ST  
**Ship City, State, Zip** DULUTH, MN 55804  
**School Ph** 218-336-8875 Fax 218-336-8879  
**Cell Ph** 218-336-8875 Alt Ph \_\_\_\_\_  
**Email (required)** tracy.thompson@isd709.org

**Proof Contact** (Provide ALL contact info)  
 Name Approved Online Fax \_\_\_\_\_  
 Cell Ph \_\_\_\_\_ Alt Ph \_\_\_\_\_  
 Home Email (required) \_\_\_\_\_  
 Work Email (required) \_\_\_\_\_

**Bill Attention to:** ACCOUNTS PAYABLE  
 PO# (opt.) \_\_\_\_\_  Invoice Us  
 Pay by credit card, go to schoolmate.com.

**Signature Required Below**

Please send me email updates, reminders, and special offers from School Mate.®

A CHOOSE PLANNER – Check only 1 product code below. Submit extra order form(s) for additional product(s).											B QUANTITY	
PLANNER TYPE	Kindergarten	Primary	Elementary	Middle School	Navigator	High School	Dated Agenda	Undated Agenda	Classic	Scholar	# Student Planners.....	
Value Planners	<input type="checkbox"/> KGA	<input type="checkbox"/> PRA	<input type="checkbox"/> ELA	<input type="checkbox"/> MSA	<input type="checkbox"/> NVA	<input type="checkbox"/> HSA	<input type="checkbox"/> AGA	<input type="checkbox"/> UDA	<input type="checkbox"/> CLA	<input type="checkbox"/> SRA	115	
Custom Planners	<input type="checkbox"/> KGB	<input type="checkbox"/> PRB	<input type="checkbox"/> ELB	<input checked="" type="checkbox"/> MSB	<input type="checkbox"/> NVB	<input type="checkbox"/> HSB	<input type="checkbox"/> AGB	NA	<input type="checkbox"/> CLB	<input type="checkbox"/> SRB	# Teacher Editions (TE) + ...	
Custom with Handbooks	<input type="checkbox"/> KGC	<input type="checkbox"/> PRC	<input type="checkbox"/> ELC	<input type="checkbox"/> MSC	<input type="checkbox"/> NVC	<input type="checkbox"/> HSC	<input type="checkbox"/> AGC	NA	<input type="checkbox"/> CLC	<input type="checkbox"/> SRC	# Total Planners (TP) = ...	115

**C VALUE PLANNERS** – See Price Chart C  
 \$ \_\_\_\_\_ x Total Planners (TP) (25 min. order, 60 min. for UDA) ... = \$ \_\_\_\_\_  
 KGA PRA ELA MSA NVA HSA AGA UDA CLA SRA  
 Continue on to sections H and I.

**D CUSTOM PLANNERS** (with or without Handbooks) – See Price Chart D  
 \$ 3.65 x Total Planners (TP) (60 min. order) ... = \$ 419.75  
 KGB KGC PRB PRC ELB ELC MSB MSC NVB NVC HSB HSC AGB AGC CLB CLC SRB SRC  
 Continue on to sections E, F, G, H, and I.

**E COVERS** – For Custom Planners only. Select a cover design and complete the Cover Wording (also indicate if years are to be printed) and Mascot below.

- Poly-Pro™ Cover with school name/mascot in black ink: Design #P- \_\_\_\_\_ FREE
- Full-Color Agenda Cover – For AGB and AGC only with school name/mascot in black ink: #FC- \_\_\_\_\_ FREE
- Religious Cover with school name/mascot in black ink: #R- \_\_\_\_\_ FREE
- One-Color Cover – Indicate 1 standard ink: \_\_\_\_\_ FREE  
 #C \_\_\_\_\_  Repeat last year's; change year  Own design
- Multicolor or Photo Cover – Indicate 2 standard inks: \_\_\_\_\_ TP x 25¢ = \$ 40.00  
 #T \_\_\_\_\_  Repeat last year's; change year  Own design  
 Photo Cover #F \_\_\_\_\_;  Own photo OR  Photo mascot # \_\_\_\_\_  Repeat last year's design; change year  
 Cover Wording: \_\_\_\_\_  print 2025-2026  
 Mascot: Online mascot # \_\_\_\_\_  Own mascot  Repeat last year's mascot
- Custom Back Cover  Own design  Repeat last year's  Solid - standard ink: BLACK TP x 25¢ = \$ 40.00  
 Custom Inside Back Cover (only available with Custom Back Cover)  Own design  Repeat last year's TP x 25¢ = \$ \_\_\_\_\_

**F OPTIONS & TEACHER AIDS** – For Custom Planners only. All options ordered will be included in both Student Planners and Teacher Editions.

Only options available for AGB & AGC are 4, 5, and 6. Only option available for CLB, CLC, SRB & SRC is 6.

- Hall Pass Sheet ... TP x 12¢ = \_\_\_\_\_
- Year-Rnd. Suppl. TP x 25¢ = \_\_\_\_\_ → bind in:  front of planner  back of planner
- Char. Ed. Suppl. ... TP x 40¢ = \_\_\_\_\_
- Vinyl Pouch ... TP x 30¢ = \_\_\_\_\_
- Planning Stickers ... TP x 25¢ = \_\_\_\_\_
- Inserts  IN1  IN2  IN3  IN4 ... #Total Inserts \_\_\_\_\_ x 25¢ x TP = \$ \_\_\_\_\_

Options for Teacher Editions (TE) only – will be placed in all TEs ordered.  
 Grade Records ... TE x 85¢ = \_\_\_\_\_  Lesson Plans (NA for HSB, HSC, SRB, or SRC) TE x 85¢ = \_\_\_\_\_

**G HANDBOOK PAGES** – For Custom Planners only.  
 Note: 1 page is 1 side of a sheet of paper. #Total Custom Pages \_\_\_\_\_ x 4¢/page (3¢ for HSC, SRC & AGC) x TP = \$ \_\_\_\_\_  
 Repeat last year's pages  Press-ready pages enclosed  PDF uploaded

**H EXTRAS** – Available for ALL planners & agendas (Value and Custom).  
 Page Marker Rulers – Must order for all, no partials. TP x 20¢ = \$ 23.00  
 Wall Charts – 5 wall charts per case (must order by full case). #cases \_\_\_\_\_ x \$35 = \$ \_\_\_\_\_

**Order will not be processed without a signature.**  
 Sign Here Simone Zruich Date 3/5/25  
 By signing, you agree to School Mate's Terms & Conditions

**I SHIPPING & ORDER TOTALS**

Subtotal = \$ 522.75  
 RUSH Production – 4 weeks (Custom Planners only) – add 20% (\$75 min.) = \$ \_\_\_\_\_  
 Shipping – (AK, HI, APO, FPO call for pricing) 48 states. 60¢/planner = \$ 69.00  
 Pretax Total = \$ 591.75  
 State Tax Customer must provide tax exempt form, or customer will be responsible for paying sales tax. 205  
 Delay Ship (opt.):  Apr 25  May 9  June 13  July 11  July 18  
 July 25  Aug 1  Aug 8  Aug 15  Aug 22  Aug 29

**591.75 TOTAL**

Special Instructions: Please attach if you have any.

# 25/26 PLANNER QUOTE



Order online, or complete, sign, and email order form to purchaseorders@schoolmate.com, or fax to 800-570-1767. Call 800-516-8339 with questions. Phone orders not accepted.

**For Office Use Only – 1/25 online**  
 Order # \_\_\_\_\_  
 Date Rec'd 274  
 Quote # PQ03032599698

**School Name** LESTER PARK ELEMENTARY  
**District Name** ISD709 DULUTH MN  
**Contact Name** TRACY THOMPSON Title ADMIN ASST  
**School Mailing Address** 5300 GLENWOOD ST  
**City, State, Zip** DULUTH, MN 55804  
**Ship Address (If different. No PO Boxes)** 5300 GLENWOOD ST  
**Ship City, State, Zip** DULUTH, MN 55804  
**School Ph** 218-336-8875 Fax 218-336-8879  
**Cell Ph** 218-336-8875 Alt Ph \_\_\_\_\_  
**Email (required)** tracy.thompson@isd709.org

**Proof Contact** (Provide ALL contact info)  
**Name** Approved Online Fax \_\_\_\_\_  
**Cell Ph** \_\_\_\_\_ Alt Ph \_\_\_\_\_  
**Home Email (required)** \_\_\_\_\_  
**Work Email (required)** \_\_\_\_\_

**Bill Attention to:** ACCOUNTS PAYABLE  
 PO# (opt.) \_\_\_\_\_  Invoice Us  
 Pay by credit card, go to schoolmate.com.

**Signature Required Below**

Please send me email updates, reminders, and special offers from School Mate.®

A CHOOSE PLANNER – Check only 1 product code below. Submit extra order form(s) for additional product(s).											B QUANTITY	
PLANNER TYPE	Kindergarten	Primary	Elementary	Middle School	Navigator	High School	Dated Agenda	Undated Agenda	Classic	Scholar	# Student Planners.....	
Value Planners	<input type="checkbox"/> KGA	<input type="checkbox"/> PRA	<input type="checkbox"/> ELA	<input type="checkbox"/> MSA	<input type="checkbox"/> NVA	<input type="checkbox"/> HSA	<input type="checkbox"/> AGA	<input type="checkbox"/> UDA	<input type="checkbox"/> CLA	<input type="checkbox"/> SRA	103	
Custom Planners	<input type="checkbox"/> KGB	<input type="checkbox"/> PRB	<input type="checkbox"/> ELB	<input checked="" type="checkbox"/> MSB	<input type="checkbox"/> NVB	<input type="checkbox"/> HSB	<input type="checkbox"/> AGB	NA	<input type="checkbox"/> CLB	<input type="checkbox"/> SRB	# Teacher Editions (TE) + ...	
Custom with Handbooks	<input type="checkbox"/> KGC	<input type="checkbox"/> PRC	<input type="checkbox"/> ELC	<input type="checkbox"/> MSC	<input type="checkbox"/> NVC	<input type="checkbox"/> HSC	<input type="checkbox"/> AGC	NA	<input type="checkbox"/> CLC	<input type="checkbox"/> SRC	# Total Planners (TP) = ...	103

**C VALUE PLANNERS** – See Price Chart C  
 \$ \_\_\_\_\_ x Total Planners (TP) (25 min. order, 60 min. for UDA) ..... = \$ \_\_\_\_\_  
 KGA PRA ELA MSA NVA HSA AGA UDA CLA SRA  
 Continue on to sections H and I.

**D CUSTOM PLANNERS** (with or without Handbooks) – See Price Chart D  
 \$ 3.65 x Total Planners (TP) (60 min. order) ..... = \$ 375.95  
 KGB KGC PRB PRC ELB ELC MSB MSC NVB NVC HSB HSC AGB AGC CLB CLC SRB SRC  
 Continue on to sections E, F, G, H, and I.

**E COVERS** – For Custom Planners only. Select a cover design and complete the Cover Wording (also indicate if years are to be printed) and Mascot below.

- Poly-Pro™ Cover with school name/mascot in black ink: Design #P- \_\_\_\_\_ FREE
- Full-Color Agenda Cover – For AGB and AGC only with school name/mascot in black ink: #FC- \_\_\_\_\_ FREE
- Religious Cover with school name/mascot in black ink: #R- \_\_\_\_\_ FREE
- One-Color Cover – Indicate 1 standard ink: \_\_\_\_\_ FREE  
 #C \_\_\_\_\_  Repeat last year's; change year  Own design
- Multicolor or Photo Cover – Indicate 2 standard inks: \_\_\_\_\_ TP x 25¢ = \$ 40.00  
 #T \_\_\_\_\_  Repeat last year's; change year  Own design  
 Photo Cover #F \_\_\_\_\_;  Own photo OR  Photo mascot # \_\_\_\_\_  Repeat last year's design; change year  
 Cover Wording: \_\_\_\_\_  print 2025-2026  
 Mascot: Online mascot # \_\_\_\_\_  Own mascot  Repeat last year's mascot
- Custom Back Cover  Own design  Repeat last year's  Solid - standard ink: BLACK TP x 25¢ = \$ 40.00  
 Custom Inside Back Cover (only available with Custom Back Cover)  Own design  Repeat last year's TP x 25¢ = \$ \_\_\_\_\_

**F OPTIONS & TEACHER AIDS** – For Custom Planners only. All options ordered will be included in both Student Planners and Teacher Editions.

- Only options available for AGB & AGC are 4, 5, and 6. Only option available for CLB, CLC, SRB & SRC is 6.
- Hall Pass Sheet... TP x 12¢ = \_\_\_\_\_
  - Year-Rnd. Suppl. TP x 25¢ = \_\_\_\_\_ → bind in:  front of planner  back of planner
  - Char. Ed. Suppl.... TP x 40¢ = \_\_\_\_\_
  - Vinyl Pouch.... TP x 30¢ = \_\_\_\_\_
  - Planning Stickers... TP x 25¢ = \_\_\_\_\_
  - Inserts  IN1  IN2  IN3  IN4 #Total Inserts \_\_\_\_\_ x 25¢ x TP = \$ \_\_\_\_\_
- Options for Teacher Editions (TE) only – will be placed in all TEs ordered.  
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**G HANDBOOK PAGES** – For Custom Planners only.

Note: 1 page is 1 side of a sheet of paper. #Total Custom Pages \_\_\_\_\_ x 4¢/page (3¢ for HSC, SRC & AGC) x TP = \$ \_\_\_\_\_  
 Repeat last year's pages  Press-ready pages enclosed  PDF uploaded

**H EXTRAS** – Available for ALL planners & agendas (Value and Custom).

- Page Marker Rulers – Must order for all, no partials. TP x 20¢ = \$ 20.60
- Wall Charts – 5 wall charts per case (must order by full case). #cases \_\_\_\_\_ x \$35 = \$ \_\_\_\_\_

**Order will not be processed without a signature.**  
 Sign Here Simone Zunic Date 3/15/25  
 By signing, you agree to School Mate's Terms & Conditions

**I SHIPPING & ORDER TOTALS**  
 Subtotal = \$ 476.55  
 RUSH Production – 4 weeks (Custom Planners only) – add 20% (\$75 min.) = \$ \_\_\_\_\_  
 Shipping – (AK, HI, APO, FPO call for pricing) 48 states..... 60¢/planner = \$ 61.80  
 Pretax Total = \$ 538.35  
 State Tax Customer must provide tax exempt form, or customer will be responsible for paying sales tax. = \$ \_\_\_\_\_  
 Delay Ship (opt.):  Apr 25  May 9  June 13  July 11  July 18  
 July 25  Aug 1  Aug 8  Aug 15  Aug 22  Aug 29  
**538.35**  
**TOTAL**

Special Instructions: Please attach if you have any.

# 2025-2026 Planner Pricing & Delay Shipping

## CHART C. Value Planner Pricing

Code	Quantity	25+	50+	100+	250+	500+	1000+
KGA PRA ELA MSA NVA	Quantity	25+	50+	100+	250+	500+	1000+
	Price	4.15	3.65	3.40	3.35	3.30	3.20
	Price w/ discount*	<b>3.85</b>	<b>3.35</b>	<b>3.10</b>	<b>3.05</b>	<b>3.00</b>	<b>2.90</b>
HSA	Price	3.90	3.40	3.15	3.10	3.05	2.95
	Price w/ discount*	<b>3.60</b>	<b>3.10</b>	<b>2.85</b>	<b>2.80</b>	<b>2.75</b>	<b>2.65</b>
CLA	Price	3.90	3.40	3.15	3.10	3.05	2.95
SRA	Price	3.65	3.15	2.90	2.85	2.80	2.70
AGA	Price	3.45	2.95	2.70	2.65	2.60	2.55
UDA	Price	2.25 per agenda (60 minimum order)					

\*Order and ALL material must be received by May 7, 2025 to qualify.

## CHART D. Custom Planner Pricing

Code	Quantity	60+	100+	150+	250+	500+	750+	1000+	1500+	2000+
KGB PRB ELB MSB NVB	Quantity	60+	100+	150+	250+	500+	750+	1000+	1500+	2000+
	Price	4.90	3.95	3.85	3.70	3.55	3.45	3.40	3.35	3.30
	Price w/ discount*	<b>4.60</b>	<b>3.65</b>	<b>3.55</b>	<b>3.40</b>	<b>3.25</b>	<b>3.15</b>	<b>3.10</b>	<b>3.05</b>	<b>3.00</b>
HSC	Price	4.60	3.65	3.55	3.40	3.25	3.15	3.10	3.05	3.00
	Price w/ discount*	<b>4.30</b>	<b>3.35</b>	<b>3.25</b>	<b>3.10</b>	<b>2.95</b>	<b>2.85</b>	<b>2.80</b>	<b>2.75</b>	<b>2.70</b>
CLB	Price	4.65	3.70	3.60	3.45	3.30	3.20	3.15	3.10	3.05
SRB	Price	4.35	3.40	3.30	3.15	3.00	2.90	2.85	2.80	2.75
AGB	Price	4.05	3.10	3.05	3.00	2.90	2.80	2.75	2.70	2.65
TB QB	Quantity	100+	150+	200+	250+	300+	400+			
	Price	5.80	4.30	3.60	3.55	3.25	2.75			

School Events Agendas must be ordered online.

\*Order and ALL material must be received by May 7, 2025 to qualify.



## Order Early • Save Money • Ship Later

Save time and get immediate pricing with our easy online quote calculator at [schoolmate.com](http://schoolmate.com).

Delay shipping information applies to both planners and folders.

**WHAT IS A DELAY SHIP DATE?** A delay ship date allows you to specify when you want your order to ship. We will produce your order upon receipt, and if your order is complete before the chosen delay ship date, we will hold the order and ship it on the date requested. If your order was not placed in time to allow for the full production schedule and you chose a delay ship date, the order will ship upon completion after the delay ship date.

**SCHOOL CLOSED FOR SPRING BREAK OR SUMMER BREAK?** Order early and choose a delay ship date to ensure someone is at the school to receive the shipment. This will save you from incurring additional shipping charges if the order is returned to us by the carrier.

**NEED YOUR INVOICE DATED AFTER A SPECIFIC DATE?** Choose a delay ship date, and we will ship and invoice your order on the requested delay ship date. Please allow for production time when ordering.

**IS A DELAY SHIP DATE A DELIVERY DATE?** No. A delay ship date is the date you would like your order to leave our facility upon completion. Shipping time is an additional 2–8 business days for orders shipped within the 50 states. Please note that a delay ship date is not a receive date.

**WANT TO TAKE ADVANTAGE OF OUR EARLY ORDERING, BUT CANNOT GET A PO UNTIL JULY?** Place your order early and select a delay ship date. We will complete your order, and then wait to ship it until the requested delay ship date. We will invoice your order at the time of shipping. Payment is not due until Sept. 1, 2025 (some exclusions apply). See our delay ship dates below.

2025 DELAY SHIP DATES:	
April 25	May 9
June 13	July 11
July 18	July 25
August 1	August 8
August 15	August 22
August 29	

### Order online or get a quote: [schoolmate.com/ordering](http://schoolmate.com/ordering)

**Email Order Form:**  
purchaseorders@schoolmate.com

**Fax Order Form:**  
800-570-1767

**Mailing Address:**  
School Mate  
PO Box 2110  
Kearney, NE 68848-2110

**Call for Quote\*:**  
(Phone orders not accepted)  
800-516-8339  
Mon-Fri, 8-5 CST

Upload Custom Material: [uploader.schoolmate.com/#/customer/new](http://uploader.schoolmate.com/#/customer/new)

\*School Mate must receive a signed order form or an online order. We do not accept phone orders.

Download an order form at [schoolmate.com/downloads/porder.pdf](http://schoolmate.com/downloads/porder.pdf).

## Use our online quote calculator today!

# 2025-2026 Planner Terms & Conditions 276

## Early Order Discount

- **Save 30¢ per planner if we receive your order by May 7, 2025.** See prices on p. 20. Discount does not apply to Classic & Scholar Planners, Agendas, or School Events Agendas, and cannot be used with other discounts or on reorders after the deadline.
- **IMPORTANT:** ALL material (mascot/logo, handbook pages, cover, etc.) must be received to begin processing the order. Incomplete orders do not qualify, and discount will be invalidated if material arrives late or changes are made after May 7, 2025.

## Ordering

- School Mate® agrees to produce planners in accordance with information furnished on the order form. The person submitting the order, hereinafter referred to as the Customer, agrees to furnish a completed, **signed** order form and all material to be produced in the Customer's planners, including handbook pages, mascot, and other material with no subsequent changes. The Customer specifically representing the submitting organization is at least 18 years old and is fully authorized to sign this application as agent on behalf of the organization.
- Order online at schoolmate.com/ordering, or email a complete, signed order form to purchaseorders@schoolmate.com or fax to 800-570-1767. Phone orders not accepted.
- A submitted order constitutes a binding Contract between School Mate and the Customer. No other statements or oral agreements are binding.
- We recommend ordering extra to account for unexpected enrollment, transfer students, and lost planners/agendas. Reordering more planners/agendas later may cost more.
- If Customer's organization requires a PO, the Customer is responsible for providing it and notifying their purchasing department of changes that may affect the PO. School Mate's terms supersede any terms from a PO or written bid.
- If order must be delivered by a specific date, the Customer is responsible for placing the order on time and for charges incurred if the order is refused due to PO expiration.
- Orders outside the USA are not accepted, except for orders from schools with APO and FPO addresses. School Mate reserves the right to deny orders from individuals, retailers, non-educational parties, or others for just cause.
- Supplies are limited, School Mate reserves the right to substitute front & back covers.
- Multiple orders cannot be combined for volume discounts.
- Customer warrants that releases have been obtained to reproduce any copyrighted or trademarked material submitted with order. If Customer furnishes custom material, Customer shall hold School Mate and its subsidiaries harmless against claims, suits, costs, damages, judgments, attorney fees, license fees, settlements, or expenses incurred, claimed, obtained, or sustained by third parties, whether for intellectual property infringement (including copyright and trademark infringement), dilution, misappropriation, or otherwise, because of the manufacture, use, marketing, or sale of planners.

## Reorders

- A reorder is a subsequent order requesting planners/agendas for the same school year. Contact School Mate if you need to place a reorder.
- Custom Planner and Agenda reorders require a minimum of 25. Value Planner and Agenda reorders require a minimum of 10. Undated Agenda reorders require a minimum of 60. School Events Agenda reorders require a minimum of 100.

## Payment

- Orders will be invoiced upon shipping. Payment from schools or school districts is due Sept. 1, 2025. Payment terms for orders shipped after Sept. 1, 2025 is Net 30. Accounts 30 days past due will be charged 1.33% interest per month (16% annum) or maximum allowed by law. The Customer is liable for any collection fees incurred. School Mate reserves the right to require prepayment. All prices are based on USA currency.
- Delayed shipping and invoicing are available.
- If order is canceled, the Customer is liable for any costs in preparation or production of the order.
- Customer must provide tax exempt form, or customer will be responsible for paying sales tax. The sales tax amount is subject to change upon validation of provided information.

## Free Proof

- Proofs are emailed for material that requires design. Proofs are not sent for press-ready handbooks.
- Provide a proof contact person and contact info (phone/email), or order will be delayed. Proofs are emailed after order is received if proof was not approved upon ordering. Customer must approve the proof within 3 business days to avoid delays.
- Overlooked errors or material inadequately submitted by the Customer are considered Customer errors.

## Production

- Production begins the day **after** the completed, **signed** order form and all material is received. Delayed material will delay production and ship date.
- Normal or Rush Production time does not include weekends, holidays, or shipping time. **See chart below.** Normal Production time is **estimated** as seasonal demands, shortages, or any other reasonable causes can affect it.
- School Mate is not responsible for requested changes after the order is in process. Changes to orders or production halts will incur charges and delay shipping.

### Value Planners/Agendas & Undated Agendas

**KGA, PRA, ELA, MSA, NVA, HSA, CLA, SRA, AGA, UDA**

Production Time.....1–2 weeks

### Custom Planners/Agendas – KGB, KGC, PRB, PRC, ELB, ELC, MSB, MSC, NVB, NVC, HSB, HSC, CLB, CLC, SRB, SRC, AGB, AGC, TB, TC, QB, QC

RUSH Production.....4 weeks

\*Normal Production.....6 weeks

**RUSH orders incur a 20% upcharge on the subtotal (\$75 min.). All material must be stock items or press-ready if custom.**

**NOTE:** Orders ship once completed; however, earliest orders ship spring 2025. If necessary, choose a delay ship date to ensure someone can receive the order. Check your school calendar.

\*Orders may require 6–9 weeks for Normal Production due to heavy demand.

## Shipping

- Allow 2–8 business days for delivery within the 50 states. For APO and FPO orders, allow approx. 6–12 weeks (USPS does not guarantee a service commitment for APO and FPO addresses).
- All orders within the 50 states ship via UPS ground or truck from Kearney, NE. APO and FPO orders ship via standard post. To prevent shipping delays, School Mate reserves the right to deny Customer-specified carriers or accounts. Shipping charges within the contiguous USA are 60¢ per book. AK, HI, APO, and FPO orders cost extra; call for charges.
- UPS will deliver to the door only. Truck drivers are not required to unload. The Customer may be responsible for unloading items.
- Choose a delay ship date, if needed, to ensure someone is available to receive order (not available for APO/FPO orders). If order is returned to School Mate because no one was available to receive the order, or if freight is rerouted, the Customer is liable for extra charges.
- Books cannot be returned for any reason.
- Defective books, not due to shipping damage, must be reported to School Mate within 90 days of ship date. School Mate reserves the right to repair, replace, or credit defective books. Book damage due to shipping or any other shipment issues must be reported within 7 days. The Customer must retain all packaging, including boxes, for a claim to be made.
- School Mate is not responsible for delays in shipping or receipt of order due to strikes, shortages, heavy seasonal demand, or any other reasonable causes beyond School Mate's control.

March 7 8-10 ish

# LYRIC OPERA OF THE NORTH

277

February 10, 2025

## AGREEMENT and PREPARATION CHECKLIST FOR LITTLE OPERA OF THE NORTH PERFORMANCE AT LAURA MACARTHUR ELEMENTARY.

This document shall serve as an agreement and checklist for one performance of Opera for the Young's *Rusalka*, at Laura MacArthur Elementary in Duluth, MN in the school gymnasium, on Friday, March 7, 2025. This 45 minute opera is designed and written specifically for a K-5<sup>th</sup> grade audience. **Parents, sponsors, and community members are welcome at the school's discretion and according to school visitor policies.**

The following schedule of events is agreed upon:

**7:40 a.m.** Arrival and load-in to the performance space at school.

**8:10 a.m.** Begin rehearsal with the student chorus (please have student performers ready to begin at this time). Costumes and hand props for students are provided by LOON.

**8:55 a.m.** Audience takes their places.

**9:00 a.m.** Performance and Q&A.

**9:50 a.m.** END of performance, LOON loads out.

**10:20 p.m.** Gym is empty.

1. Music Teacher agrees to **prepare a chorus of 16 student singers**. These students will memorize their parts and perform alongside LOON's touring cast. From among the 16 choristers, **choose 2 students to play the SPINY URCHINS**. If additional students are participating as singers, they are welcome to sit in risers behind the acting chorus.
2. Please **make a piano available for the use of this performance**, beginning with the rehearsal. For our purposes, a "bad" or even an out of tune piano is usually better than an electric keyboard, but we rely on Music Teachers' discretion!
3. Please see teaching materials for gym set-up: LOON sets up a performing area under one hoop, with student audience on the gym floor and adult audience in **chairs around perimeter**. We request the use of cones to help establish a center aisle.
4. Prior to performance week: **please check to see if gym fans can be turned off**. This performance is un-amplified and gym fans can drown out lyrics. Some schools have automated systems which require several days' advance notice.
5. Payment can be sent to Lyric Opera of the North at the address below. Checks made payable to Lyric Opera of the North are preferred. **The cost of the performance is \$750.00**. Payment can be made at any time from now until the day of the performance.

# LYRIC OPERA OF THE NORTH

6. Teaching materials include age-specific surveys. Please distribute to classroom teachers and return completed surveys to Lyric Opera of the North within one week of performance. We are happy to provide postage-paid envelopes for this upon request.
7. We ask that you limit the total number of students in the gym to 400. We can discuss this further for clarification if needed.
8. Please do not send choristers with any symptoms of illness to participate in the performance alongside the cast. Thank you for helping keep our touring cast healthy!

Lyric Opera of the North is the presenter of all performances by Little Opera of the North. Lyric Opera of the North is a 501 (c) (3) organization. Tax identification # 20-1896591.

We look forward to working with you to bring live, professional opera to your school. Please sign one copy of this agreement and return to LOON at your earliest convenience.

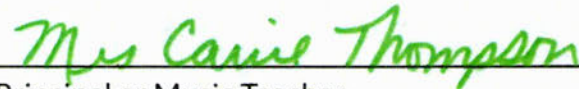


2/10/2025

---

Sarah Lawrence  
General Artistic Director

Date



2/12/25

---

Principal or Music Teacher

Date

**No Cost Contracts Signed  
February 2025**

For your information, the Superintendent or the Executive Director of Business Services has signed the following no cost contracts during the above timeframe:

<b>Name</b>	<b>Contract Source</b>	<b>Description</b>
City of Duluth	Duluth Adult Education (DAE)	Duluth Adult Education partnered with the City of Duluth (grant applicant), SOAR Career Solutions, Lake Superior College, and Fond du Lac Tribal College and received a Minnesota DEED Pathways to Prosperity grant. This grant support allows us to provide training programs for Certified Nursing Assistant, Construction, Medical office, and Human Services careers, as well as career guidance and individualized training support. The First Amendment to Sub-Recipient Funding Agreement between DAE and the City of Duluth simply extends the deadline to use this funding to carry out these programs.

FIRST AMENDMENT TO  
SUB-RECIPIENT FUNDING AGREEMENT BETWEEN  
CITY OF DULUTH  
AND  
INDEPENDENT SCHOOL DISTRICT 709  
(DULUTH ADULT EDUCATION PROGRAM)

This First Amendment, effective as of the date of attestation by the City Clerk (“Effective Date”) is by and between the CITY OF DULUTH, (the “City”) and INDEPENDENT SCHOOL DISTRICT 709 (DULUTH ADULT EDUCATION PROGRAM) (the “Grantee”); and.

WHEREAS, the City and the Grantee entered into a Sub-recipient Funding Agreement (“Agreement”) on or about March 11, 2024 (City Contract No. 24725); and

WHEREAS, Section 3 of the Agreement provides that the term of the Agreement may be extended as approved by DEED on substantially the same terms as set forth in the Agreement by mutual written consent of the authorized representatives of the parties.

WHEREAS, the City and Grantee wish to extend the term of the agreement from June 30, 2025 to December 31, 2025.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties agree as follows:

In this First Amendment, deleted terms will be ~~struck out~~ and added terms will be underlined.

3. TIME OF PERFORMANCE. Grantee may start the Program and begin incurring Program costs on the effective date of the City’s Pathway to Prosperity Program grant agreement with DEED, and complete the Program for SFYs 2024-2025 on or before ~~June 30, 2025~~ December 31, 2025. The City is not obligated to pay for any Program costs incurred after that date or any earlier termination, which ever occurs first. The term of this agreement may be extended as approved by DEED on substantially the same terms as set forth herein by mutual written consent of the authorized representatives of the parties. Nothing herein guarantees any such renewal.

Except as amended herein, the terms and conditions of the Agreement remain in full force and effect. 281

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

CITY OF DULUTH

Signed by:  
By Matthew Staehling  
248028EC452B4D4...  
Mayor (City Administrator per delegated authority)

Attest:

DocuSigned by:  
Ian B Johnson  
EE9D2CA7AA9F42B...  
City Clerk  
Date Attested: 2/25/2025 | 16:23:35 CST

Countersigned:

DocuSigned by:  
John Baby  
5DCC8A0CCFE4D1...  
City Auditor

As to form:

Signed by:  
Temi Uler  
8EC118A320845B...  
City Attorney

INDEPENDENT SCHOOL DISTRICT 709

Signed by:  
By Simone Burch  
9B4602F1461A4BB...  
Its: Executive Dir Bs Services

By: \_\_\_\_\_

Its: \_\_\_\_\_

## Grant Applications February 2025

For your information, the Assistant Superintendent and/or the CFO, Executive Director of Business Services have approved the following grant applications during the above month:

<b>Organization</b>	<b>Author/Contact</b>	<b>Project Title</b>	<b>Amount Requested</b>	<b>Terms</b>
Duluth Public Schools Endowment Fund	Elizabeth Greiner	Lincoln Park MS/Math	643.98	Movement chairs and activity table for student engagement for math class and math intervention.
Duluth Endowment Fund	Meghan Lozinski	Lincoln Park Middle School/8th Grade	\$1,500.00	The funds would be used to provide more books by indigenous authors to meet new MN ELA standards and provide students with diverse perspectives at a variety of reading levels, including graphic novels and traditional prose.
Legislative Citizen Commission on Minnesota	Darren Sheldon	Lakewood Elementary School	\$300,000.00	The funds will be used to revitalize and repair our Lakewood School Forest. Our Foundation and PTA are seeking the help of Traileyes (Tim) to help orchestrate the grant and processes once the grant is received. If the grant is received, the district would have to pay for funding and then ask for reimbursement as this is how this grant works. In the end the cost to the district would be \$0.
Duluth Superior Area Community Foundation	Jennifer Eckel	Lincoln Park Middle School	\$743.86	To purchase project display boards for the National History Day Competition.

**Policy Committee Meeting**  
Duluth Public Schools, ISD 709  
Agenda  
Thursday, March 13, 2025  
District Services Center  
709 Portia Johnson Dr.  
Duluth, MN 55811  
3:30 PM

<b>1. AGENDA ITEMS</b>	
<b>2. POLICIES FOR FIRST READING</b>	
<b>3. POLICIES FOR SECOND READING</b>	
A. 525 Violence Prevention	2
B. 519 Interviews of Students by Outside Agencies	17
<b>4. POLICIES FOR REVIEW</b>	
A. 722 Public Data Requests	23
<b>5. REGULATIONS - Informational</b>	
<b>6. OTHER</b>	

## 525 VIOLENCE PREVENTION [APPLICABLE TO STUDENTS AND STAFF]

### I. PURPOSE

~~The purpose of this policy is to recognize that violence has increased and to identify measures that the school district will take in an attempt to maintain a learning and working environment that is free from violent and disruptive behavior.~~

~~The school board is committed to promoting healthy human relationships and learning environments that are physically and psychologically safe for all members of the school community. It further believes that students are the first priority and they should be protected from physical or emotional harm during school activities and on school grounds, buses, or field trips while under school district supervision.~~

This policy acknowledges that violence is a critical issue for schools to address. The Duluth school district will establish an implement measures to ensure a safe and disruption-free learning environment for all students.

### II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to strictly enforce its weapons policy (Policy 501).
- B. The policy of the school district is to act promptly in investigating all acts, or formal or informal complaints, of violence and take appropriate disciplinary action against any student or staff member who is found to have violated this policy or any related policy.
- C. The administration will periodically review discipline policies and procedures, prepare revisions if necessary, and submit them to the school board for review and adoption.
- D. The school district will implement approved violence prevention strategies to promote safe and secure learning environments, to diminish violence in our schools, and to aid in the protection of children whose health or welfare may be jeopardized through acts of violence.

### III. IMPLEMENTATION OF POLICY

- A. The school board will review and approve policies to prevent and address violence in our schools. The superintendent or designee will develop procedures to effectively implement the school weapons and violence prevention policies. It shall be incumbent on all students and staff to observe all policies and report violations to the school administration.
- B. The school board and administration will inform staff and students annually of policies and procedures related to violence prevention and weapons.
- C. The school district will act promptly to investigate all acts and formal and informal complaints of violence and take appropriate disciplinary action against any student or staff member who is found to have violated this policy or any related policy.
- D. The consequences set forth in the school weapons policy (Policy 501) will be imposed upon any student or nonstudent who possesses, uses or distributes a weapon when in a school location.
- E. The consequences set forth in the school hazing policy (Policy 526) will be imposed upon any student or staff member who commits an act against a student or staff member; or coerces a student or staff member into committing an act, that creates a substantial risk of harm to a person in order for the student or staff member to be

initiated into or affiliated with an organization, or for any other purpose.

- F. Students who engage in assault or violent behavior, **as outlined in the ISD 709 Student handbook under level 4 conduct,** will be removed from the classroom immediately and for a period of time deemed appropriate by the principal, in consultation with the teacher, pursuant to the student discipline policy (Policy 506).
- G. Students with disabilities may be expelled for behavior unrelated to their disabilities, subject to the procedural safeguards required by the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Pupil Fair Dismissal Act.
- H. Procedures will be developed for the referral of any person in violation of this policy or the weapons policy to the local law enforcement agency in accordance with Minnesota Statutes section 121A.05.
- I. Students who wear objectionable emblems, signs, words, objects, or pictures on clothing communicating a message that is racist, sexist, or otherwise derogatory to a protected minority group or which connotes gang membership or that approves, advances, or provokes any form of religious, racial, or sexual harassment or violence against other individuals as defined in the harassment and violence policy (Policy 413) will be subject to the procedures set forth in the student dress and appearance policy (Policy 504). "Gang" as used in this policy means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or whose members engaged in a pattern of criminal gang activity. A "pattern of gang activity" means the commission, attempt to commit, conspiring to commit, or solicitation of two or more criminal acts, provided the criminal acts were committed on separate dates or by two or more persons who are members of or belong to the same criminal street gang.
- J. This policy is not intended to abridge the rights of students to express political, religious, philosophical, or similar opinions by wearing apparel on which such messages are stated. Such messages are acceptable as long as they are not lewd, vulgar, obscene, defamatory, profane, denote gang affiliation, advocate harassment or violence against others, are likely to disrupt the education process, or cause others to react in a violent or illegal manner (Policy 504).

#### **IV. PREVENTION STRATEGIES**

The school district has adopted and will implement the following prevention strategies to promote safe and secure learning environments, to diminish violence in our schools, and to aid in the protection of children whose health or welfare may be jeopardized through acts of violence.

***[Note: The school board can adopt any of the prevention strategies that it intends to implement in its schools, including some or all of the following sample strategies.]***

- A. Adopt a district crisis management policy to address potential violent crisis situations in the district.
- B. Provide training in recognition, prevention, and safe responses to violence and development of a positive school climate.
- C. Coordinate a local school security review committee or task force comprised of school officials, law enforcement, parents, students, and other youth service providers to advise on policy implementation.

- D. In-service training for personnel in aspects of reporting, visibility, and supervision as deterrents to violence.
- E. In-service training for personnel and school board members by experts familiar with sexual abuse, domestic violence, and personal safety issues on the following: helping students identify violence in the family and the community so that students may learn to resolve conflicts in effective, nonviolent ways; responding to a disclosure of child sexual abuse in a supportive, appropriate manner; and/or complying with mandatory reporting requirements under the Maltreatment of Minors Reporting Act.
- F. Promote student safety responsibility by encouraging the reporting of suspicious individuals and unusual activities on school grounds.
- G. Establish a curriculum committee that explores ways of teaching students violence prevention strategies, law-related education, and character/values education (universal values, e.g., honesty, personal responsibility, self-discipline, cooperation, and respect for others).
- H. Establish clear school rules that prevent and deter violence.
- I. Develop cross-cultural awareness programs to unify students of all cultures and backgrounds, to develop mutual respect and understanding of shared experiences and values among students, and to promote the message of inclusion.
- J. Establish conflict resolution training, conflict management, or peer mediation programs for staff and students to teach conservative approaches to settling disputes.
- K. Develop curriculum that teaches social skills such as maintaining self-control, building communications skills, forming friendships, resisting peer pressure, being appropriately assertive, forming positive relationships with adults, and resolving conflict in nonviolent ways.
- L. Develop curriculum that teaches critical viewing and listening skills in analyzing mass media to recognize stereotypes, distinguish fact from fantasy, and identify differences in behavior and values that conflict with their own.
- M. Develop student safety forums that both inform and elicit students' ideas about particular safety problems in the building.
- N. Develop a student photo or name identification system for quick identification of the student in case of emergency.
- O. Develop a staff photo or name identification system using identification badges for quick identification of unauthorized people on campus.
- P. Require all visitors to check-in the main office upon their arrival and state their business at the school. A visitor badge may be issued for easy identification that the visitor is authorized to be present in the school building.
- Q. Develop curriculum on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, and resourcefulness.
- R. Develop curriculum on child sexual abuse prevention for students, including age-appropriate instruction on recognizing sexual abuse and assault, boundary violations, and ways offenders groom or desensitize victims, as well as strategies to promote disclosure, reduce self-blame, and mobilize bystanders. The curriculum may be created in consultation with federal, state, and local agencies and community-based

organizations, including the Child Welfare Information Gateway website maintained by the United States Department of Health and Human Services, to identify research-based tools, curricula, and programs to prevent child sexual abuse.

- S. Provide training to all school personnel on recognizing and preventing sexual abuse and sexual violence which may include training on mandatory reporting requirements provided on the Minnesota Department of Education's website and reviewing the Code of Ethics for Minnesota Teachers.
- T. Promote the safe storage of guns in accordance with School Board resolution for the safe storage of weapons at home and school grounds.

## V. STUDENT SUPPORT

- A. Students will have access to school-based student service professionals, when available, including counselors, nurses, social workers, and psychologists who are knowledgeable in methods to assist students with violence prevention and intervention.
- B. Students will be apprised of school board policies designed to protect their personal safety.
- C. Students will be provided with information as to school district and building rules regarding weapons and violence.
- D. Students will be informed of resources for violence prevention, restorative practices, relationship skills and proper reporting.

## VI. PERSONNEL

- A. School district personnel shall comply with the school weapons policy (Policy 501) and the school hazing policy (Policy 526).
- B. School district personnel shall be knowledgeable of violence prevention policies and report any violation to school administration immediately. School district personnel will be informed annually as to school district and building rules regarding weapons and violence prevention.
- C. School district personnel or agents of the school district shall not engage in emotionally abusive acts including malicious shouting, ridicule, and/or threats or other forms of corporal punishment (Policy 507).

**Legal References:** Minn. Stat. § 13.43, Subd. 16 (Personnel Data)  
 Minn. Stat. § 120B.22 (Violence Prevention Education)  
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 Minn. Stat. § 181.967, Subd. 5 (School District Disclosure of Violence or Inappropriate Sexual Contact)

18 U.S.C. § 921 (Definition of Firearm)  
 20 U.S.C. § 1400 *et seq.* (Individuals with Disabilities Education Act)  
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 MSBA/MASA Model Policy 514 (Bullying Prohibition Policy)  
 MSBA/MASA Model Policy 526 (Hazing Prohibition)  
 MSBA/MASA Model Policy 529 (Staff Notification of Violent Behavior by Students)

First Reading: 02.25.25  
 Second Reading:

## **525 VIOLENCE PREVENTION [APPLICABLE TO STUDENTS AND STAFF]**

### **I. PURPOSE**

The purpose of this policy is to recognize that violence has increased and to identify measures that the school district will take in an attempt to maintain a learning and working environment that is free from violent and disruptive behavior.

The school board is committed to promoting healthy human relationships and learning environments that are physically and psychologically safe for all members of the school community. It further believes that students are the first priority and they should be protected from physical or emotional harm during school activities and on school grounds, buses, or field trips while under school district supervision.

### **II. GENERAL STATEMENT OF POLICY**

- A. The policy of the school district is to strictly enforce its weapons policy (Policy 501).
- B. The policy of the school district is to act promptly in investigating all acts, or formal or informal complaints, of violence and take appropriate disciplinary action against any student or staff member who is found to have violated this policy or any related policy.
- C. The administration will periodically review discipline policies and procedures, prepare revisions if necessary, and submit them to the school board for review and adoption.
- D. The school district will implement approved violence prevention strategies to promote safe and secure learning environments, to diminish violence in our schools, and to aid in the protection of children whose health or welfare may be jeopardized through acts of violence.

### **III. IMPLEMENTATION OF POLICY**

- A. The school board will review and approve policies to prevent and address violence in our schools. The superintendent or designee will develop procedures to effectively implement the school weapons and violence prevention policies. It shall be incumbent on all students and staff to observe all policies and report violations to the school administration.
- B. The school board and administration will inform staff and students annually of policies and procedures related to violence prevention and weapons.
- C. The school district will act promptly to investigate all acts and formal and informal complaints of violence and take appropriate disciplinary action against any student or staff member who is found to have violated this policy or any related policy.
- D. The consequences set forth in the school weapons policy (Policy 501) will be imposed upon any student or nonstudent who possesses, uses or distributes a weapon when in a school location.
- E. The consequences set forth in the school hazing policy (Policy 526) will be imposed upon any student or staff member who commits an act against a student or staff member; or coerces a student or staff member into committing an act, that creates a substantial risk of harm to a person in order for the student or staff member to be initiated into or affiliated with an organization, or for any other purpose.
- F. Students who engage in assault or violent behavior will be removed from the classroom immediately and for a period of time deemed appropriate by the principal, in consultation with the teacher, pursuant to the student discipline policy (Policy 506).

- G. Students with disabilities may be expelled for behavior unrelated to their disabilities, subject to the procedural safeguards required by the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and the Pupil Fair Dismissal Act.
- H. Procedures will be developed for the referral of any person in violation of this policy or the weapons policy to the local law enforcement agency in accordance with Minnesota Statutes section 121A.05.
- I. Students who wear objectionable emblems, signs, words, objects, or pictures on clothing communicating a message that is racist, sexist, or otherwise derogatory to a protected minority group or which connotes gang membership or that approves, advances, or provokes any form of religious, racial, or sexual harassment or violence against other individuals as defined in the harassment and violence policy (Policy 413) will be subject to the procedures set forth in the student dress and appearance policy (Policy 504). "Gang" as used in this policy means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or whose members engaged in a pattern of criminal gang activity. A "pattern of gang activity" means the commission, attempt to commit, conspiring to commit, or solicitation of two or more criminal acts, provided the criminal acts were committed on separate dates or by two or more persons who are members of or belong to the same criminal street gang.
- J. This policy is not intended to abridge the rights of students to express political, religious, philosophical, or similar opinions by wearing apparel on which such messages are stated. Such messages are acceptable as long as they are not lewd, vulgar, obscene, defamatory, profane, denote gang affiliation, advocate harassment or violence against others, are likely to disrupt the education process, or cause others to react in a violent or illegal manner (Policy 504).

#### IV. PREVENTION STRATEGIES

The school district has adopted and will implement the following prevention strategies to promote safe and secure learning environments, to diminish violence in our schools, and to aid in the protection of children whose health or welfare may be jeopardized through acts of violence.

***[Note: The school board can adopt any of the prevention strategies that it intends to implement in its schools, including some or all of the following sample strategies.]***

- A. Adopt a district crisis management policy to address potential violent crisis situations in the district.
- B. Provide training in recognition, prevention, and safe responses to violence and development of a positive school climate.
- C. Coordinate a local school security review committee or task force comprised of school officials, law enforcement, parents, students, and other youth service providers to advise on policy implementation.
- D. In-service training for personnel in aspects of reporting, visibility, and supervision as deterrents to violence.
- E. In-service training for personnel and school board members by experts familiar with sexual abuse, domestic violence, and personal safety issues on the following: helping students identify violence in the family and the community so that students may learn

to resolve conflicts in effective, nonviolent ways; responding to a disclosure of child sexual abuse in a supportive, appropriate manner; and/or complying with mandatory reporting requirements under the Maltreatment of Minors Reporting Act.

- F. Promote student safety responsibility by encouraging the reporting of suspicious individuals and unusual activities on school grounds.
- G. Establish a curriculum committee that explores ways of teaching students violence prevention strategies, law-related education, and character/values education (universal values, e.g., honesty, personal responsibility, self-discipline, cooperation, and respect for others).
- H. Establish clear school rules that prevent and deter violence.
- I. Develop cross-cultural awareness programs to unify students of all cultures and backgrounds, to develop mutual respect and understanding of shared experiences and values among students, and to promote the message of inclusion.
- J. Establish conflict resolution training, conflict management, or peer mediation programs for staff and students to teach conservative approaches to settling disputes.
- K. Develop curriculum that teaches social skills such as maintaining self-control, building communications skills, forming friendships, resisting peer pressure, being appropriately assertive, forming positive relationships with adults, and resolving conflict in nonviolent ways.
- L. Develop curriculum that teaches critical viewing and listening skills in analyzing mass media to recognize stereotypes, distinguish fact from fantasy, and identify differences in behavior and values that conflict with their own.
- M. Develop student safety forums that both inform and elicit students' ideas about particular safety problems in the building.
- N. Develop a student photo or name identification system for quick identification of the student in case of emergency.
- O. Develop a staff photo or name identification system using identification badges for quick identification of unauthorized people on campus.
- P. Require all visitors to check-in the main office upon their arrival and state their business at the school. A visitor badge may be issued for easy identification that the visitor is authorized to be present in the school building.
- Q. Develop curriculum on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, and resourcefulness.
- R. Develop curriculum on child sexual abuse prevention for students, including age-appropriate instruction on recognizing sexual abuse and assault, boundary violations, and ways offenders groom or desensitize victims, as well as strategies to promote disclosure, reduce self-blame, and mobilize bystanders. The curriculum may be created in consultation with federal, state, and local agencies and community-based organizations, including the Child Welfare Information Gateway website maintained by the United States Department of Health and Human Services, to identify research-based tools, curricula, and programs to prevent child sexual abuse.
- S. Provide training to all school personnel on recognizing and preventing sexual abuse and

sexual violence which may include training on mandatory reporting requirements provided on the Minnesota Department of Education's website and reviewing the Code of Ethics for Minnesota Teachers.

## **V. STUDENT SUPPORT**

- A. Students will have access to school-based student service professionals, when available, including counselors, nurses, social workers, and psychologists who are knowledgeable in methods to assist students with violence prevention and intervention.
- B. Students will be apprised of school board policies designed to protect their personal safety.
- C. Students will be provided with information as to school district and building rules regarding weapons and violence.
- D. Students will be informed of resources for violence prevention and proper reporting.

## **VI. PERSONNEL**

- A. School district personnel shall comply with the school weapons policy (Policy 501) and the school hazing policy (Policy 526).
- B. School district personnel shall be knowledgeable of violence prevention policies and report any violation to school administration immediately. School district personnel will be informed annually as to school district and building rules regarding weapons and violence prevention.
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 MSBA/MASA Model Policy 529 (Staff Notification of Violent Behavior by Students)

First Reading: 02.25.25  
 Second Reading:

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy  
525Orig. 1996  
Rev.Revised: \_\_\_\_\_  
2022**525 VIOLENCE PREVENTION [APPLICABLE TO STUDENTS AND STAFF]****I. PURPOSE**

The purpose of this policy is to recognize that violence has increased and to identify measures that the school district will take in an attempt to maintain a learning and working environment that is free from violent and disruptive behavior.

The school board is committed to promoting healthy human relationships and learning environments that are physically and psychologically safe for all members of the school community. It further believes that students are the first priority and they should be protected from physical or emotional harm during school activities and on school grounds, buses, or field trips while under school district supervision.

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- D. In-service training for personnel in aspects of reporting, visibility, and supervision as deterrents to violence.
- E. In-service training for personnel and school board members by experts familiar with sexual abuse, domestic violence, and personal safety issues on the following: helping students identify violence in the family and the community so that students may learn to resolve conflicts in effective, nonviolent ways; responding to a disclosure of child sexual abuse in a supportive, appropriate manner; and/or complying with mandatory reporting requirements under the Maltreatment of Minors Reporting Act.
- F. Promote student safety responsibility by encouraging the reporting of suspicious individuals and unusual activities on school grounds.
- G. Establish a curriculum committee that explores ways of teaching students violence prevention strategies, law-related education, and character/values education (universal values, e.g., honesty, personal responsibility, self-discipline, cooperation, and respect for others).
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organizations, including the Child Welfare Information Gateway website maintained by the United States Department of Health and Human Services, to identify research-based tools, curricula, and programs to prevent child sexual abuse.

- S. Provide training to all school personnel on recognizing and preventing sexual abuse and sexual violence which may include training on mandatory reporting requirements provided on the Minnesota Department of Education's website and reviewing the Code of Ethics for Minnesota Teachers.

## **V. STUDENT SUPPORT**

- A. Students will have access to school-based student service professionals, when available, including counselors, nurses, social workers, and psychologists who are knowledgeable in methods to assist students with violence prevention and intervention.
- B. Students will be apprised of school board policies designed to protect their personal safety.
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## **VI. PERSONNEL**

- A. School district personnel shall comply with the school weapons policy (Policy 501) and the school hazing policy (Policy 526).
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## **519 INTERVIEWS OF STUDENTS BY OUTSIDE AGENCIES**

### **I. PURPOSE**

There are occasions in which persons other than school district officials and employees find it necessary to speak with a student during the school day. Student safety and disruption of the educational program is of concern to the school district. The purpose of this policy is to establish the procedures for access to students by authorized individuals during the school day.

### **II. GENERAL STATEMENT OF POLICY**

- A. Generally, students may not be interviewed during the school day by persons other than a student's parents, school district officials, employees and/or agents, except as otherwise provided by law and/or this policy.
- B. Requests from law enforcement officers and those other than a student's parents, school district officials, employees and/or agents to interview students shall be made through the principal's office. Upon receiving a request, it shall be the responsibility of the principal and/or assistant principal to determine whether the request will be granted. Prior to granting a request, the principal and/or assistant principal shall attempt to contact the student's parents to inform them of the request, except where otherwise prohibited by law.

### **III. INTERVIEWS CONDUCTED UNDER THE MALTREATMENT OF MINORS ACT**

- A. In the case of an investigation pursuant to the Reporting of Maltreatment of Minors Act, Minnesota Statutes Chapter 260E, a local welfare agency, the agency responsible for investigating the report, and a local law enforcement agency may interview, without parental consent, an alleged victim and any minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school and during school hours. School district officials will work with the local welfare agency, the agency responsible for investigating the report, or law enforcement agency to select a place appropriate for the interview. When it is possible and the report alleges substantial child endangerment or sexual abuse, the interview may take place outside the presence of the alleged offender and may take place prior to any interviews of the alleged offender.
- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school district property. Where the interviews are conducted by the local welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the

interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal and/or assistant principal and without proper warrant.

**Legal References:** Minn. Stat. § 13.32 (Educational Data)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

**Cross References:** MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

First Reading: 02.11.25  
Second Reading:

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 519

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2024

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- B. Requests from law enforcement officers and those other than a student's parents, school district officials, employees and/or agents to interview students shall be made through the principal's office. Upon receiving a request, it shall be the responsibility of the principal **and/or assistant principal** to determine whether the request will be granted. Prior to granting a request, the principal **and/or assistant principal** shall attempt to contact the student's parents to inform them of the request, except where otherwise prohibited by law.

### III. INTERVIEWS CONDUCTED UNDER THE MALTREATMENT OF MINORS ACT

- A. In the case of an investigation pursuant to the Reporting of Maltreatment of Minors Act, Minnesota Statutes Chapter 260E, a local welfare agency, the agency responsible for investigating the report, and a local law enforcement agency may interview, without parental consent, an alleged victim and any minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school and during school hours. School district officials will work with the local welfare agency, the agency responsible for investigating the report, or law enforcement agency to select a place appropriate for the interview. When it is possible and the report alleges substantial child endangerment or sexual abuse, the interview may take place outside the presence of the alleged offender and may take place prior to any interviews of the alleged offender.

**[NOTE: This change is found in Minnesota Statutes, section 260E.22.]**

- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an

interview on school district property. Where the interviews are conducted by the local welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal **and/or assistant principal** and without proper warrant.

**Legal References:** Minn. Stat. § 13.32 (Educational Data)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

**Cross References:** MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

First Reading: 02.11.25

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 519

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2024

## **519 INTERVIEWS OF STUDENTS BY OUTSIDE AGENCIES**

### **I. PURPOSE**

There are occasions in which persons other than school district officials and employees find it necessary to speak with a student during the school day. Student safety and disruption of the educational program is of concern to the school district. The purpose of this policy is to establish the procedures for access to students by authorized individuals during the school day.

### **II. GENERAL STATEMENT OF POLICY**

- A. Generally, students may not be interviewed during the school day by persons other than a student's parents, school district officials, employees and/or agents, except as otherwise provided by law and/or this policy.
- B. Requests from law enforcement officers and those other than a student's parents, school district officials, employees and/or agents to interview students shall be made through the principal's office. Upon receiving a request, it shall be the responsibility of the principal to determine whether the request will be granted. Prior to granting a request, the principal shall attempt to contact the student's parents to inform them of the request, except where otherwise prohibited by law.

### **III. INTERVIEWS CONDUCTED UNDER THE MALTREATMENT OF MINORS ACT**

- A. In the case of an investigation pursuant to the Reporting of Maltreatment of Minors Act, Minnesota Statutes Chapter 260E, a local welfare agency, the agency responsible for investigating the report, and a local law enforcement agency may interview, without parental consent, an alleged victim and any minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school and during school hours. School district officials will work with the local welfare agency, the agency responsible for investigating the report, or law enforcement agency to select a place appropriate for the interview. When it is possible and the report alleges substantial child endangerment or sexual abuse, the interview may take place outside the presence of the alleged offender and may take place prior to any interviews of the alleged offender.

**[NOTE: This change is found in Minnesota Statutes, section 260E.22.]**

- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school district property. Where the interviews are conducted by the local

welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal and without proper warrant.

**Legal References:** Minn. Stat. § 13.32 (Educational Data)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

**Cross References:** MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

## 722 PUBLIC DATA AND DATA SUBJECT REQUESTS

### I. PURPOSE

The school district recognizes its responsibility relative to the collection, maintenance, and dissemination of public data as provided in state statutes.

### II. GENERAL STATEMENT OF POLICY

The school district will comply with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13 (MGDPA), and Minnesota Rules parts 1205.0100-1205.2000 in responding to requests for public data.

### III. DEFINITIONS

#### A. Confidential Data on Individuals

Data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data.

#### B. Data on Individuals

All government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

#### C. Data Practices Compliance Officer

The data practices compliance official is the designated employee of the school district to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems. The responsible authority may be the data practices compliance official.

#### D. Government Data

All data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

#### E. Individual

"Individual" means a natural person. In the case of a minor or an incapacitated person as defined in Minnesota Statutes section 524.5-102, subdivision 6, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

#### F. Inspection

"Inspection" means the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the school district, unless printing a copy is the only method to provide for inspection of the data. For data stored in electronic form and made available in electronic form on a remote access basis to the public by the school district, typically through an online portal or the government entity's website, inspection includes remote access to the data by the public and the

ability to print copies of or download the data on the public's own computer equipment.

G. Not Public Data

Any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

H. Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

I. Private Data on Individuals

Data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data.

J. Protected Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

K. Public Data

All government data collected, created, received, maintained, or disseminated by the school district, unless classified by statute, temporary classification pursuant to statute, or federal law, as nonpublic or protected nonpublic; or, with respect to data on individuals, as private or confidential.

L. Public Data Not on Individuals

Data accessible to the public pursuant to Minnesota Statutes section 13.03.

M. Public Data on Individuals

Data accessible to the public in accordance with the provisions of section 13.03.

N. Responsible Authority

The individual designated by the school board as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law. Until an individual is designated by the school board, the responsible authority is the superintendent.

O. Summary Data

Statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable. Unless classified pursuant to Minnesota Statutes section 13.06, another statute, or federal law, summary data is public.

#### **IV. REQUESTS FOR PUBLIC DATA**

A. All requests for public data must be made in writing using the data practices form and directed to the responsible authority.

1. A request for public data must include the following information:

- a. Date the request is made;
  - b. A clear description of the data requested;
  - c. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
  - d. Method to contact the requestor (such as phone number, address, or email address).
2. Unless specifically authorized by statute, the school district may not require persons to identify themselves, state a reason for, or justify a request to gain access to public government data. A person may be asked to provide certain identifying or clarifying information for the sole purpose of facilitating access to the data.
  3. The identity of the requestor is public, if provided, but cannot be required by the government entity.
  4. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- B. The responsible authority will respond to a data request at reasonable times and places as follows:
1. The responsible authority will notify the requestor in writing as follows:
    - a. The requested data does not exist; or
    - b. The requested data does exist but either all or a portion of the data is not accessible to the requestor; or
      - (1) If the responsible authority determines that the requested data is classified so that access to the requestor is denied, the responsible authority will inform the requestor of the determination in writing, as soon thereafter as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based.
      - (2) Upon the request of a requestor who is denied access to data, the responsible authority shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.
    - c. The requested data does exist and provide arrangements for inspection of the data, identify when the data will be available for pick-up, or indicate that the data will be sent by mail. If the requestor does not appear at the time and place established for inspection of the data or the data is not picked up within ten (10) business days after the requestor is notified, the school district will conclude that the data is no longer wanted and will consider the request closed.
  2. The school district's response time may be affected by the size and complexity of the particular request, including necessary redactions of the data, and also

by the number of requests made within a particular period of time.

3. The school district will provide an explanation of technical terminology, abbreviations, or acronyms contained in the responsive data on request.
4. The school district is not required by the MGDPA to create or collect new data in response to a data request, or to provide responsive data in a specific form or arrangement if the school district does not keep the data in that form or arrangement.
5. The school district is not required to respond to questions that are not about a particular data request or requests for data in general.

## **V. REQUEST FOR SUMMARY DATA**

- A. A request for the preparation of summary data shall be made and directed to the responsible authority.
  1. A request for the preparation of summary data must include the following information:
    - a. Date the request is made;
    - b. A clear description of the data requested;
    - c. Identify the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
    - d. Method to contact requestor (phone number, address, or email address).
- B. The responsible authority will respond within ten (10) business days of the receipt of a request to prepare summary data and inform the requestor of the following:
  1. The estimated costs of preparing the summary data, if any; and
  2. The summary data requested; or
  3. A written statement describing a time schedule for preparing the requested summary data, including reasons for any time delays; or
  4. A written statement describing the reasons why the responsible authority has determined that the requestor's access would compromise the private or confidential data.
- C. The school district may require the requestor to pre-pay all or a portion of the cost of creating the summary data before the school district begins to prepare the summary data.

## **VI. DATA BY AN INDIVIDUAL DATA SUBJECT**

- A. Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.

- B. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by the school district for any purposes other than those stated to the individual at the time of collection in accordance with Minnesota Statutes section 13.04, except as provided in Minnesota Statutes section 13.05, subdivision 4.
- C. Upon request to the responsible authority or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data.
- D. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created.
- E. The responsible authority or designee shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.
- F. The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.
- G. An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.
- H. The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by Minnesota Statutes chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.
- I. Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by a government entity without regard to the requirements of Minnesota Statutes section 138.17.
- J. After completing, correcting, or destroying successfully challenged data, the school district may retain a copy of the commissioner of administration's order issued under Minnesota Statutes chapter 14 or, if no order were issued, a summary of the dispute between the parties that does not contain any particulars of the successfully challenged data.

## **VII. REQUESTS FOR DATA BY AN INDIVIDUAL SUBJECT OF THE DATA**

- A. All requests for individual subject data must be made in writing directed to the responsible authority.

- B. A request for individual subject data must include the following information:
1. Statement that one is making a request as a data subject for data about the individual or about a student for whom the individual is the parent or guardian;
  2. Date the request is made;
  3. A clear description of the data requested;
  4. Proof that the individual is the data subject or the data subject's parent or guardian;
  5. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
  6. Method to contact the requestor (such as phone number, address, or email address).
- C. The identity of the requestor of private data is private.
- D. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- E. Policy 515 (Protection and Privacy of Pupil Records) addresses requests of students or their parents for educational records and data.

### **VIII. COSTS**

- A. Public Data
1. The school district will charge for copies provided as follows:
    - a. 100 or fewer pages of black and white, letter or legal sized paper copies will be charged at 25 cents for a one-sided copy or 50 cents for a two-sided copy.
    - b. More than 100 pages or copies of other materials are charged based upon the actual cost of searching for and retrieving the data and making the copies or electronically sending the data, unless the cost is specifically set by statute or rule.
      - (1) The actual cost of making copies includes employee time, the cost of the materials onto which the data is copied (paper, CD, DVD, etc.), and mailing costs (if any).
      - (2) Also, if the school district does not have the capacity to make the copies, e.g., photographs, the actual cost paid by the school district to an outside vendor will be charged.
  2. All charges must be paid for [in cash, check, or online service] in advance of receiving the copies.

**B. Summary Data**

1. Any costs incurred in the preparation of summary data shall be paid by the requestor prior to preparing or supplying the summary data.
2. The school district may assess costs associated with the preparation of summary data as follows:
  - a. The cost of materials, including paper, the cost of the labor required to prepare the copies, any schedule of standard copying charges established by the school district, any special costs necessary to produce such copies from a machine-based record-keeping system, including computers and microfilm systems;
  - b. The school district may consider the reasonable value of the summary data prepared and, where appropriate, reduce the costs assessed to the requestor.

**C. Data Belonging to an Individual Subject**

1. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.

The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies. Based on the factors set forth in Minnesota Rule 1205.0300, subpart 4, the school district determines that a reasonable fee would be the charges set forth in section VIII.A of this policy that apply to requests for data by the public.

2. The school district may not charge a fee to search for or to retrieve educational records of a child with a disability by the child's parent or guardian or by the child upon the child reaching the age of majority.

**IX. Annual Review and Posting**

- A. The responsible authority shall prepare a written data access policy and a written policy for the rights of data subjects (including specific procedures the school district uses for access by the data subject to public or private data on individuals). The responsible authority shall update the policies no later than August 1 of each year, and at any other time as necessary to reflect changes in personnel, procedures, or other circumstances that impact the public's ability to access data.
- B. Copies of the policies shall be easily available to the public by distributing free copies to the public or by posting the policies in a conspicuous place within the school district that is easily accessible to the public or by posting them on the school district's website.

**Data Practices Contacts**

**Responsible Authority:**

Superintendent  
 709 Portia Johnson Dr.  
 Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

**Data Practices Compliance Official:**

Executive Director of Business Services and Finance  
 709 Portia Johnson Dr.  
 Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

**Data Practices Designee(s):**

Business Services Coordinator  
 709 Portia Johnson Dr.  
 Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

**Legal References:**

- Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
- Minn. Stat. § 13.01 (Government Data)
- Minn. Stat. § 13.02 (Definitions)
- Minn. Stat. § 13.025 (Government Entity Obligation)
- Minn. Stat. § 13.03 (Access to Government Data)
- Minn. Stat. § 13.04 (Rights of Subjects to Data)
- Minn. Stat. § 13.05 (Duties of Responsible Authority)
- Minn. Stat. § 13.32 (Educational Data)
- Minn. Rules Part 1205.0300 (Access to Public Data)
- Minn. Rules Part 1205.0400 (Access to Private Data)

**Cross References:**

- MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
- MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

New Policy  
 Replacing: Policy 108  
 First Reading: 09-18-2018  
 Adopted: 10-16-2018  
 Reviewed: 10-15-2019  
 Reviewed: 07-21-2020  
 First Reading: 11-15-2022  
 Second Reading: 12-20-2022  
 Reviewed: 01-23-2024  
 Reviewed:



# DULUTH PUBLIC SCHOOLS - DATA REQUEST FORM

Date of Request: \_\_\_\_\_

Description of requested data (please be specific, include date spans):

### Requested method to access data:

Inspection Only: \_\_\_\_\_ Copies Only:\* \_\_\_\_\_ Both Inspection and Copies:\* \_\_\_\_\_

**\* Note:** There will be a cost charged to provide copies of public data

### Contact Information (optional) \*\*

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email address: \_\_\_\_\_

Address: \_\_\_\_\_

**\*\* Note:** You do not have to provide any contact information. However, if you want Duluth Public Schools to mail/email copies of data to you, some type of contact information must be provided. Duluth Public Schools would also need contact information from you if it is necessary to clarify your request. We will not work on such a request until clarified.

**Duluth Public Schools will respond to your request as soon as possible.**

Written requests for data can be returned several ways:

- Email: [data.request@isd709.org](mailto:data.request@isd709.org)
- Fax: 218-336-8773
- Mail: ISD 709 – Attn: Business Services  
709 Portia Johnson Drive  
Duluth, MN 55811
- In Person: See mail address above

**Consent Agenda - Regular School Board Meeting**

Duluth Public Schools, ISD 709

Agenda

Tuesday, March 18, 2025

District Services Center

709 Portia Johnson Dr.

Duluth, MN 55811

6:30 PM

**1. Consent Agenda**

**A. Approval of Minutes from Past School Board Meetings**

1) Regular School Board Meeting - February 25, 2025 3

**B. Approval of Action Items**

1) Human Resources

a. HR Staffing Report 6

2) Finance

a. Financial Report 8

b. Fundraisers 9

c. Bids, RFPs and Quotes

(1) BID #1337 - General Construction Lowell ES 10

(2) BID #1338 - Glazing Work Lowell ES 12

d. Contracts, Change Orders, Leases

(1) LEASE - Arvig Building 05.01.25 - 04.31.26 14

(2) CONTRACT - DSC Transportation Building Addition (BID 25

#1333 Transportation Building Addition approved 12.17.24)

3) Items Brought Forward From the Monthly Committee of the Whole Meeting

4) Other

a. Diploma Requests 134

b. Field Trip Requests

(1) Duluth East Band Jazz Festival 148

(2) Laura MacArthur Wolfe Ridge 5th Grade 154

c. Data Sharing Agreements

(1) The College of St Scholastica, Upward Bound 176

(2) The Regents of the University of Minnesota Through Its 180

Duluth Campus Upward Bound

**C. Approval of Policy Readings**

1) First Readings - None

2) Second Readings

a. 519 Interviews of Students by Outside Agencies 184

3) Annual Review

a. 722 Public Data Requests 190

**D. Approval of Committee Reports**

By approving Committee Reports, the board acknowledges and approves all

informational and action items represented in the Regular School Board Meeting Report of each committee.

- 1) Monthly Committee of the Whole - *March 4, 2025*
- 2) Policy Committee - *March, 13, 2025*
- 3) Human Resources/Business Services Committee - *March 10, 2025*

Regular School Board Meeting  
 Tuesday, February 25, 2025 6:30 PM Central

District Services Center  
 709 Portia Johnson Dr.  
 Duluth, MN 55811

Henry Banks: Present  
 Kelly Durick Eder: Present  
 Rosie Loeffler-Kemp: Present  
 Jill Lofald: Present  
 Sarah Mikesell: Present  
 Amber Sadowski: Present  
 Stephanie Williams: Present  
 Present: 7.

1. Call to Order  
 at 6:37 p.m.

2. Roll Call

3. Pledge of Allegiance

4. Approval of the Agenda

Move to Approve the Agenda. This motion, made by Jill Lofald and seconded by Amber Sadowski, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea  
 Yea: 7, Nay: 0

5. School and Community Recognition

6. Resolution of Concurrence and Non-Concurrence Presentation

Members of the American Indian Parent Advisory Committee presented a vote of Non-Concurrence along with recommendations.

7. Career and Technical Education Presentation

Principal on Special Assignment Danette Seboe shared the Career and Technical Education Presentation.

8. Report of the Superintendent

8.A. Reports from Student School Board Representatives

Vice Chair Lofald presented Student Representative Garner's Denfeld Report.

Student Representative Dean presented the East Report.

Student Representative Taylor presented the ALC Report.

8.B. Superintendent's Report

Superintendent Magas presented the Superintendent's Report. Topics included:

Student Representative Reports

Budget Reduction & Realignment Update  
 Spanish Immersion Expansion Update  
 Legislative Update  
 Other

#### 8.C. Schedule of Meetings and Events

### 9. Report of Standing Committees

#### 9.A. Committee of the Whole

9.A.1) Monthly Committee of the Whole (*February 4, 2025*)

Assistant Superintendent Bonds presented the Monthly Committee of the Whole Report.

#### 9.B. Human Resources/Business Services Committee (*Tuesday, February 11, 2025*)

Member Sadowski presented the HR/Business Services Committee Report.

#### 9.C. Policy Committee (*Tuesday, February 11, 2025*)

Member Loeffler-Kemp presented the Policy Committee Report.

### 10. General Board Committee Updates

Member Williams gave a report about attending the Education Equity Advisory Committee.

Member Loeffler-Kemp shared information from the Duluth Public Schools Foundation.

Member Lofald shared information about participating in the Board of School Administrators.

Member Sadowski gave a report about attending the Inter-Governmental meeting.

Member Sadowski gave a report about attending the Head Start Parent Policy Council.

Member Loeffler-Kemp shared information about participating in an Art Grant Committee.

### 11. Consent Agenda

Move to Approve the Consent Agenda. This motion, made by Stephanie Williams and seconded by Henry Banks, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea  
 Yea: 7, Nay: 0

### 12. Resolutions from Committee Reports

#### 12.A. B-2-25-4089 - Acceptance of Donations to Duluth Public Schools

Move to Approve Resolution B-2-25-4089 Acceptance of Donations to Duluth Public Schools.

This motion, made by Amber Sadowski and seconded by Jill Lofald, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea

Yea: 7, Nay: 0

### 13. Special Resolutions and Action Items

#### 13.A. SP-2-25-4090 School Board Members Attendance at MSBA/MASA and AMSD Days at the Capitol

Move to Approve Resolution SP-2-25-4090 School Board Members Attendance at MSBA/MASA and AMSD Days at the Capitol. This motion, made by Rosie Loeffler-Kemp and seconded by Stephanie Williams, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah

Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea  
Yea: 7, Nay: 0

#### 14. Questions / Other

#### 15. Adjournment

Move to Adjourn at 9:51 p.m. This motion, made by Henry Banks and seconded by Stephanie Williams, Passed.

Henry Banks: Yea, Kelly Durick Eder: Yea, Rosie Loeffler-Kemp: Yea, Jill Lofald: Yea, Sarah Mikesell: Yea, Amber Sadowski: Yea, Stephanie Williams: Yea  
Yea: 7, Nay: 0

**HUMAN RESOURCES ACTION ITEMS FOR: March 10, 2025**

<b><u>CERTIFIED APPOINTMENT</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
BROMAN, NANCY E	MATH INTERVENTIONIST TOSA/MYERS WILKINS, (MA+45) IV 9, 0.6, GALLINGER C. RETIRED	01/16/2025
DOWNEY, ASHLEY M	SPED SOCIAL WORKER/DISTRICT WIDE, (MA+45) IV 9, 1.0, JARVIS H. TRANSFER	02/24/2025
JACKSON, GARY A	LTS VOCAL MUSIC TEACHER/ORDEA EAST, (BA+45) III 8, 1.0, Rodrigues G. LOA	02/24/2025
KEENEY, MCKENZIE K	LTS SPED RESOURCE TEACHER/EAST, (BA) III 1.0, SWANSON S. MATERNITY LEAVE	01/08/2025
NIELSEN, JULIA J	SPED EBD RESOURCE TEACHER/DENFELD, (BA) III 1, 1.0, NETTLETON J. RESIGNED	02/24/2025
PETRICH, HOLLY C	SPED ASD SETTING III TEACHER/PIEDMONT, (MA) IV 5, 1.0, JORGENSEN M. TRANSFER	01/22/2025
SOINE, VICTORIA L	LTS SEB SPECILAIST TOSA/MYERS-WILKINS, (BA) III 1, 1.0, FRISCHMANN B. LOA	02/26/2025
<b><u>CERTIFIED LEAVES</u></b>	<b><u>POSITIONS</u></b>	<b><u>EFFECTIVE DATES</u></b>
CARLAND, DANIEL J	SPED ELEMENTARY RESOURCE/PIEDMONT	05/19/2025 06/06/2025
LONG, CATHERINE G	PAWS PROG COORD - DENFELD HS	02/28/2025 04/11/2025
PIERRE, MARGARET L	PREKINDERGARTEN/MYERS WILKINS	08/25/2025 06/05/2026
ROSS, SYDNEY P	SPED RESOURCE TEACHER/DENFELD	08/25/2025 11/14/2025
SUNDELL, VICTORIA L	MENTAL HEALTH COORDINATOR/DW	02/25/2025 02/25/2026
TEMPLE-RHODES, VIRGINIA S	ADULT BASIC ED - DAE	01/02/2025 03/02/2025
WADE, MATTHEW P	READING INTERVENTIONIST/HOMECROFT	08/25/2025 06/05/2026
WOHLWEND, ALEXANDRA A	SPED SCHOOL NURSE/DISTRICT WIDE	08/25/2025 11/17/2025
<b><u>CERTIFIED RESIGNATION</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
BORAK, CHARLES E	DEAN OF STUDENTS - ORDEAN-EAST MS	03/28/2025
HUGHES, KIM M	SPED SETTING III/IV - DENFELD HS	06/06/2025
MIX, JODI A	SPED ECSE - DW	06/06/2025
<b><u>CERTIFIED RETIREMENT</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
BEAUDRY, MELINDA L	GRADE 4 - LAKEWOOD ES-REVISED FROM 7/1/25	06/06/2025
BEETCHER, CHERYL L	KINDERGARTEN - STOWE ES	06/06/2025
BERGMAN, HELEN E	GRADE 2 - STOWE ES	06/06/2025
HANNU, DEBRA A	VISUAL ARTS - ORDEAN-EAST MS	06/06/2025
JOHNSTON, DAN L	SPED SEC SETTING III/IV - EAST HS	02/14/2025
KOLAR, PATRICIA J	GRADE 2 - CONGDON PARK ES	06/06/2025
MILLER, JENNIFER E	CTE GRAPHIC ARTIST TEACHER- EAST & DENFELD HS	06/06/2025
PAQUETTE, BARBARA A	SPED RESIDENTIAL - MERRITT CREEK ACADEMY	07/11/2025
VAN DRUTEN, SUSAN K	ENGLISH - EAST HS	08/26/2025
VAN LOH, JANE F	PRE K - HOMECROFT ES	06/06/2025
VICHE, LEIGH ANN	SPED DAPE - LESTER PARK ES	06/06/2025
<b><u>NON-CERT APPOINTMENT</u></b>	<b><u>POSITION</u></b>	<b><u>EFFECTIVE DATES</u></b>
ANDERSEN, MISTY D	CERTIFIED LANGUAGE INTERPRETER PARA/DISTRICT WIDE, 31.25/38WKS, \$36.88/HR	02/24/2025
ARVIDSON-HICKS, KAELENE E	HOURLY MONITOR/LAKEWOOD, 23/38WKS, \$15.00/HR	01/06/2025
BAER, APRIL N	BUS HELPER/TRANSPORTATION, 25/38WKS, \$16.90/HR	01/21/2025
BURGOON, JERAMIE M	SUPERVISORY PARA/LINCOLN PARK, 33.75/38WKS, \$20.37/HR, DEHNKE K. LEAVE FOR STUDENT TEACHING	02/03/2025
CHASTEY, KELLY M	ECFE PARAPROFESSIONA/PIEDMONT, 8/38WKS, \$19.54/HR, GEER M. TRANSFER	01/28/2025
CHUDOMELKA, ANTONIN J	HOURLY MONITOR/LAURA MACARTHUR, 23/38WKS, \$15.00/HR	02/03/2025
COBB, SCOTT S	HOURLY PAINTER/DISTRICT WIDE, 23/UP TO 67 WORKING DAYS, \$27.14/HR	02/03/2025
FOLDESI, MARK T	SPED STUDENT SPECIFIC PARA/LINCOLN PARK, 33.75/38WKS, \$21.42/HR	02/24/2025
GRAMS, ADELINE G	ECSE PARAPROFESSIONAL/DISTRICT WIDE, 25.25/38WKS, \$19.74/HR, GERSICH B. TRANSFER	02/24/2025
GROSS, MOLLY J	SPED PROGRAM PARA/PIEDMONT, 31.25/38WKS, DECAMBALIZA S. RESIGNED	01/21/2025
HABBERSTAD, PAIGE E	SPED KEYZONE PARA/PIEDMONT, 15/38WKS, \$19.88/HR	01/21/2025
HARYU, RIAN A	CUSTODIAN I/EAST, 40/52WKS, \$17.52/HR, HAKALA W. RESIGNED	02/18/2025
HATHAWAY, ANGEL R	HOURLY DISHWASHER/MYERS-WILKINS, 12/38WKS, \$14.00/HR	02/03/2025
HELGESON, SARA T	SPED PROGRAM PARA/CHESTER CREEK, 31.25/38WKS, \$21.07/HR, LAUDERBAUGH G. RESIGNED	01/21/2025
KOCHEVAR, PETER G	VAN DRIVER/TRANSPORTATION, 40/38WKS, \$20.03/HR	02/10/2025
LAYMAN, ANTHONY J	SUPERVISORY PARA/EAST, 33.75/38WKS, \$20.34/HR, TROMBLEY M. RESIGNED	01/28/2025
LOFALD, ERIK C	SUPERVISORY PARA/DENFELD, 33.75/38WKS, FLORESTANO M. TRANSFER	01/06/2025
LYONS, MICHELLE R	HOURLY MONITOR/MYERS-WILKINS, 23/38WKS, \$15.00/HR	01/28/2025
MCGUIRE, PEGGY S	NUTRITIONAL SERVICE ASST/LINCOLN PARK, 30/38WKS, \$15.68/HR, PAULSON L. RESIGNED	01/28/2025
MIELKE, KRISTA E	HOURLY MONITOR/LAURA MACARTHUR, 23/38WKS, \$15.00/HR	01/03/2025
MILLER, DILLEYONA D	BUS DRIVER/TRANSPORTATION, 25/38WKS, \$23.08/HR, JOHNSON J. RESIGNED	02/03/2025
MURRAY, NICHOLAS E	FLOATING CUSTODIAN/DISTRICT WIDE, 40/52WKS, \$18.49/HR,	02/12/2025
MURRAY, SIERRA L	FLOATING CUSTODIAN/DISTRICT WIDE, 40/52WKS, \$18.49/HR	02/12/2025
NELSON, EMILY A	SPED BUILDING WIDE PARA/LESTER PARK, 31.25/38WKS, \$20.04/HR, SPECHT D. TERM	02/10/2025
PRICE, MELISSA A	EXECUTIVE ASSISTANT/TLE, 40/52WKS, \$22.70/HR, BRAUN W. RETIRED	03/03/2025
ROSS, ELIZABETH S	SPED BUILDING WIDE PARA/MYERS-WILKINS, 31.25/38WKS, \$20.04/HR, LONGAKER S. RESIGNED	02/24/2025
RYZAK, WILLIAM J	HOULRY DISHWASHER/DISTRICT WIDE, 12/38WKS, \$14.00/HR	01/06/2025
SIEMSEN, MARY B	SPED PROGRAM PARA/DISTRICT WIDE, 31.25/38WKS, \$22.49/HR, BECKER A. RESIGNED	03/10/2025
TERESI, WENDY L	PRESCHOOL PARA/PIEDMONT, 23/38WKS, \$21.35/HR, CURNOW L. TRANSFER	01/09/2025
THOMSON, CHRISTOPHER J	CUSTODIAN I/ORDEAN EAST, 40/52WKS, \$17.52/HR, THOMPSON E. RESIGNED	02/24/2025
WHITE, SHEILA L	COORDINATOR OF INDIAN ED/DISTRICT WIDE, \$1,979/WEEK, 48 WKS, GARBOW J. RESIGNED	01/13/2025
WORGREN, JOSHUA S	NETWORK ENGINEER 1/TECHNOLOGY, \$1,456/WK, LITWIN D.	02/24/2025
<b><u>NON-CERT LEAVES</u></b>	<b><u>POSITIONS</u></b>	<b><u>EFFECTIVE DATES</u></b>
BLACK, NEIL J	OSSS - DSC	02/12/2025 05/12/2025
ECKSTROM, ALYSSA M	OFFICE SUPPORT SPECIALIST SENIOR/DSC	04/16/2025 07/07/2025
JOHNSON, ELIZABETH A	PRE SCHOOL PARA - STOWE ES	03/26/2025 05/07/2025
RYME, ROBIN A	DIGITAL INNOVATION SPECIALIST/DW	04/23/2025 07/16/2025

**NON-CERT RESIGNATION**

BECKER, ADAM J  
 BERGESON, JOSEPHINE M  
 COMPO, BERAM L  
 GUY, TONY R  
 JOY, STEPHANIE G  
 KALWITE, MICHELLE R U  
 LOCHNER, HALIE M  
 LONGAKER, SCOTT J  
 LUOTO, KIMBERLY S  
 MCGUIRE, PEGGY S  
 RUSSELL, KEVIN M  
 RYME, EMILY M  
 SHATTO, MILLI  
 THOMPSON, MIRANDA  
 WALLER, DEEDRA E  
 WITUCKI, ASHLEY M

**POSITION**

SPED PROG PARA SETTING III/IV - DW  
 SPED CHILD SPECIFIC SETTING III/IV - CHESTER CREEK ACADEMY  
 BUS DRIVER II - TRANSPORTATION  
 CHILD NUTRITION ASST - LINCOLN PARK MS  
 OSSS - HOMECROFT ES  
 CHILD NUTRITION ASST - LINCOLN PARK MS  
 SPED BW PARA - LAKEWOOD ES  
 SPED BW PARA - MYERS-WILKINS ES  
 SECOND SHIFT ENGINEER 1 - LESTER PARK ES  
 CHILD NUTRITION SERVICE ASST - LINCOLN PARK MS  
 LIFEGUARD PARA - ORDEAN-EAST MS  
 SYSTEM SPECIALIST DESKTOP 1 - DW  
 HOURLY MONITOR - PIEDMONT ES  
 HRIS SPECIALIST - DSC  
 PRE-SCHOOL PROG PARA - STOWE ES  
 PRE K PARA - PIEDMONT ES

**EFFECTIVE DATES**

02/14/2025  
 03/07/2025  
 03/03/2025  
 02/03/2025  
 06/06/2025  
 01/15/2025  
 03/07/2025  
 01/28/2025  
 02/12/2025  
 01/30/2025  
 02/19/2025  
 02/27/2025  
 02/14/2025  
 03/14/2025  
 02/24/2025  
 03/07/2025

**NON-CERT RETIREMENT**

COTTINGHAM, JANE M  
 HALLFRISCH, MONICA M  
 JAZDZEWSKI, MARK W  
 LUOMA, DERYN R  
 MCEWEN, TERRY L

**POSITION**

SPED PROG PARA SETTING III/IV - LAURA MAC ES  
 COMMUNITY LIAISON PARA - STOWE ES  
 UTILITY PERSON II - FACILITIES  
 SPED PROG PARA SETTING III/IV - MYERS-WILKINS ES  
 PRINT SHOP COORD/PRINTER - FACILITIES

**EFFECTIVE DATES**

06/06/2025  
 09/02/2025  
 04/25/2025  
 06/06/2025  
 06/30/2025



**\*\*\*REVISED BUDGET**

**HR/BS Services Committee Monthly Fund Balance Report  
MARCH 10, 2025 Committee Meeting**

**BUDGET SUMMARY**

1/10/2025 Percent spent

REVENUES	24-25		24-25		24-25		24-25		24-25		Percent spent
	CURRENT YEAR ADOPTED BUDGET		CURRENT YEAR REVISED BUDGET adj		RECEIVED TO YEAR TO DATE		RECEIVED ENCUMBERED		BUDGET BALANCE		
	FUND	Jul-24	JULY 24-25	July -June	July -June	July -June	July -June	July -June			
General	01	\$ 121,223,653.72	\$ 121,764,312.65	\$ 64,506,116.33	\$ 9,349.24	\$ 57,267,545.56				53%	
<b>REVISED REVENUE- Special Education</b>			<b>\$ 3,759,110.84</b>								
<b>REVISED REVENUE - +32 adm adjustment</b>			<b>\$ 288,000.00</b>								
<b>REVISED REVENUE- St Louis County tax adj</b>			<b>\$ 361,539.90</b>								
					<b>TOTAL REVISED REV = \$4,408,650.74</b>						
Food Service	02	\$ 6,000,000.00	\$ 6,000,000.00	\$ 2,839,288.00	\$ -	\$ 3,160,712.00				47%	
Transportation	03	\$ 6,332,190.85	\$ 6,332,190.85	\$ 2,057,813.79	\$ -	\$ 4,274,377.06				32%	
Community Ed	04	\$ 8,577,600.00	\$ 8,662,818.02	\$ 4,072,210.20	\$ -	\$ 4,590,607.82				47%	
Operating Capital	05	\$ 2,772,175.43	\$ 2,772,175.43	\$ 736,470.64	\$ -	\$ 2,035,704.79				27%	
Building Construction	06	\$ -	\$ -	\$ -	\$ -	\$ -					
Debt Service Fund	07	\$ 28,067,285.00	\$ 28,067,285.00	\$ 2,413,402.82	\$ -	\$ 25,653,882.18				9%	
Trust Fund	08	\$ 276,100.00	\$ 276,100.00	\$ -	\$ -	\$ 276,100.00				0%	
Dental Insurance Fund	20	\$ 950,000.00	\$ 950,000.00	\$ 755,774.44	\$ -	\$ 194,225.56				80%	
Student Activity	79	\$ 276,264.00	\$ 276,264.00	\$ 286,178.69	\$ -	\$ (9,914.69)				104%	
<b>REVENUES</b>	<b>TOTALS:</b>	<b>\$ 174,475,269.00</b>	<b>\$ 179,509,796.69</b>	<b>\$ 77,667,254.91</b>	<b>\$ 9,349.24</b>	<b>\$ 97,443,240.28</b>				<b>43%</b>	

EXPENSES	24-25		24-25		24-25		24-25		24-25		Percent spent
	CURRENT YEAR ADOPTED BUDGET		CURRENT YEAR REVISED BUDGET adj		EXPENSES TO YEAR TO DATE		EXPENSES ENCUMBERED		BUDGET BALANCE		
	FUND	Jul-24	JULY 24-25	July - June	July - June	July - June	July - June	July - June			
General	01	\$ 122,071,417.00	\$ 123,151,409.84	\$ 77,851,987.71	\$ 2,621,395.99	\$ 42,678,026.14				65%	
<b>REVISED EXPENDITURE REDUCTION ESTIMATE ONLY</b>			<b>(\$2,600,000)</b>								
Food Service	02	\$ 6,055,998.00	\$ 6,055,998.00	\$ 3,316,937.07	\$ 1,283,438.62	\$ 1,455,622.31				76%	
Transportation	03	\$ 6,783,799.00	\$ 6,783,799.00	\$ 5,843,791.09	\$ 374,934.82	\$ 565,073.09				92%	
Community Ed	04	\$ 7,817,759.00	\$ 7,926,977.02	\$ 4,680,005.57	\$ 26,469.18	\$ 3,220,502.27				59%	
Operating Capital	05	\$ 6,720,958.43	\$ 6,908,621.43	\$ 5,908,463.44	\$ 546,648.00	\$ 453,509.99				93%	
Building Construction	06	\$ 993,431.57	\$ 993,431.57	\$ 629,028.81	\$ 11,985.00	\$ 352,417.76				65%	
Debt Service Fund	07	\$ 27,393,530.00	\$ 27,393,530.00	\$ 27,392,333.10	\$ -	\$ 1,196.90				100%	
Trust Fund	08	\$ 263,733.00	\$ 263,733.00	\$ -	\$ -	\$ 263,733.00				0%	
Dental Insurance Fund	20	\$ 929,564.00	\$ 929,564.00	\$ 921,313.76	\$ -	\$ 8,250.24				99%	
Student Activity	79	\$ 379,993.00	\$ 379,993.00	\$ 206,323.34	\$ 12,205.24	\$ 161,464.42				58%	
<b>EXPENSES</b>	<b>TOTALS</b>	<b>\$ 179,410,183.00</b>	<b>\$ 178,187,056.86</b>	<b>\$ 126,750,183.89</b>	<b>\$ 4,877,076.85</b>	<b>\$ 49,159,796.12</b>				<b>74%</b>	

Extra Curricular Fund 01 Prog 298  
Revenue \$ 349,001.29  
Expense \$ 376,389.78

**Fundraisers Reported  
February 2025**

The following fundraisers were reported in the above timeframe and per Policy 511–Fundraising, require School Board approval:

<b>School</b>	<b>Organization Fundraising</b>	<b>Estimated Profit</b>	<b>Description of Fundraiser</b>
East HS	Track & Field	\$7,800.00	Email Donations

3/3/2025

Duluth Public Schools  
709 Portia Johnson Drive  
Duluth, MN 55811



323

1331 Tyler Street NE, Suite 101  
Minneapolis, MN 55413  
ics-builds.com  
(763) 354-2670

**Re:** Lowell Elementary School Misc. Remodeling - REBID  
Duluth, MN 55811

Dear Board Members:

ICS has reviewed the bids that were received on Thursday, February 27, 2025, for the above-referenced project. Our recommendation for award is as follows:

**Work Scope 1 – General Construction**  
Donald Holm Construction – Duluth, MN  
**BASE BID:**

*Bid 1337*

**\$765,710.00**

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**TOTAL**

**\$765,710.00**

**Work Scope 2 – Openings**  
St. Germain’s Glass – Duluth, MN  
**BASE BID:**

**\$135,100.00**

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**TOTAL**

**\$135,100.00**

Based on the recommendations above, we recommend that the District enter into a contract with the above-mentioned contractors for the total bid amount of Nine Hundred Thousand, Eight Hundred Ten Dollars and No/100 Cents (\$900,810.00).

Upon Board action, we will draft a contract reflecting this amount to each of the respective Contractors.

Enclosed are copies of the official bid tabulation, bid forms and bid securities. Please contact us at 763-354-2670 should you have any questions regarding our recommendation.

Sincerely,

Jason Filipek  
ICS Project Manager

**Lowell Elementary School Misc. Remodeling**

OWNER: Duluth Public Schools #709

CONSTRUCTION MANAGER: ICS Consulting, Inc.

ARCHITECT: DSGW Architects



Thursday, February 27, 2025 @ 10:00 a.m.

**WORK SCOPE 1 - General Construction**

	BIDDER	BIDDER	BIDDER	BIDDER
	Donald Holm Construction Co., Inc. 3211 West 3rd Street Duluth, MN 55806 218-628-2257	Gardner Builders Duluth, LLC 2 West 1st Street, Suite #133 Duluth, MN 55802 218-428-1752	Johnson Wilson Constructors, Inc. 4431 West Michigan Street Suite 1 Duluth, MN 55807 218-626-0202	Intercon Group Inc. 1775 Shilhon Road Duluth, MN 55804 218-464-2876
BID SECURITY	X	X	X	X
ADDENDA REC'D.	X	X	X	X
Acknowledged MN Responsible Contractor:	X	X	X	X
BASE BID:	\$765,710.00	\$799,476.00	\$982,299.00	\$1,264,147.00
COMBINED WS BID:	\$916,848.00	\$939,195.00	N/A	N/A

3/3/2025

Duluth Public Schools  
709 Portia Johnson Drive  
Duluth, MN 55811



325

1331 Tyler Street NE, Suite 101  
Minneapolis, MN 55413  
ics-builds.com  
(763) 354-2670

**Re:** Lowell Elementary School Misc. Remodeling - REBID  
Duluth, MN 55811

Dear Board Members:

ICS has reviewed the bids that were received on Thursday, February 27, 2025, for the above-referenced project. Our recommendation for award is as follows:

**Work Scope 1 – General Construction**

Donald Holm Construction – Duluth, MN

**BASE BID:** \$765,710.00

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**TOTAL** **\$765,710.00**

**Work Scope 2 – Openings** *Bid 1338*

St. Germain's Glass – Duluth, MN

**BASE BID:** \$135,100.00

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**TOTAL** **\$135,100.00**

Based on the recommendations above, we recommend that the District enter into a contract with the above-mentioned contractors for the total bid amount of Nine Hundred Thousand, Eight Hundred Ten Dollars and No/100 Cents (\$900,810.00).

Upon Board action, we will draft a contract reflecting this amount to each of the respective Contractors.

Enclosed are copies of the official bid tabulation, bid forms and bid securities. Please contact us at 763-354-2670 should you have any questions regarding our recommendation.

Sincerely,

Jason Filipek  
ICS Project Manager

**Lowell Elementary School Misc. Remodeling**

OWNER: Duluth Public Schools #709

CONSTRUCTION MANAGER: ICS Consulting, Inc.

ARCHITECT: DSGW Architects



Thursday, February 27, 2025 @ 10:00 a.m.

WORK SCOPE 2 - Openings

	BIDDER	BIDDER	BIDDER	BIDDER	BIDDER	BIDDER
	St. Germain's Glass 212 North 40th Avenue West Duluth, MN 55807 218-628-0221	Superior Glass Inc. 7500 Tower Avenue Superior, WI 54880 218-451-6501	United Glass Inc. 1402 Progress Parkway Suite C Eveleth, MN 55734 651-633-2529	Donald Holm Construction Co., Inc. 3211 West 3rd Street Duluth, MN 55806 218-628-2257	Mesabi Glass Window & Door Inc. 510 West 25th Street Hibbing, MN 55746 218-262-2010	Murphy Window and Door 12356 314th Avenue NW Princeton, MN 55371 320-980-1987
BID SECURITY	X	X	X	X	X	X
ADDENDA REC'D.	X	X	X	X	X	X
Acknowledged MN Responsible Contractor:	X	X	X	X	X	X
BASE BID:	\$135,100.00	\$141,600.00	\$149,887.00	\$151,138.00	\$151,480.00	\$242,935.00
COMBINED WS BID:	N/A	N/A	N/A	\$916,848.00	N/A	N/A

**THIS LEASE AGREEMENT**, made and entered into this 21<sup>st</sup> day of February, 2025, by and between Infotel Investments, L.L.C. (hereinafter referred to as "Lessor"), and Independent School District No. 709 (hereinafter referred to as "Lessee", whether one or more).

**WITNESSETH:**

1. **PREMISES & TERMS:** In consideration of the obligation of Lessee to pay rent as herein provided, and in consideration of the other terms, provisions and covenants hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, certain premises (hereinafter referred to as the "Leased Premises" or "premises") situated within the County of St. Louis, State of Minnesota, identified as Suite 300 in the building commonly known as the Arvig Building, consisting of approximately 3,501 usable square feet, as outlined on the floor plan attached hereto as Exhibit A, (hereinafter referred to as the "Building") located at 325 West First Street, Duluth, together with all rights, privileges, easements, appurtenances and immunities belonging to or in any way pertaining to the Leased Premises, and together with the right to use in common with Lessor and other Lessees in the Building, and its and their employees, agents, representatives and invitees, any common areas and facilities of the Building.

To have and to hold for a term of 1 year, commencing on the 1<sup>st</sup> day of May 2025, and ending on the 30<sup>th</sup> day of April, 2026. Lessee acknowledges that it has inspected the Leased Premises and accepts them in their present condition as suitable for the purpose for which they are leased, and further acknowledges that no representations as to the repair of the Leased Premises nor promises to alter, remodel or improve the Leased Premises have been made by Lessor.

**ACCEPTANCE OF PREMISES:** If Lessor does not complete leasehold improvements, if any to be completed by Lessor, and deliver possession of the Leased Premises on or before said commencement date, or if Lessor is unable for reasons beyond its control to deliver possession of the Leased Premises by such date, Lessor shall not thereby be deemed to be in default hereunder, and shall not thereby be liable to Lessee for any loss, damage, cost and expense suffered or incurred by Lessee, nor shall the commencement date of the Lease or the term of the Lease be affected or changed thereby, and Lessee agrees to accept possession of the Leased Premises at such time as Lessor is able to tender the same; provided, however, Lessor hereby waives payment of rent covering any period prior to the tendering of possession to Lessee hereunder.

2. **RENT:** Lessee shall pay to the Lessor as a monthly rent for said premises \$5,707.00, said monthly rent to be paid in advance on the first day of each and every month during the initial term and any extension terms to the initial lease, at the office and to the order of ONEIDA REALTY COMPANY at 1605 Alworth Building, Duluth, Minnesota 55802, or payable to such other person or entity or at such other place as may from time to time be designated by the Lessor in writing. A prorated monthly installment shall be paid at the then current rate for any fraction of a month if the term shall begin on any day except for the first day or shall be terminated on any day except the last day of any month.

3. **ADJUSTMENTS TO RENT:** Effective May 1<sup>st</sup> of each year of this Lease Lessor shall have the right to increase the rent by the same percentage increase in the CPI-U (Consumer Price Index for all urban consumers and for urban wage earners), or a similar index if the CPI-U has been discontinued, from the preceding calendar year. Lessor shall have the further right, and with sixty (60) days written notice, to increase Lessee's rent on May 1<sup>st</sup> of each year of this Lease, by a proportionate share of any increase in ad valorem taxes that are payable for the Building and land in such year in excess of the taxes paid in the immediately preceding calendar year. The proportionate share increase shall be an amount determined by a fraction, the numerator of which shall be the square feet of the Leased Premises, and the denominator being the net rentable area of the Building. The result shall be added to the rent otherwise payable hereunder, and shall be paid in twelve (12) equal monthly amounts commencing at May 1<sup>st</sup>. Lessor shall provide evidence supporting increased rent calculation resulting from CPI increase and/or tax increase.

4. **USE:** The Leased Premises shall be used for the purpose of a general office or school space only. No part of the Leased Premises shall be used for any purpose which constitutes a nuisance or which is illegal, offensive, termed extra hazardous by insurance companies or which may make void or voidable any insurance on the Building or which may increase the premiums therefore, or which will interfere with the general safety, comfort and convenience of the Lessor and

other Lessees of the Building. There shall be no sale of food or beverages by any means without the prior written consent of Lessor. Lessee shall not permit intoxicating liquors to be kept or sold in the Leased Premises. 328

5. **BUSINESS HOURS:** Usual business hours as used herein shall mean the hours between 7:00 A.M. and 5:00 P.M., Monday through Friday, holidays excepted. Lessee shall also have access to the Building between the hours of 5:00 P.M. and 7:00 A.M., Monday through Friday, Saturday, Sundays and holidays but may be required to comply with reasonable security precautions imposed by Lessor.

6. **REPAIRS BY LESSOR:** Lessor shall at its expense maintain the roof, foundation and the structural soundness of the exterior walls of the Building and the heating, air conditioning, plumbing, elevator and electrical systems in good repair, reasonable wear and tear excepted. Lessee shall repair and pay for any damage caused by the act or negligence of Lessee or Lessee's employees, agents, representatives or invitees, or caused by Lessee's default hereunder. Lessee shall immediately give Lessor written notice of defect or need for repairs, after which Lessor shall have reasonable opportunity to repair same or cure such defect. Lessor's liability hereunder shall be limited to the cost of such repairs or curing such defect.

7. **REPAIRS BY LESSEE:** Lessee shall at its own cost and expense maintain all other parts of the Leased Premises in good repair, reasonable wear and tear excepted, and shall take good care of the Leased Premises and its fixtures and permit no waste. Lessee will keep the whole of the Leased Premises in a clean, sanitary and safe condition, and will at the expiration of the term of this Lease or other termination of the term of this Lease, surrender the same to Lessor, broom clean, and in the same order and condition as they were in at the commencement of the term of this Lease, reasonable wear and tear excepted.

8. **ALTERATIONS BY LESSOR:** Lessee shall permit Lessor to make such alterations, renovations, improvements, restorations and/or repairs as, in the judgment of Lessor, may be deemed necessary or desirable for the Leased Premises, for any other premises in the Building, or for the Building itself (Including access to distribution systems above the ceiling of the Leased Premises). Lessor shall use reasonable efforts to not unreasonably interfere with the conduct of Lessees' business, but Lessor shall in no event be liable to Lessee for any damages in connection with such entry.

9. **ALTERATIONS BY LESSEE:** Lessee shall not make any alterations of, or additions to, the Leased Premises without the prior written consent of Lessor. Lessee will not permit any mechanics', laborers' or materialmen's liens to stand against the Leased Premises or the Building for any labor or material furnished to or for the account of Lessee, or claimed to have been so furnished in connection with any work performed or claimed to have been performed in, on or about the Leased Premises.

At the termination of this Lease, Lessee shall, if Lessor so elects, remove all alterations and additions erected by Lessee and restore the Leased Premises to their original condition; otherwise such improvements shall be delivered up to the Lessor with the Leased Premises. All movable office furnishings and trade fixtures installed by Lessee may be removed by Lessee at the termination of this Lease if Lessee so elects, and shall be removed if required by Lessor. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to damage the primary structure or structural qualities of the Leased Premises. Personal property remaining in the Leased Premises at the expiration or termination of the term of this Lease shall be deemed abandoned, and Lessor may dispose of the same as Lessor deems expedient, and at Lessee's expense.

Notwithstanding anything to the contrary contained in this Lease, Lessor shall in all events have the right to prescribe the weight and position of any safes and other heavy equipment placed in or on the Leased Premises by Lessee. Any and all damage or injury to the Leased Premises or the Building caused by moving the property of Lessee in or out of the Leased Premises, or due to the same being in or on the Leased Premises, shall be repaired by Lessee at its sole cost and expense. No equipment, fixtures, furniture or other bulky matter will be received into or carried in the Building, except in or at such places and in such manner as are approved by Lessor, and all moving of Lessee's property in or out of the Leased Premises shall be done only under the direct control and supervision of Lessor; provided, however, that Lessor shall not be responsible for any damage to, or charges for moving such property.

10. **SIGNS:** The Lessee shall not display, inscribe, print, maintain, or affix on any place in or about the Building any sign, notice, legend, direction, figure or advertisement, except on the doors of the Leased Premises

and on the Building Directory, and then only such name(s) and matter, and in such color, size, style, place and materials, as shall first have been approved by the Lessor. The listing of any name other than that of the Lessee<sup>329</sup>, whether on the doors of the Leased Premises, on the Building Directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Leased Premises or be deemed to be written consent of the Lessor, it being expressly understood that any such listing is a privilege extended by Lessor revocable at will by written notice to Lessee. Lessor shall designate all sources furnishing sign painting and lettering, used on the Leased Premises or in the Building. The Lessor also reserves the right to name the Building and to change the name or street address of the Building. Further, Lessor shall have the right to install and maintain a sign or signs on the exterior or interior of the Building.

11. **ACCESS BY LESSOR:** Lessor, its agents and representatives shall be entitled to keep pass keys to the Leased Premises and shall have the right to enter and inspect the Leased Premises at any time for the purpose of ascertaining the condition thereof or in order to make such repairs as may be required to be made by Lessor under the terms of this Lease or as Lessor may deem necessary. During the period that is six (6) months prior to the end of the term hereof, Lessor and Lessor's agents and representatives shall have the right to enter the Leased Premises at reasonable times for the purpose of showing the Leased Premises and shall have the right to erect on the Leased Premises a suitable sign indicating that the Leased Premises are available. Any such entry by Lessor shall never be deemed an eviction or disturbance of Lessee's possession of the Leased Premises, or render Lessor liable to Lessee for damages, or relieve Lessee from the performance of Lessee's obligations under this Lease. The right of entry reserved shall not be deemed to impose any greater obligation on Lessor to clean, maintain, repair or change the Leased Premises than is specifically provided in this Lease. The Lessor, its agents and representatives may at any time in case of emergency enter the Leased Premises and do such acts as Lessor may deem proper in order to protect the Leased Premises, the Building, or any occupants of the Building.

## 12. UTILITIES AND SERVICES

a. **AIR CONDITIONING AND HEAT:** Lessor shall furnish air conditioning, if available to the Leased Premises, and heat for normal purposes only, to provide in Lessor's judgment comfortable occupancy Monday through Friday from 8:00 A.M. to 5:00 P.M., holidays excepted. Lessee agrees not to use any apparatus or device, in or upon or about the Leased Premises, which in any way may increase the amount of such services usually furnished or supplied to the Leased Premises, and Lessee further agrees not to connect any apparatus or device with the conduits or pipes, or other means by which such services are supplied, for the purpose of using additional or unusual amounts of such services, without written consent of Lessor. Should Lessee use such services to excess or request the use of such services at other than operating hours listed above, Lessor reserves the right to charge for such services. The charge shall be payable as additional rental. Should Lessee fail to make payment upon demand of Lessor, such failure shall constitute a breach of the obligation to pay rent under this Lease and shall entitle Lessor to the rights hereinafter granted for such breach. Nothing contained herein shall be construed to require Lessor to furnish air conditioning to the Leased Premises or any portion of the Building not currently served by air conditioning.

b. **ELECTRICAL SERVICE:** Lessor shall maintain electrical facilities to provide sufficient power for lighting, typewriters and other office machines of similar low electrical consumption, but not including electricity required for electronic data processing equipment, special lighting in excess of building standard, and any other item of electrical equipment which (singly) consumes more than .5 kilowatts per hour at rated capacity or requires a voltage other than one hundred twenty (120) volts single phase; and provided that if the installation of said electrical equipment requires additional air conditioning capacity above that provided by the building standard system, then the additional air conditioning installation and Operating Costs will be the obligation of Lessee. Lessee shall pay to Lessor, in addition to the monthly rent, the submetered cost of Lessee's electrical consumption, or, at Lessor's option, one-twelfth (1/12) monthly of an amount equal to one dollar (\$1.00) per square foot of Lessee's occupied space. At the same time and manner as Lessor may increase the monthly rent the Lessor may also increase this fixed rate charge by an amount not greater than five percent (5%) of the amount in effect immediately prior to the effective date of the increase. It is understood that Lessee will use reasonable judgment

in preventing waste. It is understood that Lessor does not warrant that any of the services referred to above will be free from interruption from causes beyond the reasonable control of Lessor. Such interruption of service shall never be deemed an eviction or disturbance of Lessee's use and possession of the Leased Premises or any part thereof or render Lessor liable to Lessee for damages by abatement of rent or otherwise or relieve Lessee from performance of Lessee's obligations under this Lease.

c. **LIGHTING:** Lessor shall supply initial lamps, bulbs, starters and ballasts used on the Leased Premises; Lessee agrees to reimburse Lessor for the cost and expense of maintaining and replacing such lamps, bulbs, starters and ballasts.

d. **KEYS:** Lessor shall furnish Lessee with two (2) keys for each corridor door entering the Leased Premises, and additional keys ordered by Lessee at a charge by Lessor. All such keys shall remain the property of Lessor. No additional locks shall be allowed on any door of the Leased Premises without Lessor's written permission, and Lessee shall not make, or permit to be made, any duplicate keys, except those furnished by Lessor. Upon termination of this Lease, Lessee shall surrender to Lessor all keys to the Leased Premises, and give to Lessor the combination of all locks for safes, safe cabinets and vault doors, if any, in the Leased Premises.

e. **ELEVATORS:** Lessor shall furnish passenger elevator service whenever the Building is open. Lessor shall have the right to stop the operation of said elevators whenever alterations, improvements or repairs therein or in the machinery or appliances connected therewith shall be necessary or desirable and shall not be liable for damages for any such stoppage of service.

f. **JANITORIAL:** Lessee shall furnish such janitor service for Lessee's leased areas.

g. **WATER:** Lessor shall provide water for lavatory and toilet purposes.

h. **WASTE:** Lessee shall not waste electricity, water, heat or air conditioning or any other utility, and shall cooperate fully with Lessor to insure the most effective operation of the Building's heating and air conditioning, which shall include closing Venetian blinds and drapes and keeping all windows closed when air conditioning is in use and shall refrain from attempting to adjust any controls other than room thermostats, if any, installed for Lessee's use.

i. **TEMPORARY INTERRUPTION OF SERVICES:** Lessor shall not be liable to Lessee, its agents, employees, representatives, customers or invitees for any inconvenience, loss or damage or for any injury to any person or property caused by or resulting from any casualties, riots, strikes, picketing, accidents, breakdowns or any cause beyond Lessor's reasonable control, or from any temporary failure or lack of services and Lessee shall indemnify Lessor and hold Lessor harmless from any claim or damage because of such inconvenience, loss, damage or injury. No variation, interruption or failure of such services incident to the making of repairs, alterations or improvements or due to casualties, riots, strikes, picketing, accidents, breakdowns or any cause beyond Lessor's reasonable control or temporary failure or lack of such services shall be deemed an eviction of Lessee or relieve Lessee from any of Lessee's obligations hereunder.

13. **ASSIGNMENT AND SUBLETTING:** Lessee shall not have the right to assign, transfer, pledge, or otherwise encumber this Lease, or to sublet the whole or any part of the Leased Premises, without the prior written consent of Lessor. Upon each request made by Lessee to Lessor for Lessor's consent hereunder, Lessee shall pay to Lessor a processing fee not to exceed, in each instance, \$500.00. Notwithstanding any permitted assignment or subletting, Lessee shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Lessor shall have the right to assign any of its rights under this Lease, and upon any such assignment, and provided that the assignee assumes all of Lessor's obligations hereunder, Lessor shall be relieved of any and all such obligations.

14. **FIRE AND OTHER CASUALTY:** If the Building or any part thereof is damaged or destroyed by fire or other casualty, the Lessor shall have the right to terminate this Lease, provided it gives written notice thereof to

the Lessee within ninety (90) days after such damage or destruction. Such notice shall state Lessor's intention to terminate this lease not less than thirty (30) days after Lessee's receipt of such notice. If a portion of the Leased Premises is damaged by fire or other casualty and this Lease is not thereby terminated, the Lessor shall, at its expense, restore the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by the Lessee, to as near the condition which existed immediately prior to such damage or destruction as reasonably possible, and rent shall abate during such period of time as the Leased Premises are untenable in the proportion that the untenable portion of the Leased Premises bears to the entire Leased Premises. The Lessor shall not be responsible to the Lessee for damage to, or destruction of, any furniture, equipment, improvements or other changes made by the Lessee in, on or about the Leased Premises regardless of the cause of the damage or destruction.

#### 15. **SUBROGATION:**

a. Lessor and Lessee each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties covered by the insurance maintained hereunder, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such times as the releasor's policies shall contain a clause or endorsement to the effect that any release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. Lessor and Lessee each agrees that it will request its insurance carriers to include in its policies such a clause or endorsement.

b. Lessor covenants and agrees to maintain standard fire and extended coverage insurance covering the Building in an amount not less than eighty percent (80%) of the replacement cost thereof. Lessee covenants and agrees to maintain "All Risk" property insurance covering the full replacement value of all of Lessee's leasehold improvements, trade fixtures and personal property within the Leased Premises.

c. Lessee assumes responsibility for protecting the Leased Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Leased Premises closed and secured after normal business hours.

16. **LIABILITY:** With the exception of those claims arising out of Lessor's gross negligence or willful misconduct, neither Lessor nor any of Lessor's owners, members, shareholders, directors, officers, agents, or other representatives (collectively, with Lessor, the "Lessor Parties") shall be liable to Lessee, or those claiming through or under Lessee, for injury, death or property damage occurring in, on or about the Building and appurtenances thereto, and Lessee shall indemnify the Lessor Parties and hold them harmless from any claim or damage arising out of any injury, death or property damage occurring in, on or about the Leased Premises to Lessee or an employee, customer or invitee of Lessee. Without limiting Lessee's liability hereunder, Lessee agrees, at its own cost and expense to carry public liability insurance protecting Lessor and Lessee in a combined single limit amount of not less than One Million Dollars (\$1,000,000). All policies of insurance shall name both Lessor and Lessee as insured thereunder and shall protect the interests of Lessor. Certificates of said insurance providing for not less than fifteen (15) days notice to Lessor prior to cancellation thereof shall be furnished to Lessor prior to Lessee taking possession of the Leased Premises.

17. **EMINENT DOMAIN:** If the entire Building is taken by eminent domain, this Lease shall automatically terminate as of the date of taking. If a portion of the Building is taken by eminent domain, Lessor shall have the right to terminate this Lease by giving written notice thereof to Lessee within ninety (90) days after the date of taking. Such notice shall state Lessor's intention to terminate this lease not less than thirty (30) days after Lessee's receipt of such notice. If a portion of the Leased Premises is taken by eminent domain and this Lease is not thereby terminated, Lessor shall, at its expense, restore the Leased Premises, exclusive of any improvements or other changes made to the Leased Premises by Lessee, to as near the condition which existed immediately prior to the date of taking as reasonably possible, and rent shall abate during such period of time as the Leased Premises

are untenantable, in the proportion that the untenantable portion of the Leased Premises bears to the entire Leased Premises. If all or any portion of the Building is temporarily taken by eminent domain, this Lease shall remain in full force and effect, and Lessee shall continue to pay rent and be responsible for all other obligations hereunder insofar as such obligations are not affected by the temporary taking. All damages awarded for a taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall belong to, and be the property of, Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold estate hereby created or to the fee of the Leased Premises provided, however, that Lessor shall not be entitled to any award made to Lessee for loss of business, fair value of, and cost of removal of stock and fixtures. The term "eminent domain" shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation.

18. **HAZARDOUS SUBSTANCES:** As used herein, the term "Hazardous Substance" shall mean and include any element, compound, mixture, solution or substance regulated by a federal, state or local law, rule or regulation because of its toxicity, corrosiveness, reactivity, ignitability or carcinogenic effect and shall include petroleum, natural gas and derivatives and synthetics thereof. Lessee shall not cause or permit any Hazardous Substance to be brought upon, kept, or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or invitees, except for such Hazardous Substance as is necessary to Lessee's business. Any Hazardous Substance permitted on the Leased Premises, as provided in the previous sentence, and all containers therefore, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state and local laws, rules and regulations applicable to the Hazardous Substance and Lessee shall not discharge, leak or emit any Hazardous Substance except in compliance with all federal, state and local laws, rules and regulations applicable to the Hazardous Substance. Lessee hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Substance kept or allowed on the Leased Premises by the Lessee and Lessee shall give immediate notice to the Lessor of any violation or potential violation of the provisions of this Article. Lessee shall defend, indemnify and hold Lessor and its agents harmless from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorneys' fees and consultants' fees, court costs and litigation expenses) of whatever kind or nature arising out of the violation of any provision of this Article. This provision shall survive the termination of this Lease. Lessee is not responsible for any preexisting hazardous substances and shall inform Lessor of any preexisting hazardous substances of which Lessee may be aware.

In the event any material and/or substance is discovered in the Building or premises which is deemed to be hazardous by any local or state law in which the premises is located or by any federal law, the Lessor, its agents, assigns, or employees will assume all liability for the removal and damage caused by the material and/or substance. In addition, upon discovery of the hazardous material and/or substance, Lessee will have a reasonable time in which to exercise the option to remain on the premises for the Lease term or to surrender the premises to the Lessor. In the event the premises are surrendered, Lessee shall pay rent only to time of such surrender and will not be liable for any cost of clean-up or damage to the premises caused by the material and/or substance. The provisions of this paragraph shall not apply if it is determined that the hazardous material and/or substance was introduced into the premises by Lessee.

19. **HOLDING OVER:** Should Lessee, or any of its successors in interest, hold over the Leased Premises or any part thereof, after the expiration of the term of this Lease, such holding over shall constitute and be construed as a tenancy from month to month only. The inclusion of the preceding sentence shall not be construed as Lessor's permission for Lessee to hold over. The monthly rent during any such unauthorized month-to-month tenancy shall be at one and one half (1 1/2) times the amount set forth in Article 2 "Rent" as most recently adjusted in accordance with Article 3. If Lessee holds over with the permission of Lessor, then the rent shall be as most recently adjusted in accordance with Article 3.

20. **QUIET ENJOYMENT:** Lessor represents and warrants that it has full right and authority to enter into this Lease and that Lessee, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from Lessor, subject to the terms and provisions of this Lease.

21. **EVENTS OF DEFAULT:** The following events shall be deemed to be events of default by Lessee under this Lease:

a. Lessee shall fail to pay any installment of the rent hereby reserved or any other charge payable hereunder within five days of the respective due date.

b. Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors. 333

c. Lessee shall file or have filed against it a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder.

d. A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee.

e. Lessee shall desert or vacate any substantial portion of the Leased Premises.

f. Lessee shall assign, transfer, pledge, or otherwise encumber this Lease, or sublet the whole or any portion of the Leased Premises, without Lessor's prior written consent.

g. Lessee shall fail to comply with any term, provision or covenant of this Lease (other than the foregoing in this Article 21) and shall not cure such failure within ten (10) days, after written notice thereof to Lessee.

22. **DEFAULT:** Lessee hereby agrees that in case Lessee shall default in making its payments hereunder or in performing any of the other agreements, terms, and conditions of this Lease, then, in any such event, in addition to all other rights and remedies available to Lessor by law or by other provisions hereof, at Lessor's option, Lessor may annul and cancel this Lease as to all future rights of Lessee. Lessee further agrees that in case of any such termination Lessee will indemnify the Lessor against all loss of rents and other damage which Lessor may incur by reason of such termination, including, but not limited to, costs of restoring and repairing the Leased Premises and putting the same in rentable condition, costs of renting the Leased Premises to another Lessee, loss or diminution of rents and other damage which Lessor may incur by reason of such termination and all reasonable attorney fees and expenses incurred in enforcing any of the terms of this Lease. Neither acceptance of rent by Lessor, with or without knowledge of breach, nor failure of Lessor to take action on account of any breach hereof, or to enforce its rights hereunder shall be deemed a waiver of any breach, and absent written notice or consent, said breach shall be a continuing one. Lessor's rights and remedies in the event of Lessee's default shall be deemed cumulative, and the exercise of any one or more of such remedies shall not operate to bar the exercise of any other rights or remedies of Lessor hereunder or available at law or in equity.

In the event Lessee fails to pay any installment of rent hereunder as and when such installment is due, or any other charge payable hereunder as and when such charge is due, Lessee, if permitted by law, shall pay to Lessor on demand a late charge in an amount equal to five percent (5%) of such installment or other such charge, and failure to pay such late charge within ten (10) days after demand therefor shall be an event of default hereunder. The provision for such late charge shall be in addition to all Lessor's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner.

23. **SUBORDINATION OF LEASE AND ATTORNMENT:** The rights of Lessee under this Lease shall be and are subject and subordinate at all times to all ground leases, and/or underlying leases, if any, now or hereafter in force against the Building, and to the lien of any mortgage or mortgages now or hereafter in force against such leases and/or the Building, and to all advances made or hereafter to be made upon the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that Lessee's rights under this Lease and possession of the Leased Premises shall not be disturbed so long as Lessee is not in default hereunder. If, by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or in any other manner, Lessor's interest in the Building is transferred to and owned by (a) the lessor under a ground lease or underlying lease now or hereafter in force against the Building, or (b) any mortgagee under a mortgage now or hereafter in force against any such lease and/or the Building, and such lessor or such mortgagee succeeds to Lessor's interest under this Lease, Lessee shall, at the option of such lessor or such mortgagee, be bound to such lessor or such mortgagee under all of the terms, covenants, and conditions of this

Lease for the balance of the term thereof remaining, and any extensions or renewals thereof, with the same force and effect as if such lessor or such mortgagee were the Lessor under this Lease, and Lessee does hereby attorn to such lessor or such mortgagee as its landlord, with the respective rights and obligations of Lessee and such lessor or such mortgagee being the same as now set forth in this Lease. This Article 23 is automatically effective and self-operative, and no further instrument of subordination or attornment shall be required; provided, however, Lessee shall promptly execute such further instruments as may be requested by Lessor to further confirm such subordination and/or attornment. Failure of Lessee to execute any such instrument within thirty (30) days of Lessee's receipt of written request by Lessor shall constitute a breach of this Lease, upon which Lessor may, at its option, cancel this Lease and terminate Lessee's interest therein.

24. **NOTICES:** Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivery of any notice or the making of any payment by Lessor to Lessee or by Lessee to Lessor shall be deemed to be complied with, when and if, the following steps are taken;

a. All rent and other payments required to be made by Lessee to Lessor hereunder shall be payable to Lessor at the address hereinbelow set forth or at such other address as Lessor may specify from time to time by written notice delivered in accordance herewith.

b. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, certified or registered mail, addressed to the parties hereto at the respective addresses set out opposite their names below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith:

**Lessor:**

Oneida Realty Company  
1605 Alworth Building  
306 West Superior Street  
Duluth, MN 55802

AND TO

InfoTel Investments, L.L.C.  
36227 Fox Hunter Rd  
Pequot Lakes, MN 56472

**Lessee:**

Independent School District No. 709  
4316 Rice Lake Road  
Duluth, MN 55811

AND TO

Chief Financial Officer  
Independent School District No. 709  
4316 Rice Lake Road  
Duluth, MN 55811

c. Any notice or document required or permitted to be delivered hereunder by Lessor to Lessee also shall be deemed to be delivered if and when delivered personally to Lessee at the Leased Premises.

25. **LAWS, RULES AND REGULATIONS:** Lessee shall observe such laws, ordinances, rules and regulations which from time to time may be put in effect by Lessor or any government agency for the general safety, comfort and convenience of Lessor, occupants, invitees and lessees of said Building or the public at large.

26. **ENERGY; GOVERNMENTAL ACTION:** Wherever in this Lease any terms, covenants or conditions are required to be kept or performed by the Lessor, the Lessor shall be deemed to have kept and performed such terms, covenants and conditions notwithstanding any action taken by the Lessor, if such action is pursuant to any governmental regulations, requirements, directives or requests, or if the Lessor deems such action to be for the benefit of our national interest or the general public. Without limiting the generality of the foregoing, the Lessor may reduce the quantity and quality of all utility and other services and impose such regulations as the Lessor deems necessary in order to conserve energy, and may change the normal hours of operation of the Building. Utility in the sense of this paragraph includes, but is not limited to heating, cooling, electricity, water and all the sources of energy needed to provide such.

a. Throughout the Term of this Lease, Lessee shall observe and comply with all governmental codes, laws, requirements, rules, orders, ordinances and regulations, and orders or recommendations of insurance carriers or fire insurance

rating organizations applicable to the Leased Premises or the business conducted therein, hereinafter called "Legal Requirements", whether or not any work necessary to be done in order to comply with such Legal Requirements by ordinance, extraordinary or otherwise, is required by any existing or future Legal Requirement, or is within the present contemplation of Lessor and Lessee, including, but not limited to, any demolition, reconstruction, alteration or repair of any part of the Leased Premises. It is the intention of the parties that Lessee shall and does hereby assume the entire responsibility of complying with all Legal Requirements which affect the Leased Premises. If any alterations are required, they shall be completed in accordance with Article 9.

27. **LIGHT, AIR & VIEW:** Lessee has no right to light, air, or view over any premises adjoining the Building.

28. **LESSOR'S USE:** It is understood that Lessor may occupy portions of the Building in the conduct of the Lessor's business. In such event, all references herein to other lessee's of the Building shall be deemed to include Lessor as an occupant or lessee.

29. **MISCELLANEOUS TAXES:**

a. Lessee shall pay prior to delinquency all taxes assessed against or levied upon its occupancy of the Leased Premises, or upon the fixtures, furnishings, equipment and personal property of Lessee located in the Leased Premises, and when possible, Lessee shall cause said fixtures, furnishings, equipment and personal property to be assessed and billed separately from the property of Lessor. In the event any or all of Lessee's fixtures, furnishings, equipment and personal property, or Lessee's occupancy of the Leased Premises, shall be assessed and taxed with the property of Lessor, Lessee shall pay to Lessor its share of such taxes within ten (10) days after delivery to Lessee by Lessor of a statement in writing setting forth the amount of such taxes applicable to Lessee's fixtures, furnishings, equipment or personal property, or occupancy of the Leased Premises.

b. If, under the laws of the United States or the State of Minnesota or any political subdivision in which the Leased Premises are situated, a tax or excise on rents or other tax, however described, is levied or assessed against Lessor or the rent reserved hereunder, in lieu of or as a substitute in whole or in part for taxes and assessments commonly known as real estate taxes, Lessee shall pay and discharge such tax or excise on rents or other tax, but only to the extent of the amount thereof which is lawfully assessed or imposed upon Lessor, and which was so assessed or imposed as a direct result of Lessor's ownership of the Leased Premises or of this Lease, or of the rental accruing under this Lease.

30. **ESTOPPEL CERTIFICATE:** Lessee agrees, within ten (10) days after request of Lessor, to deliver to Lessor, or Lessor's designee, including without limitation, the present or any future holder of any mortgage(s) and/or deed(s) of trust and/or ground lease(s) and/or underlying lease(s) on the Leased Premises, or any prospective purchaser of the Leased Premises, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent and other charges have been paid, the unexpired term of this Lease, whether or not Lessor is in default hereunder, and the nature of any such default, and such other matters pertaining to this Lease as may be reasonably requested by Lessor.

31. **MISCELLANEOUS:**

a. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

b. The terms, provisions and covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors, permitted sublessees, and permitted assigns, except as otherwise herein expressly provided.

c. Failure of Lessor to insist, in any one or more instances, upon strict performance of any term, covenant or condition of this Lease, or to exercise any option herein contained shall not be construed as a waiver, or a relinquishment for the future, of such term, covenant, condition or option, but the same shall continue and remain

in full force and effect. The receipt by Lessor of rents with knowledge of a breach in any of the terms, covenants or conditions of the Lease to be kept or performed by Lessee shall not be deemed waiver of such breach, and 336 Lessor shall not be deemed to have waived any provision of this Lease unless expressed in writing and signed by Lessor.

d. The captions of this Lease are for convenience and reference only, and in no way define, limit or describe its scope or content.

e. All preliminary and contemporaneous negotiations are merged and incorporated into this Lease. This Lease contains the entire understandings between Lessor and Lessee and shall not be modified or amended in any manner except by an instrument in writing executed by Lessor and Lessee.

f. Time is of the essence.

g. Lessor and Lessee represent and warrant to the other that it has not engaged or dealt with any broker, finder, or like agent in connection with this Lease.

h. This Lease shall be subject to and governed by the laws of the State of Minnesota, and all questions concerning the making of this Lease, the meaning or intention of any of the terms of this Lease or concerning the validity thereof, and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of the State of Minnesota. All actions to enforce the terms and provisions of this Lease shall be brought and maintained only in St. Louis County District Court venued in Duluth, Minnesota. Nothing in this Section will prevent the docketing, registration, or enforcement of any judgment or order obtained in compliance with this Section in a court in another jurisdiction.

i. Lessee represents and warrants that the undersigned representative of Lessee is duly authorized to lease the Leased Premises and to engage in the transactions and bind Lessee to the obligations set forth in this Lease.

j. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument. The executed counterparts of this Lease may be delivered by electronic means, such as email and/or facsimile, and the receiving party may rely on the receipt of such executed counterpart as if the original had been received.

32. **INVALIDITY OF PARTICULAR PROVISIONS:** If any Article or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during its term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby unless such illegality, invalidity, or unenforceability is, in the sole determination of Lessor, essential to the rights of both parties in which event Lessor has the right to terminate this Lease on written notice to Lessee.

33. **PARKING:** During the initial term of this lease and during any and all extensions thereof, included in this lease are two (2) parking spaces. The parking spaces are located behind the building in an open air parking lot.

34. **BROKERAGE FEES:** Lessee represents and warrants that it has dealt with no broker, agent or other person in connection with this Lease other than Oneida Realty Company, and Lessee hereby indemnifies and holds Lessor harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Lessee with regard to this Lease. The provisions of this Article shall survive the expiration or termination of this Lease.

IN WITNESS WHEREOF, the Lessor and Lessee have duly signed and sealed these presents the day and year first hereinbefore written.

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**INDEPENDENT SCHOOL DISTRICT NO. 709,  
LESSEE**

By: Simone Znuich  
Its: Exec. Dir. Business Services  
Date: March 3, 2025

**INFOTEL INVESTMENTS, L.L.C.,  
LESSOR**

By: \_\_\_\_\_  
Greg Arvig, President  
Date: \_\_\_\_\_

**FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between ISD 709 – Duluth Public Schools (“Owner”) and  
Donald Holm Construction Company, Inc. (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

*Construction includes a 3,000-square-foot addition to the existing Transportation Building garage.*

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

*Project scope of work includes extension of existing utilities and services for plumbing and electrical, addition of new equipment for mechanical and related architectural, structural and civil modifications.*

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Design Tree Engineering and Land-Surveying (Engineer) and DSGW Architects (Architect), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before October 3, 2025, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before November 15, 2025.

## ARTICLE 4 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a lump sum of: \$ 820,733.00

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold in accordance with Paragraph 14.02 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

**ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 4.0 percent per annum.

**ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
  - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
  - F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.<sup>341</sup>
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages 1 to 7, inclusive).
  2. General Conditions (pages 1 to 75, inclusive).
  3. Supplementary Conditions (pages 1 to 10, inclusive).
  4. Specifications as listed in the table of contents of the Project Manual.
  5. Drawings consisting of 33 sheets with each sheet bearing the following general title: ISD 709 Transportation Building Addition (General, Architectural, Structural, Civil, Plumbing, Mechanical & Electrical).
  6. Addenda (number 1, narrative pages 1 to 4 and associated attachments, inclusive).
  7. Exhibits to this Agreement (enumerated as follows):
    - a. Notice to Proceed (page 1, dated December 17, 2024, inclusive).
    - b. Contractor's Bid (pages 1 to 4, inclusive).
    - c. Attachment A – Prime Contractor Response and First-Tier Subcontractors List (pages 1 to 4, inclusive)
    - d. Bid bond (pages 1 to 4, inclusive).
  8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Performance bond. To be issued following receipt of executed contract.
    - b. Payment bond. To be issued following receipt of executed contract.
    - c. Work Change Directives.

- d. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value<sup>343</sup> likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been<sup>344</sup> delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on December 18, 2024 (which is the Effective Date of the Agreement).

OWNER:

ISD 709 – Duluth Public Schools

By: Bryan Brown

Title: Manager of Facilities

CONTRACTOR

Donald Holm Construction Co, Inc.

By: Ryker C. Holm

Title: Vice President

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

709 Portia Johnson Drive

Duluth, MN 55811

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

3211 West 3<sup>rd</sup> Street

Duluth, MN 55806

License No.: \_\_\_\_\_

(Where applicable)

Agent for service of process:

\_\_\_\_\_

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*
    - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

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- requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
  13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
  14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
  16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
  17. *Cost of the Work*—See Paragraph 13.01 for definition.
  18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
  19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
  20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2—PRELIMINARY MATTERS

### 2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

### 2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
  - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

## ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
  - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

**ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
  - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
  - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
  2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

#### 5.06 *Hazardous Environmental Conditions at Site*

##### A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

##### B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

- conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
  - J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
  - K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

### **6.01 *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

- Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
  - E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
  - F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
  - G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
  - H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

- Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

#### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  1. include at least the specific coverages required;
  2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
  - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
  - a. will certify that the proposed substitute item will:
    - 1) perform adequately the functions and achieve the results called for by the general design;
    - 2) be similar in substance to the item specified; and
    - 3) be suited to the same use as the item specified.
  - b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### 7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

#### 7.16 *Submittals*

##### A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
  2. *Samples*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
  8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.
- D. *Resubmittal Procedures for Shop Drawings and Samples*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
  2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.
- E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

**7.17 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  - 1. Observations by Engineer;
  - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4. Use or occupancy of the Work or any part thereof by Owner;
  - 5. Any review and approval of a Shop Drawing or Sample submittal;
  - 6. The issuance of a notice of acceptability by Engineer;
  - 7. The end of the correction period established in Paragraph 15.08;
  - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### 7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  2. An itemization of the specific matters to be covered by such authority and responsibility; and
  3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02 *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

### **9.03 *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

### 10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### 10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

## ARTICLE 11—CHANGES TO THE CONTRACT

### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
  1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
  2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
    - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
    - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### ARTICLE 12—CLAIMS

#### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

- and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
  4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
  5. Other costs consisting of the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
- 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 6. Expenses incurred in preparing and advancing Claims.
- 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
  - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

**ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

**14.07 Owner May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

**ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

**15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    - a. to supervise, direct, or control the Work;
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
    - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
    - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
    - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
    - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. *Payment Becomes Due*
1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- E. *Reductions in Payment by Owner*
1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
    - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

- submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
  - C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
  - D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
  - E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
  - F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  1. correct the defective repairs to the Site or such adjacent areas;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

- attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
  - G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the dispute to another dispute resolution process; or
  3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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## SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

### ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

### ARTICLE 2—PRELIMINARY MATTERS

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor **4** printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and **none** in electronic portable document format (PDF).

### ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC-3.01 Delete Paragraph 3.01.C in its entirety.

### ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

No Supplementary Conditions in this Article.

### ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Geotechnical Evaluation Report	May 7, 2021, 2024	Subsurface Boring Logs

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		None

- G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at [location] during regular business hours, or may request copies from Engineer.

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		None

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		None

**ARTICLE 6—BONDS AND INSURANCE**

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **None**

- E. *Workers' Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

<b>Workers' Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers' Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
<b>Employer's Liability</b>	
Each accident	\$1,000,000.00
Each employee	\$1,000,000.00
Policy limit	\$2,000,000.00

- F. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
  2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
  6. Any limitation or exclusion based on the nature of Contractor’s work.
  7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. *Commercial General Liability—Minimum Policy Limits*

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$2,000,000.00
Products—Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000.00

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Bodily Injury</b>	
Each Person	\$1,000,000.00
Each Accident	\$1,000,000.00

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Property Damage</b>	
Each Accident	\$1,000,000.00
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000.00

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$5,000,000.00
General Aggregate	\$5,000,000.00

#### **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

- SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state "...all Work at the Site must be performed during regular working hours, **Monday** through **Friday**. Contractor will not perform Work on a **Saturday, Sunday**, or any legal holiday."

#### **ARTICLE 8—OTHER WORK AT THE SITE**

- SC-8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:
- C. Owner intends to contract with others for the performance of other work at or adjacent to the Site.
1. **Design Tree Engineering, Inc.** shall have authority and responsibility for coordination of the various contractors and work forces at the Site.

#### **ARTICLE 9—OWNER'S RESPONSIBILITIES**

No Supplementary Conditions in this Article.

#### **ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

##### 10.03 *Resident Project Representative*

- SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:
- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
  3. *Liaison*
    - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
  4. *Review of Work; Defective Work*
    - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
    - b. Observe whether any Work in place appears to be defective.
    - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
  5. *Inspections and Tests*
    - a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
    - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
  6. *Payment Requests:* Review Applications for Payment with Contractor.
  7. *Completion*
    - a. Participate in Engineer's visits regarding Substantial Completion.
    - b. Assist in the preparation of a punch list of items to be completed or corrected.
    - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
    - d. Observe whether items on the final punch list have been completed or corrected.
- D. The RPR will not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Authorize Owner to occupy the Project in whole or in part.

#### **ARTICLE 11—CHANGES TO THE CONTRACT**

No Supplementary Conditions in this Article.

#### **ARTICLE 12—CLAIMS**

No Supplementary Conditions in this Article.

#### **ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK**

No Supplementary Conditions in this Article.

#### **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

No Supplementary Conditions in this Article.

#### **ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD**

SC-15.01 Add the following new Paragraph 15.01.F:

- F. The Prime Contractor shall pay subcontractors within ten days of receipt of payment from the Owner or pay interest at the rate of 1 ½ percent per month for any part of the month.

#### **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

No Supplementary Conditions in this Article.

#### **ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES**

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 *Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
  - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;
  - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
  - 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and

4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
- I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

#### **ARTICLE 18—MISCELLANEOUS**

No Supplementary Conditions in this Article.

## ADDENDUM NO. 1

Date: November 13, 2024

Project: ISD 709 Transportation Building Addition

QuestCDN Project ID#9373790

Project Location: Duluth, Minnesota

Owner: Duluth Public School District 709

Architect: DSGW Architects

Bid Due Date: November 19, 2024, 10:00 am

This Addendum shall be considered part of the contract documents for the above-mentioned project. The following items modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. Where a portion of the Bidding Documents are modified by this Addendum, the unaltered portions of the Bidding Documents shall remain in effect. Receipt of this addendum must be acknowledged on bid form, failure to do so may subject Proposer to disqualification.

### CHANGES TO BIDDING REQUIREMENTS

#### **CHANGES TO PROJECT MANUAL AND DRAWINGS:**

##### Section 00 01 00 – Table of Contents:

- 1) Revised.

##### Section C410 – Bid Form for Construction Contract:

- 1) Revise dates for substantial completion and completed and ready for final payment/owner occupancy to Friday, October 3, 2025 and Monday, November 3, 2025, respectively.
- 2) Delete Item 4.03 regarding liquidated damages.

##### Section 09 90 00 – Painting and Coating:

- 1) Revised.

##### Section 21 13 13 – Wet-Pipe Sprinkler Systems:

- 1) Delete Section 21 13 13 in its entirety.

##### Section 21 13 16 – Dry-Pipe Sprinkler Systems:

- 1) Add Section 21 13 16.

##### Section 23 09 93 – Sequence of Operations for HVAC Controls:

- 1) Add Item 3.1 – A – 5. To read:
  5. BAS to monitor space temperature in new addition and MAU status.
    - a. If space temperature falls below 65°F, BAS shall send alarm to Owner's facilities team indicating low temperature condition.
    - b. MAU shall be enabled to operate in response to the low temperature alarm.

##### Section 31 22 00 – Grading:

- 1) Replace section 31 22 00 – Grading specification section with the attached specifications section.

Section 33 46 00 – Subdrainage:

- 1) Revised.

Appendix A – Geotechnical Evaluation Report:

- 1) Replace original Geotechnical Evaluation Report dated May 7, 2021 with new report dated November 8, 2024.

Drawing C101 – EXISTING CONDITIONS & REMOVALS:

- 1) Revise extents of landscaping and sidewalk removal as shown on the attached drawing.

Drawing C201 – SITE & GRADING PLAN:

- 1) Revise extents of sidewalk installation as shown on the attached drawing.
- 2) Revise keynote 7 as shown on the drawing.

Drawing C301 – UTILITY PLAN:

- 1) No revisions, shown for reference only.

Drawing C401 – EROSION CONTROL PLAN:

- 1) Revise extents of erosion control measures as shown on the attached drawing.
- 2) Revise silt fence quantity as shown on the attached drawing.

Drawing C501 – CIVIL DETAILS:

- 1) Remove notes referring to unit pricing from “PVC and corrugated polyethylene sewer pipe bedding” details as shown on the drawing.

Drawing S100 – GENERAL NOTES

- 1) Revise geotechnical report number:

Drawing S200 – FOUNDATION PLAN:

- 1) Delete section cut 12/S300
- 2) Revise Vapor retarder to 15mil thickness

Drawing S300 – FOUNDATION DETAILS - CIP:

- 1) Delete erroneous noted detail 5/S301
- 2) Revise insulation Thickness detail 8/S301
- 3) Delete detail 12/S301

Drawing M401 – LEVEL 1 MECHANICAL PLAN (Drawing Not Attached – Narrative Only)

- 1) Delete Keynote 1. This note is superseded by Keynote 8. Change the two Keynote 1 markings to Keynote 8.
- 2) Clarification for Keynote 8: “Extend existing dry-system fire protection line as needed for coverage of new addition.”



**Drawing E401 – LEVEL 1 MECHANICAL PLAN:**

- 1) Revised Keyed Notes as indicated on attached drawing.
- 2) Omitted Keyed Note 1 designation and existing door devices shown at existing Southeast door.
- 3) Omitted keyed Note 3 and new devices at new South door.
- 4) Added Keyed Note 3 and new door devices at new Southeast door.

**Architectural Addendum One:**

- 1) See attached architectural drawing sheets.:
  - a) Drawing G1.1 – LIFE SAFETY PLAN & SUMMARY
  - b) Drawing A2.1 – FIRST FLOOR PLAN
  - c) Drawing A4.1 – SCHEDULES & TYPES
  - d) Drawing A6.1 – WALL SECTIONS
  - e) Drawing A8.1 - DETAILS

**PRODUCT APPROVALS:**

<b>Section / Drawing No. &amp; Schedule</b>	<b>Material / Product / ID</b>	<b>Approved Manufacturer</b>
23 09 00, 2.15	CO/NO2 Gas Monitor Sensors	CET; Brasch Env. Tech.
23 55 00, 2.2	Fuel-Fired Heaters	Advanced Radiant Systems

**QUESTIONS FROM PROPOSERS:**

Question 1: The spec book and bid form mention liquidated damages multiple times, are there any liquidated damages associated with this project?

Answer 1: Eliminate references to liquidated damages in the specifications and bid form.

Question 2: The bid form provided notes to provide a list of proposed subcontractors. Please confirm if there will be a form to provide this info.

Answer 2: The bidding contractor to provide a list of subcontractors in format at their discretion.

Question 3: Spec section 26 08 00 Testing and commissioning of electrical systems notes to provide 3<sup>rd</sup> party commissioning agent info with the bid. Please clarify if this is required.

Answer 3: The 3<sup>rd</sup>-party commissioning agent will be direct to Owner.

Question 4: Please clarify the use of the existing; water, sewer, electric, and gas services. Who will pay the cost of these items?

Answer 4: The school district will be paying for the cost of existing utility services during construction.



### **ATTACHMENTS:**

Addendum One – DSGW Architects Narrative pages

Section 00 01 00 – Table of Contents  
Section C410 – Bid Form for Construction Contract  
Section 09 90 00 – Painting and Coating  
Section 21 13 16 – Dry-Pipe Sprinkler Systems  
Section 23 09 00 – Instrumentation and Control for HVAC  
Section 23 09 93 – Sequence of Operations for HVAC Controls  
Section 23 55 00 – Fuel-Fired Heaters  
Section 31 22 00 – Grading  
Section 33 46 00 – Subdrainage  
Appendix A – Geotechnical Evaluation Report

Drawing G1.1 – LIFE SAFETY PLAN & SUMMARY  
Drawing A2.1 – FIRST FLOOR PLAN  
Drawing A4.1 – SCHEDULES & TYPES  
Drawing A6.1 – WALL SECTIONS  
Drawing A8.1 – DETAILS

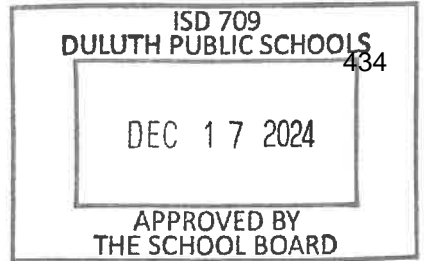
Drawing C101 – EXISTING CONDITIONS & REMOVALS  
Drawing C201 – SITE & GRADING PLAN  
Drawing C301 – UTILITY PLAN  
Drawing C401 – EROSION CONTROL PLAN  
Drawing C501 – CIVIL DETAILS  
Drawing S100 – GENERAL NOTES  
Drawing S200 – FOUNDATION PLAN  
Drawing S300 – FOUNDATION DETAILS - CIP  
Drawing E401 – LEVEL 1 MECHANICAL PLAN:

Pre-Bid Meeting Sign-In Sheet from 11/12/24

END OF ADDENDUM 1



INDEPENDENT SCHOOL DISTRICT NO. 709  
Duluth Public Schools  
709 Portia Johnson Drive  
Duluth, Minnesota 55811  
218-336-8907



**MEMORANDUM**

**To:** Simone Zunich, Executive Director of Business Services  
**From:** Cathy Holman, Purchasing Coordinator  
**Subject:** Bid #1333 Transportation Building Addition  
**Date:** 12/2/2024

Five (5) vendors responded with the following results:

<u>VENDOR</u>	<u>TOTAL</u>
Nordic Group Inc	\$1,278,695.00
Max Gray Construction	\$912,000.00
Lake Head Construction	\$898,100.00
Johnson Wilson Construction	\$872,000.00
Donald Holm Construction	\$820,733.00

Bryan Brown and Jeremy DeGraef from the district Facilities Department reviewed the bids along with Paul Quirin from Design Tree Engineering.

Bryan Brown, Facilities Manager, and Paul Quirin from Design Tree Engineering recommend awarding Bid #1333 meeting specifications as submitted to Donald Holm Construction for the sum of \$820,733.00.

**Program:** Facilities

**Fund Custodian:** Bryan Brown Facilities

  
\_\_\_\_\_  
Jill Lofald, Board Chair

## BID FORM FOR CONSTRUCTION CONTRACT

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

### ARTICLE 1—OWNER AND BIDDER

- 1.01 This Bid is submitted to: **ISD 709 – Duluth Public Schools**
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

### ARTICLE 2—ATTACHMENTS TO THIS BID

- 2.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
  - B. List of Proposed Subcontractors;
  - C. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such authority within the time for acceptance of Bids;
  - D. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;
  - E. Responsible contractor forms.

### ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES

- 3.01 *Lump Sum Bids*
- A. Bidder will complete the Work in accordance with the Contract Documents for the following lump sum (stipulated) price(s), together with any Unit Prices indicated in Paragraph 3.02:
    1. Lump Sum Price (Single Lump Sum)

Lump Sum Bid Price	\$820,733.00
--------------------	--------------

Eight Hundred Twenty Thousand Seven Hundred Thirty Three & 00/100 Dollars

### ARTICLE 4—TIME OF COMPLETION

- 4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 4.02 Bidder agrees that the Work will be substantially complete on or before August 29, 2025 October 3, 2025 and will be completed and ready for final payment (and Owner occupancy) in accordance with Paragraph 15.06 of the General Conditions on or before September 1, 2025 November 3, 2025. [Addendum #1 dated 11/13/24]

4.03 ~~*Bidder accepts the provisions of the Agreement as to liquidated damages, [Addendum #1 dated 11/13/24]*~~

**ARTICLE 5—BIDDER’S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA**

5.01 *Bid Acceptance Period*

A. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

5.02 *Instructions to Bidders*

A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

5.03 *Receipt of Addenda*

A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
1	11/13/2024

**ARTICLE 6—BIDDER’S REPRESENTATIONS AND CERTIFICATIONS**

6.01 *Bidder’s Representations*

A. In submitting this Bid, Bidder represents the following:

1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
2. Bidder has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Bidder has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the

effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's) safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### 6.02 *Bidder's Certifications*

##### A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:
  - a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
  - b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
  - c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.
  - d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

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EJCDC® C-410, Bid Form for Construction Contract.


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Page 3 of 4

BIDDER hereby submits this Bid as set forth above:

Bidder:

Donald Holm Construction Co., Inc.  
*(typed or printed name of organization)*

By:   
*(individual's signature)*

Name: Ryker C. Holm  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Date: 11/19/2024  
*(typed or printed)*

*If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.*

Attest:   
*(Individual's signature)*

Name: Ryker C. Holm  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Date: 11/19/2024  
*(typed or printed)*

Address for giving notices:  
3211 W 3rd Street, Duluth, MN 55806

Bidder's Contact:

Name: Ryker C. Holm  
*(typed or printed)*

Title: Vice President  
*(typed or printed)*

Phone: 218-628-2257

Email: ryker@donaldholmconst.com

Address: 3211 W 3rd Street, Duluth, MN 55806

Bidder's Contractor License No.: (if applicable) N/A

**ATTACHMENT A  
PRIME CONTRACTOR RESPONSE**

**RESPONSIBLE CONTRACTOR VERIFICATION AND CERTIFICATION OF COMPLIANCE**

**PROJECT NUMBER:** 020116.5

**This form includes changes by statutory references from the Laws of Minnesota 2015, chapter 64, sections 1-9. This form must be submitted with the response to this solicitation. A response received without this form, will be rejected.**

Minn. Stat. § 16C.285, Subd. 7. **IMPLEMENTATION.** ... any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project...

Minn. Stat. § 16C.285, Subd. 3. **RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.** "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

- |     |   |
|-----|---|
| (1) | <p>The Contractor:</p> <ul style="list-style-type: none"> <li>(i) is in compliance with workers' compensation and unemployment insurance requirements;</li> <li>(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;</li> <li>(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and</li> <li>(iv) has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative.</li> </ul>   |
| (2) | <p>The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.03, 181.101, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:</p> <ul style="list-style-type: none"> <li>(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is "repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;</li> <li>(ii) has been issued an order to comply by the commissioner of Labor and Industry that has become final;</li> <li>(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;</li> <li>(iv) has been found by the commissioner of Labor and Industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;</li> <li>(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or</li> <li>(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;*</li> <li>(vii) has been convicted of a violation of section 609.52, subd 2 (19).</li> </ul> |

(3)	The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;*
(4)	The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;*
(5)	The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;*
* Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.	
(6)	The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and
(7)	All subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

**Minn. Stat. § 16C.285, Subd. 5. SUBCONTRACTOR VERIFICATION.**

A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

**Subd. 5a. Motor carrier verification.** A prime contractor or subcontractor shall obtain annually from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each motor carrier. A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subdivision 3 after submitting its annual verification. A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet all the minimum criteria in subdivision 3. Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

**Minn. Stat. § 16C.285, Subd. 4. VERIFICATION OF COMPLIANCE.**

A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3, with the exception of clause (7), at the time that it responds to the solicitation document.

A contracting authority may accept a signed statement under oath as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required minimum criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section provided that it contains an electronic signature as defined in section 325L.02, paragraph (h).

**CERTIFICATION**

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. § 16C.285, and
- 2) if my company is awarded a contract, I will submit Attachment A-1 prior to contract execution, and
- 3) if my company is awarded a contract, I will also submit Attachment A-2 as required.

<b>Authorized Signature of Owner or Officer:</b> <i>Ryker C. Holm</i>	<b>Printed Name:</b> Ryker C. Holm
<b>Title:</b> Vice President	<b>Date:</b> 11/19/2024
<b>Company Name:</b> Donald Holm Construction Co., Inc.	

NOTE: Minn. Stat. § 16C.285, Subd. 2, (c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

**ATTACHMENT A-1**

**FIRST-TIER SUBCONTRACTORS LIST**

**SUBMIT PRIOR TO EXECUTION OF A CONSTRUCTION CONTRACT**

**PROJECT NUMBER:** 020116.5

Minn. Stat. § 16C.285, Subd. 5. A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor.

<b>FIRST TIER SUBCONTRACTOR NAMES*</b> (Legal name of company as registered with the Secretary of State)	<b>Name of city where company home office is located</b>
Northern Concrete	Cotton, MN
M& J, LLC	Proctor, MN
A.G. O'Brien	Hermantown, MN
Belknap Electric	Superior, WI
FirePro Sprinkler Specialists, Inc.	Hermantown, MN
Doorco	Duluth, MN
CMC Construction	Duluth, MN
KTM Paving	Hermantown, MN

\*Attach additional sheets as needed for submission of all first-tier subcontractors.

**SUPPLEMENTAL CERTIFICATION FOR ATTACHMENT A-1**

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

All first-tier subcontractors listed on attachment A-1 have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in Minn. Stat. § 16C.285.

**Authorized Signature of Owner or Officer:**

*Ryker C. Holm*

**Printed Name:**

Ryker C. Holm

**Title:**

Vice President

**Date:**

11/19/2024

**Company Name:**

Donald Holm Construction Co., Inc.

**Bid Bond**

**CONTRACTOR:**

*(Name, legal status and address)*  
Donald Holm Construction Co., Inc.  
3211 West Third Street  
  
Duluth, MN 55806

**SURETY:**

*(Name, legal status and principal place of business)*  
Granite Re, Inc.  
14001 Quailbrook Drive  
  
Oklahoma City, OK 73134

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**OWNER:**

*(Name, legal status and address)*  
ISD#709-Duluth Public Schools

**Bond Amount:** Five Percent of the Bid Amount ( 5% of Bid Amount)

**PROJECT:** Project No.- 020116.50- ISD 709 Transportation Building Addition

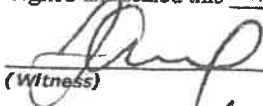
*(Name, location or address, and Project number, if any)*

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 13th day of November, 2024

  
*(Witness)*

Donald Holm Construction Co., Inc.  
*(Principal)*  *(Seal)*

  
*(Witness)*

Granite Re, Inc.  
*(Surety)*  *(Seal)*

*(Title)* Attorney-in-Fact Troy Staples

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

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**ACKNOWLEDGMENT OF PRINCIPAL (Individual)**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally come(s) \_\_\_\_\_ to me known and known to me to be the person(s) who (is) (are) described in and executed the foregoing instrument and acknowledge(s) to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL (Partnership)**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

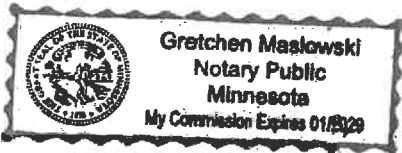
On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally come(s) \_\_\_\_\_ a member of the co-partnership of \_\_\_\_\_ to me known and known to me to be the person who is described in and executed the foregoing instrument and acknowledges to me that he/she executed the same as for the act and deed of the said co-partnership.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT OF PRINCIPAL (Corporation)**

State of Minnesota )  
County of Carlton )

On this 19th day of November in the year 2024 before me personally come(s) Ryker C. Holm to me known, who, being duly sworn, deposes and says that he/she is the Vice President of the Donald Holm Construction Co. Inc the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

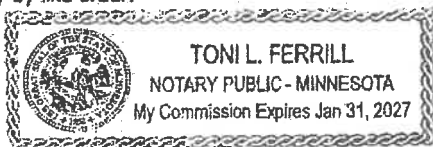


Gretchen Maslowski  
Notary Public

**ACKNOWLEDGMENT OF SURETY**

State of Minnesota )  
County of Dakota )

On this 13th day of November, in the year 2024, before me personally come(s) Troy Staples, Attorney(s)-in-Fact of Granite Re, Inc. with whom I am personally acquainted, and who, being by me duly sworn, says that he/she is (are) the Attorney(s)-in-Fact of Granite Re, Inc. company described in and which executed the within instrument; that he/she know(s) the corporate seal of such company; and that seal affixed to the within instrument is such corporate seal and that it was affixed by order of the Board of Directors of said company, and that he/she signed said instrument as Attorney(s)-in-Fact of the said company by like order.



Toni Ferrill  
Notary Public





**PATE  
BONDING  
INC.**

1276 So. Robert St. • West St. Paul, MN 55118 • Phone: (651) 457-6842 • Fax: (651) 457-7531 • Web Site: www.patebonding.com

Donald Holm Construction Co., Inc.  
3211 West Third Street  
Duluth, MN 55806

## Bid Bond Results Form

**PROJECT OWNER:** ISD#709-Duluth Public Schools

**BID DATE:** November 19th 2024

**PROJECT NAME:** Project No.- 020116.50- ISD 709 Transportation Building Addition

**APPROX. BID AMOUNT:** \*\$1,000,000.00

*\* If your bid increases by 10% or more from this estimate, please contact our office for approval prior to the bid letting.*

**BOND NUMBER:** RB0096148

General Agreement of Indemnity and Surety Recommends Updating Bank Letter Of Credit

PLEASE LIST THE FIRST THREE BIDDERS IF KNOWN

	Contractor's Name	Amount	Bid Security	
			Bid Bond	Check
Low	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
2nd	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
3rd	_____	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
Your Bid If Not Listed Above		\$ _____	<input type="checkbox"/>	<input type="checkbox"/>

Comments

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

PLEASE RETURN THIS FORM TO PATE BONDING, INC.  
Your assistance in providing us with all of your bid results is appreciated

PBI-JP

Delivery Instructions: [ ] COURIER [ ] EMAIL [ ] FAX [ ] MAIL [ ] OVERNIGHT [ ] PICKUP [ ] OTHER \_\_\_\_\_

Please review your bond to ensure it is as you ordered and that it is in the proper form which includes the correct names, bond amounts and dates before you submit it. By affixing your signature, executing and providing this bond to the obligee you are verifying, and we will justifiably assume, the bond has been issued correctly with the best interests and requirements of all parties being considered. Contact us immediately if any correction is required.

---

**MEMORANDUM**

TO: Curriculum Dept.  
FROM: Angie Frank, Adult Diploma Program  
SUBJECT: High School Diploma  
DATE: 2/7/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Sophia Flink-Adduci

2/7/2025

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**MEMORANDUM**

TO: Curriculum Dept.  
FROM: Angie Frank, Adult Diploma Program  
SUBJECT: High School Diploma  
DATE: 2/7/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Jayden Hester

2/7/2025

March 3, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
<b>Evan James Butchart</b>	<b>Duluth Public Schools</b>	<b>2/10/2025</b>

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Valarie Wagenbach  
Administrative Assistant  
Area Learning Center

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**MEMORANDUM**

TO: Curriculum Dept.  
FROM: Angie Frank, Adult Diploma Program  
SUBJECT: High School Diploma  
DATE: 2/13/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Paige Stojevich

2/13/2025

February 13, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
<b>Brant Isaac White</b>	<b>Duluth Public Schools</b>	<b>2/13/2025</b>

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Valarie Wagenbach  
Administrative Assistant  
Area Learning Center

February 27, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
<b>Joseph L Howard</b>	<b>Duluth Public Schools</b>	<b>2/27/2025</b>

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Kathleen Wilson  
Sr. Clerical  
Area Learning Center

March 4, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
<b>Tobias Christopher</b>	<b>Duluth Public Schools</b>	<b>3/4/2025</b>

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Kathleen Wilson  
Sr. Clerical  
Area Learning Center

March 4, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
<b>Darla Ellen Elizabeth Anderson</b>	<b>Duluth Public Schools</b>	<b>3/4/2025</b>

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Valarie Wagenbach  
Administrative Assistant  
Area Learning Center

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**MEMORANDUM**

TO: Curriculum Dept.  
FROM: Angie Frank, Adult Diploma Program  
SUBJECT: High School Diploma  
DATE: 3/5/2025

The following student completed all requirements for graduation from I.S.D. 709 via the Adult Diploma Program and requests their Duluth Public Schools diploma, dated:

Craig Guntzburger

3/5/2025

March 6, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
<b>Kylie Elizabeth Laine</b>	<b>Duluth Public Schools</b>	<b>3/6/2025</b>

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Valarie Wagenbach  
Administrative Assistant  
Area Learning Center

March 11, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
Sydni Jo Telando	Duluth Public Schools	3/10/2025
Avera Scheibelhut	Duluth Public Schools	3/10/2025

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Kathleen Wilson  
Sr. Clerical  
Area Learning Center

March 10, 2025

Anthony Bonds, Assistant Superintendent  
Independent School District 709  
4316 Rice Lake Rd, Suite 108  
Duluth MN 55811

Dear Mr. Bonds:

This is to certify that the person(s) listed below has completed all the requirements for High School graduation from the Duluth Public Schools and is eligible to receive their diploma from the school listed.

<u>NAME OF GRADUATE</u>	<u>SCHOOL ON DIPLOMA</u>	<u>GRADUATION DATE</u>
<b>Prescott Nygaard</b>	<b>Duluth Public Schools</b>	<b>3/10/2025</b>

Please send diploma to Valarie Wagenbach at the Area Learning Center, Suite 450.

Nathan Glöckle  
Principal

Kathleen Wilson  
Sr. Clerical  
Area Learning Center

Shannon Brown <shannon.brown@isd709.org>  
459

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**Fwd: Diploma request Lucy Berkey**

2 messages

Wed, Feb 26, 2025 at 8:01 AM

**Haley Anderson** <haley.anderson@isd709.org>  
To: Shannon Brown <shannon.brown@isd709.org>

Hey Shannon,  
Are we able to get a diploma for her?

thank you,

----- Forwarded message -----

From: **Lisa Post** <christine.post@isd709.org>  
Date: Tue, Feb 25, 2025 at 1:10 PM  
Subject: Diploma request Lucy Berkey  
To: Haley Anderson <haley.anderson@isd709.org>  
Cc: Julie Guddeck <julie.guddeck@isd709.org>

Haley,

I need to request a diploma for Lucy Berkey with a graduation date of 3/13/25. The diploma would be via East High School.

I understand the diploma may take 3-4 weeks to receive. Once you get the signed diploma, could you let me know and I'll either come and pick it up or stop by my infrequently visited mailbox at Denfeld, as I will then need to mail it to Gilbert, MN.

FYI, this is not a replacement diploma.

Thanks for your assistance.

**Christine "Lisa" Post**

Work Experience Teacher  
Bridge Program ISD #709

Mailbox at Denfeld High School-Bridge Program

christine.post@isd709.org  
(218)626-7931 (cell)  
(218)336-8700 x.2091 (office)

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--

Haley Anderson  
Senior Office Support Specialist  
Duluth East High School

146

Shannon Brown <shannon.brown@isd709.org>  
480**Fwd: Diploma request Bunnell, Lucas**

1 message

Tracy Robertson <tracy.robertson@isd709.org>  
To: Shannon Brown <shannon.brown@isd709.org>

Mon, Mar 3, 2025 at 1:05 PM

Good afternoon! Is this doable?

Appreciatively,

Tracy Robertson  
Lead Administrative Assistance  
Denfeld High School  
(218) 336-8830 ext. 2757  
tracy.robertson@isd709.org



**Our Mission:** Denfeld's Spirit creates a safe and welcoming environment that provides **Opportunities** for all. We **Achieve** academic success, build relationships, and show **Respect** for all, so our students can accomplish their dreams, contribute to their communities, and improve our world.

**Our Vision:** We will work with our communities to:

- Offer engaging and differentiated academics with multiple tiers of support
- Foster accountability through proactive and restorative systems
- Prioritize relationships through social and emotional learning



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----- Forwarded message -----

From: **Lisa Post** <christine.post@isd709.org>  
Date: Mon, Mar 3, 2025 at 12:26 PM  
Subject: Diploma request Bunnell, Lucas  
To: Tracy Robertson <tracy.robertson@isd709.org>

Hi Tracy,

I'd like to request a diploma for Lucas Bunnell with graduation date of April 7, 2025. Thank you.

**Christine "Lisa" Post**

Work Experience Teacher  
Bridge Program ISD #709

Mailbox at Denfeld High School-Bridge Program

christine.post@isd709.org  
(218)626-7931 (cell)  
(218)336-8700 x.2091 (office)

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# DISTRICT 709 FIELD TRIP REQUESTS

In accordance with School District Policy District 6160, District 709 recognizes properly planned, well conducted, and carefully supervised field trips may be a vital part of the curriculum. School field trips are encouraged within available resources and requirements outlined below.

**DIRECTIONS:** All staff are required to submit a Field Trip Request **prior** to the field trip being finalized with the involved students and to:

- Receive administrative and/or extra-curricular coordinator approval for all instructional and supplementary field trips
- Receive administrative reviewal and school board approval for all extended trips (Exceptions may be granted by the school board chair to accommodate emergencies.)

**DEFINITIONS:**

Instructional Trips - Trips that take place during the school day, relate directly to a course of study, and require student participation. Fees may not be assessed against students.

Supplementary Trips - Trips in which students voluntarily participate in and which often take place outside the regular school day, but do not include overnight stays. Financial contributions may be requested of students.

Extended Trips Within Minnesota and Continental United States - Trips that involve one or more overnight stops within Minnesota or the Continental United States and may be instructional or supplementary and are voluntary in nature. Extended field trips require school board approval prior to the trip.

**INSTRUCTIONAL TRIP ACTION**

Principal:  Approved Name: \_\_\_\_\_  
 Not Approved Date: \_\_\_\_\_

**SUPPLEMENTAL TRIP ACTION**

Principal:  Approved Name: \_\_\_\_\_  
 Not Approved Date: \_\_\_\_\_

**Instructional/Supplemental Trips need not be sent to District office.**

**EXTENDED TRIP ACTION**

Principal:  Recommended Name: Kerry Johnson  
 Not Recommended Date: 3-7-25

Assistant Superintendent:  Recommended Name: Anthony B...  
 Not Recommended Date: 3/11/25

School Board:  Approved Name: \_\_\_\_\_  
 Not Approved Date: \_\_\_\_\_

**All extended trip proposals must be sent to the Assistant Superintendent's Office to be placed on the Education Committee meeting agenda for approval.**

# FIELD TRIP REQUEST FORM

Date of Submission:

Type of Trip:      Instructional      Supplementary      Extended

1. Organization/Grade/Course Planning Trip: \_\_\_\_\_
2. Contact Person (Responsible for Checklist Completion): Jonathan Grimsby - Duluth East Band Director
3. Field Trip Date(s): April 11-12, 2025     Destination: Eau Claire, WI Jazz Festival
4. Field Trip Overview (Include events, establishments and locations): Performances/Competition at UW, Eau Claire  
Travel by motor coach.
5. Field Trip Departure from School (Date and Time): 4:30 pm, April 11, 2025  
Field Trip Return to School (Date and Time): 2:00 am, April 12th, 2025
6. Objectives of Field Trip: Performance and Clinic sessions with Jazz Professionals - represent the Duluth  
community with style and panache.
7. Relationship to Curriculum or Student Learning: Directly aligns with our MN State standards and curriculum maps -  
Clinic workshops will reinforce benchmarks and goals - performances will enhance the application of knowledge.
8. Planned Follow-up Field Trip Activities: Continued instruction throughout the 2024 - 2025 academic year.
9. Field Trip Budget Request

<b>Estimated Expenses</b>		
Total Admission/Fees	<u>paid by band</u>	\$ _____ account
Total Meals	<u>paid by jazz concert revenue</u>	\$ _____
Total Lodging		\$771.12 (including
Total Transportation		\$ _____ tax)
<input type="checkbox"/> School District Vehicle(s)	<u>MN Coaches</u>	
<input checked="" type="checkbox"/> Commercial Transportation Carrier ~ Name: _____		
<input type="checkbox"/> Private Vehicle (requires certificate of insurance) ~ Name: _____		
Total Additional Stipends:		\$ _____
Other:		\$ _____
<b>Total</b>		<b>\$ 155.40/student</b>

<b>Revenues</b>		
District Budget	Code:	\$ _____
Booster Group		\$ _____
Donations		\$ _____
Student Fees		\$ _____
Total Additional Stipends:		\$ _____
<b>Total</b>		<b>\$ _____</b>

11. Reviewed/Completed Request Checklist:      Yes      No

**RETURN COMPLETED REQUEST TO BUILDING PRINCIPAL**

## FIELD TRIP REQUEST CHECKLIST - All Field Trips

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DIRECTIONS: Please complete checklist. No attachments are necessary.

- Develop and Communicate Student Discipline Expectations
- Forward Field Trip Explanation and Fee Structure Letter Sent to Parents/Guardians
- Collect Parent/Guardian Permission for Student Participation in Field Trip (Include request for special information - i.e. allergies, medications, special needs.)
- Gain Access to Cell Phone for Field Trip
- Plan Arrangements for Early Pick-Up or Late Drop-Off Students (if necessary).  
**Guide:** May choose to leave message on school voice mail to help with late drop off.
- Plan Meal Arrangements (if necessary)  
**Reminder:** Notify food service of non-participation.
- Plan Administration of Student Medication and First Aid Needs (if necessary)  
**Guide:** Contact School Nurse.
- Develop and Communicate Action Plan if Student Gets Lost on Trip
- Arrange Adult Chaperones for Field Trip (if necessary)  
**Guide:** One (1) adult for every twenty (20) students depending on field trip. Parent volunteers are encouraged when possible or appropriate.
- Develop and Communicate Teacher and Adult Chaperone Expectations  
**Example:** Supervision duties, no smoking, no alcohol
- Planned Itinerary

TIME

LOCATION

*See attached example from prior trip in 2023 - itinerary cannot be set until contest managers set the times.*

- Maintain Student Roster and Check-in/Check-out Procedure
- Arrangement for Safety Needs (i.e. crossing guards)

Signature of Contact Person: Jonathan Grimsby

## FIELD TRIP REQUEST CHECKLIST – Extended Trip Only

DIRECTIONS: Please complete checklist and attach all appropriate materials.

- Develop and Complete Field Trip Itinerary and Emergency Telephone Contacts Letter to Parents/Guardians  
**Note:** Attach tentative planned itinerary.
- Arrange Funding of Expenses During Trip
- Arrange Meal Plans
- Arrange Lodging Plans and Room Assignments
- Collect Family Emergency Information for Students  
**Example:** Home phone numbers, emergency contacts, medical information
- Additional Information  
**Note:** Provide any additional information.

Signature of Contact Person: Jonathan Grimsby



## Eau Claire Jazz Trip Itinerary - As of 4/19/23



Hello Jazz Band,

Here is an itinerary for our trip to the Eau Claire Jazz Festival from Friday, April 21, 2023 through Sunday, April 23, 2023.

### Friday, April 21, 2023

4:45 pm - Load Coach Bus and leave for Eau Claire, WI

*(Bring a snack for the bus)*

7:45 pm - Arrive in Eau Claire/check into Hotel for Dinner

Fairfield by Marriott (715) 831-1000

*1666 Princeton Crossing*

*Eau Claire, Wisconsin 54703*

8:00 pm - Taco Bar Hosted by chaperones in hotel

10:30 pm - ROOM CHECK & LIGHTS OUT

### Saturday, April 21, 2023

7:00 am - Breakfast at hotel

8:30 am - Check out of hotel/Load Bus - Depart for the University of Wisconsin, Eau Claire *(don't leave anything behind, we are not coming back!)*

9:00 am - Arrive at University of Wisconsin, Eau Claire

PERFORMANCE SCHEDULE [Linked Here](#)    MASTER CLASS SCHEDULE [Linked Here](#)

9:00 am - 11:45 am Competition/Master Classes/Performances

12:00 pm - Lunch provided by parents (brought in coolers on bus)

1:00 pm - 4:30 pm Additional clinic sessions/performance/awards

2:30 pm - **Duluth East Warm up** in "Centennial A-B"

3:00 pm - **Duluth East PERFORMANCE** in "Ojibwe Ballroom"

3:30 pm - **Duluth East SIGHTREADING** session in "Ho-Chunk"

4:30 pm - Awards Ceremony in "Ojibwe"

5:30 pm - Dinner *(purchased using concert at Pier B revenue)*

*Tony Capony Pizza*

*2501 Mondovi Road*

7:30 pm - "Headliner Concert"

*Pablo Center at the Confluence*

*128 Graham Avenue*

10:00 pm - Depart for Duluth East High School

1:00 am (4/23/23) - Approximate arrival at Duluth East High School



# CLASS AA HIGH SCHOOL BIG BAND

## PERFORMANCE IN DAVIES CENTER, OJIBWE BALLROOM

	WARM UP	PERFORMANCE	SIGHTREADING
7:30-8:00			
8:00-8:30	NORTH HIGH SCHOOL JAZZ ENSEMBLE		
8:30-9:00	ROSEMOUNT HIGH SCHOOL	NORTH HIGH SCHOOL JAZZ ENSEMBLE	
9:00-9:30	EAU CLAIRE MEMORIAL HIGH SCHOOL	ROSEMOUNT HIGH SCHOOL	NORTH HIGH SCHOOL JAZZ ENSEMBLE
9:30-10:00	BRAINERD HIGH SCHOOL	EAU CLAIRE MEMORIAL HIGH SCHOOL	ROSEMOUNT HIGH SCHOOL
10:00-10:30	FOND DU LAC HIGH SCHOOL	BRAINERD HIGH SCHOOL	EAU CLAIRE MEMORIAL HIGH SCHOOL
10:30-11:00	OCONOMOWOC HIGH SCHOOL	FOND DU LAC HIGH SCHOOL	BRAINERD HIGH SCHOOL
11:00-11:30	MAPLE GROVE SENIOR HIGH SCHOOL	OCONOMOWOC HIGH SCHOOL	FOND DU LAC HIGH SCHOOL
11:30-12:00		MAPLE GROVE SENIOR HIGH SCHOOL	OCONOMOWOC HIGH SCHOOL
12:00-12:30			MAPLE GROVE SENIOR HIGH SCHOOL
12:30-1:00			
1:00-1:30			
1:30-2:00	FRANKLIN HIGH SCHOOL		
2:00-2:30	JANESVILLE CRAIG HIGH SCHOOL	FRANKLIN HIGH SCHOOL	
2:30-3:00	DULUTH EAST JAZZ BAND	JANESVILLE CRAIG HIGH SCHOOL	FRANKLIN HIGH SCHOOL
3:00-3:30	ROSEVILLE AREA HIGH SCHOOL	DULUTH EAST JAZZ BAND	JANESVILLE CRAIG HIGH SCHOOL
3:30-4:00		ROSEVILLE AREA HIGH SCHOOL	DULUTH EAST JAZZ BAND
4:00-4:30			ROSEVILLE AREA HIGH SCHOOL

## AWARD CEREMONY IN OJIBWE

4:30

ROOM	CENTENNIAL A-B	OJIBWE BALLROOM	HO-CHUNK
STORAGE:	MENOMINEE		

**DISTRICT 709  
FIELD TRIP REQUESTS**

*Laura Mac  
5th Grade  
Wolf Ridge  
May 2025*

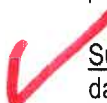
In accordance with School District Policy District 6160, District 709 recognizes properly planned, well conducted, and carefully supervised field trips may be a vital part of the curriculum. School field trips are encouraged within available resources and requirements outlined below.

**DIRECTIONS:** All staff are required to submit a Field Trip Request **prior** to the field trip being finalized with the involved students and to:

- Receive administrative and/or extra-curricular coordinator approval for all instructional and supplementary field trips
- Receive administrative reviewal and school board approval for all extended trips (Exceptions may be granted by the school board chair to accommodate emergencies.)

**DEFINITIONS:**

Instructional Trips - Trips that take place during the school day, relate directly to a course of study, and require student participation. Fees may not be assessed against students.

 Supplementary Trips - Trips in which students voluntarily participate in and which often take place outside the regular school day, but do not include overnight stays. Financial contributions may be requested of students.

Extended Trips Within Minnesota and Continental United States - Trips that involve one or more overnight stops within Minnesota or the Continental United States and may be instructional or supplementary and are voluntary in nature. Extended field trips require school board approval prior to the trip.

**INSTRUCTIONAL TRIP ACTION**

Principal:  Approved Name: \_\_\_\_\_  
 Not Approved Date: \_\_\_\_\_

**SUPPLEMENTAL TRIP ACTION**

Principal:  Approved Name: \_\_\_\_\_  
 Not Approved Date: \_\_\_\_\_

**Instructional/Supplemental Trips need not be sent to District office.**

**EXTENDED TRIP ACTION**

Principal:  Recommended Name: Carrie Thompson  
 Not Recommended Date: 2-27-25

Assistant Superintendent:  Recommended Name: [Signature]  
 Not Recommended Date: 3/4/25

School Board:  Approved Name: \_\_\_\_\_  
 Not Approved Date: \_\_\_\_\_

**All extended trip proposals must be sent to the Assistant Superintendent's Office to be placed on the Education Committee meeting agenda for approval.**

# FIELD TRIP REQUEST FORM

Date of Submission:

Type of Trip:      Instructional      Supplementary      Extended

1. Organization/Grade/Course Planning Trip: Laura Mac 5th Grade

2. Contact Person (Responsible for Checklist Completion): Adam Metzger

3. Field Trip Date(s): 5/14 - 5/16     Destination: Wolf Ridge ELC

4. Field Trip Overview (Include events, establishments and locations): Environmental classes and Outdoor education experiences

5. Field Trip Departure from School (Date and Time): 5/14/25 9:00 AM

Field Trip Return to School (Date and Time): 5/16/25 1:45 PM

6. Objectives of Field Trip: Environmental education classes

7. Relationship to Curriculum or Student Learning: Addresses MN science, and social studies standards, and SEL outcomes.

8. Planned Follow-up Field Trip Activities: Journaling & Reflection Project

9. Field Trip Budget Request     See Attached

Estimated Expenses	
Total Admission/Fees	\$
Total Meals	\$
Total Lodging	\$
Total Transportation	\$
<input type="checkbox"/> School District Vehicle(s)	
<input type="checkbox"/> Commercial Transportation Carrier ~ Name: _____	
<input type="checkbox"/> Private Vehicle (requires certificate of insurance) ~ Name: _____	
Total Additional Stipends:	\$
Other:	\$
<b>Total</b>	<b>\$</b>

Revenues	
District Budget	\$
Code:	\$
Booster Group	\$
Donations	\$
Student Fees	\$
Total Additional Stipends:	\$
<b>Total</b>	<b>\$</b>

11. Reviewed/Completed Request Checklist:      Yes      No

**RETURN COMPLETED REQUEST TO BUILDING PRINCIPAL**

<b>Wolf Ridge Budget 2024-25 SY</b>	
<b>Tuition Per Person</b>	<b>\$180</b>
<b>Number of Attendees</b>	<b>43.00</b>
<b>Deposit Amount</b>	<b>\$80</b>
<b>Expenses</b>	
<b>WR Tution</b>	<b>\$7,740</b>
<b>Transporation</b>	<b>\$1,000</b>
<b>Total Expenses</b>	<b>\$8,740</b>
<b>Funding</b>	
<b>Student Deposits</b>	<b>\$3,440</b>
	<b>We received a large grant from Wolf Ridge this</b>
<b>Grants</b>	<b>\$9,200 year.</b>
<b>Donations</b>	<b>\$0</b>
<b>Total Funding</b>	<b>\$12,640</b>
<b>Total Funding</b>	<b>\$12,640</b>
<b>Total Expenses</b>	<b>\$8,740</b>
	<b>Excess funds will be used to cover adult</b>
	<b>\$3,900 chaperone support.</b>



## FIELD TRIP REQUEST CHECKLIST - All Field Trips

DIRECTIONS: Please complete checklist. No attachments are necessary.

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- Develop and Communicate Student Discipline Expectations
- Forward Field Trip Explanation and Fee Structure Letter Sent to Parents/Guardians *10/9/24*
- Collect Parent/Guardian Permission for Student Participation in Field Trip (Include request for special information - i.e. allergies, medications, special needs.)
- Gain Access to Cell Phone for Field Trip
- N/A*  Plan Arrangements for Early Pick-Up or Late Drop-Off Students (if necessary).  
**Guide:** May choose to leave message on school voice mail to help with late drop off.
- N/A*  Plan Meal Arrangements (if necessary)  
**Reminder:** Notify food service of non-participation.
- Plan Administration of Student Medication and First Aid Needs (if necessary)  
**Guide:** Contact School Nurse.
- Develop and Communicate Action Plan if Student Gets Lost on Trip
- Arrange Adult Chaperones for Field Trip (if necessary)  
**Guide:** One (1) adult for every twenty (20) students depending on field trip. Parent volunteers are encouraged when possible or appropriate.
- Develop and Communicate Teacher and Adult Chaperone Expectations  
**Example:** Supervision duties, no smoking, no alcohol
- Planned Itinerary

*SEE ATTACHED*

**TIME**

**LOCATION**


- Maintain Student Roster and Check-in/Check-out Procedure
- Arrangement for Safety Needs (i.e. crossing guards)

Signature of Contact Person: \_\_\_\_\_

*Adam [Signature]*

## FIELD TRIP REQUEST CHECKLIST – Extended Trip Only

DIRECTIONS: Please complete checklist and attach all appropriate materials.

- Develop and Complete Field Trip Itinerary and Emergency Telephone Contacts Letter to Parents/Guardians  
**Note:** Attach tentative planned itinerary.
- Arrange Funding of Expenses During Trip
- N/A*  Arrange Meal Plans
- Arrange Lodging Plans and Room Assignments
- Collect Family Emergency Information for Students  
**Example:** Home phone numbers, emergency contacts, medical information
- Additional Information  
**Note:** Provide any additional information.

Signature of Contact Person: \_\_\_\_\_

*Adam [Signature]*

4

# Wolf Ridge May 31- June 2 Detail Schedule

Time	Learning Group A	Learning Group B	Learning Group C <span style="float: right; font-size: small;">473</span>
<b>Wednesday May 31st</b>			
7:35	Arrive at LM, gather in Large Muscle Room. (near front entrance) Students should get breakfast & eat in cafeteria. Label student luggage. All student (labeled!) meds to Pav/Rudolph.		
8:15	Begin loading the bus, everyone should have a bathroom break before we head out. Students load bags onto the trailer.		
8:30			
10:30	Arrive at [redacted] ed.		
10:45 - 11:30	Meet with WR staff for welcome [redacted] a quick nature walk or [redacted] 2		
12:15			
1:30 - 4:30	Ojibwe Heritage ED5	Superior View Hike ED7	
5:15			
6:30 - 9:00	Skyview Ropes ED Lobby 6:30 - 9	Evening Presentation SC1 6:30 - 7:15 Planetarium Sc1 7:15 - 8:15	
9 - 9:30	Get ready for bed - quiet journal/reading time in dorm room		
9:30	Bedtime- Lights Out		
<b>Thursday June 1st</b>			
7:00	Wake Up and Getting Ready		
7:30	Breakfast - Fireplace Dining Hall		
8:30 - 11:30	Small Mammals ED4	Ojibwe Heritage ED5	Wetlands SC3
12:15	Lunch - Fireplace Dining Hall		
1:30 - 4:30	Wetlands SC3	Superior View Hike ED4	Small Mammals ED5
5:30	Dinner - Fireplace Dining Hall		
6:30 - 9:15	Evening Program 6:30-7:15 Planetarium 7:15 - 8:15 Campfire	Evening Program 6:30-7:15 Night Hike/Campfire set-up 7:15-8 Campfire	Skyview Ropes ED Lobby  Campfire
9:15 - 9:30	Get ready for bed - quiet journal/reading time in dorm room. Start consolidating things into bags.		
9:30	Bedtime, Lights Out		

2024  
Schedule,  
Rooms, etc.

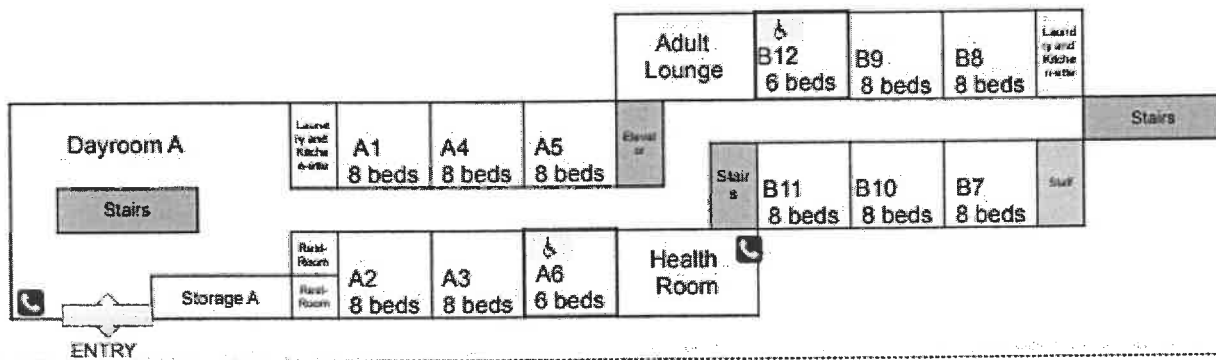
	<b>Final Day! Need to be packed up and out of rooms before our last class.</b>		
	<b>Friday June 2nd</b>		
<b>7:00</b>	Everybody up and getting ready - bags packed and in lobby!		
<b>7:30 - 8:30</b>	<b>Breakfast - Fireplace Dining Hall</b> <b>Bags packed and in lobby! Moved out of rooms!</b>		
<b>8:30 - 11:30</b>	<b>Superior View Hike ED11</b>	<b>Wetlands SC3</b>	<b>Ojibwe Heritage ED5</b>
<b>11:30 - 12:00</b>	Double check that rooms are clean and nothing if left, Begin loading the bus at 12:00. Pick up our to-go lunch, <b>BATHROOM BREAK!</b>		
<b>12:15</b>	Everyone on the bus, headcount, start passing out lunch when we are on the highway.		
<b>1:30</b>	Arrive back at LM. Load back into the Large Muscle Room		
<b>1:30 - 2:15</b>	Check out students whose parents come to pick them up. Every student needs to sign out with teacher. Return meds.		

<b>Learning Group A</b> Nikki, Jim, & Tommie		<b>Learning Group B</b> Gwen, Josh, & Amber		<b>Learning Group C</b> Colleen, Sam	
<b>A1</b>	<b>B10</b>	<b>A4</b>	<b>B11</b>	<b>A3</b>	<b>B9</b>
Keily	Aaron	Maddi	Cooper	Isabella	Aiden
Lexie	Perrin	Katrina	Atticus	Halle	Kortez
Lexi	Josh	Journie	Gauge	Jaylynn	Caiden
Zameria	Channing	Cassidy	Zeke	Maria	Jer H.
Zoey	Chase	Savanna	Byron	Jazmine	Julian
Fiona		Josey		Audri	
Z		Amarhea		Talia	
<b>B12</b>		<b>A2</b>		<b>A5</b>	
Kristian	Ian	Ava	Trinity	Norah	Kaycen
Jerimiah B	Beau	Mina	Ana	Brooklyn	Piper
		Athena	Angel		
		Allie			

## Dorm Assignments

A1	A2	A3	A4	A5	B10	B11	B9	B72
Nikki	Amber	Colleen	Gwen		Jim	Josh	Sam	Tommie
Keily	Mina	Isabella	Maddi	Norah	Aaron	Cooper	Aiden	Kristian
Lexie	Athena	Halle	Katrina	Kaycen	Perrin	Byron	Kortez	Jerimiah B
Lexi	Allie	Jaylynn	Journie	Piper	Josh	Atticus	Caiden	Ian
Zameria	Ava	Maria	Cassidy	Brooklyn	Channing	Gauge	Jer H.	Beau
Zoey	Trinity	Jazmine	Savanna		Chase	Zeke	Julian	
Fiona	Ana	Audri	Josey					
Z	Angel	Talia	Amarhea					

Summit Lodge (we don't have rooms B8, or B7) Teacher's room will be A6



### Kitchen Patrol (KP)

Wed. Lunch	Wed. Dinner	Thur. Bfast	Thur. Lunch	Thur. Dinner	Fri. Bfast
11:45am	4:45pm	7:00am	11:45am	4:45pm	7:00am
Sam	Gwen	Nikki	Tommie	Amber	Colleen
Aiden	Maddi	Beau	Kristian	Mina	Norah
Kortez	Savanna	Keily	Jerimiah B	Athena	Kaycen
Caiden	Joesy	Lexie	Ian	Allie	Piper
Jer H.	Katrina	Lexi	Aaron	Ava	Brooklyn
Julian	Amarhea	Fiona	Cooper	Trinity	Maria
		Zameria		Ana	

- Feel free to change up KP students/adults; as long as we have about 5 for each meal.





Current family letter. Permission forms. Behv. expectations

Dear 5th Grade Families,

We are excited to announce that the 5th grade class will visit Wolf Ridge Environmental Learning Center this school year.

Included in this letter, to be RETURNED -

- Wolf Ridge Student/Guardian Agreement by December 20th, 2024
- Permission Form by March 1st, 2025 (\$80.00 payment also due at this time)

Wolf Ridge website <https://wolf-ridge.org/>

This trip is an amazing opportunity for our students to learn new skills, practice science inquiry, work as a community, have experiences outdoors, and have fun with their peers. Wolf Ridge is often a trip children remember their whole lives!

### Important Points -

- **When:** Wednesday - Friday **May 14th - 16th, 2025**
- **Where:** Near Finlayson, MN (about 70 miles northeast of Duluth)
- **What:** A three day, two night learning experience focused on outdoor education, science, inquiry, and team building.
- **Cost:** ~~\$220.00~~ ⇒ **80.00 per student to be paid by families**

**We were awarded a generous scholarship/grant from Wolf Ridge!!!**

We have never had a student not attend this trip due to finances, we are happy to work out a plan with families, please reach out to us! :)

- **Fundraising:** We are doing only 1 fundraiser this year: Kwik Trip Car Wash cards ran until Holiday Break in December. Fundraising is on an individual basis; If you choose to fundraise, the money first goes directly to your student.
- **Chaperones:** Please contact us with interest, there will be a background check.
- **Due Dates:** We are asking families to **pay \$80.00 by March 1st, 2025.**

We will communicate how much your student owes based on any previous deposits of money or fundraised amounts. Money can be paid at any time, checks can be made out to Laura MacArthur PTO.

- A parent/guardian/chaperone **information meeting will be held Wed. April 9th** in Ms. Pav's room at 3:30pm

Please take time to review the following **pro-tips** with your student before our trip:

- Medications**- Teachers will be responsible for supervising any medication needed. Please have medication labeled and direction clearly written to make this process safe and efficient.
- Meals**- Food as Wolf Ridge is high quality, varied, and plentiful. Please encourage your student to have a positive attitude towards eating something that may be different than what they are used to.
- Physical Exertion** - Our learning takes place outdoors and requires lots of walking and climbing. The weather may be hot or cold. It may be raining, sleeting, or snowing. There may be bugs. This is all part of the experience and a positive attitude as well as proper preparedness makes everyone's experience better.
- Sleep** - Please work to ensure that your student is prepared to sleep away from home for two nights. They should be able to fall asleep independently.
- Representing our School** - This trip is a big deal for Laura MacArthur. Many people have worked very hard to make this trip a success and we want to impress everyone who interacts with us. This is a time for everyone to be their best!
- Participation** - There is no nurses office, places to take breaks, or extra adults to walk students to class like we have at school. Students must stay with their dorm/learning group at all times in order for everyone to participate and be safe.

**Over the next few months, we expect and require that each student act responsibly, respectfully, and safely inside and outside of school in order to earn the privilege to attend the trip.**

### **Rules for Wolf Ridge:**

**\*\*\*Please review prior to your trip.**

1. Students must be with an adult at all times. You will always stay with your dorm group adult or your leaning group adult(s). Your dorm group is your team.
2. No one is allowed to go back to the dorm without an adult.
3. Shoes or boots are not allowed in the dorm rooms. Leave them lined up neatly outside your door in the hallway.
4. Keep the rooms clean and neat at all times so you are ready for inspection for the conservation challenge award.
5. We are walking at all times within the buildings and if instructed by any adult.
6. Be on your best behavior at all times. We are representing Laura MacArthur Elementary School, our community, ourselves, and our families!
7. Remember- All electronic devices, food, and gum are to stay home. Wolf Ridge does not allow these items.

## FAQ

### What will my student need to bring?

Please see the packing list!

Practical clothing for being outside in the late spring (jacket and good walking shoes, plus mud/snow boots), toiletries, and bedding (sleeping bag/blankets & pillow), a water bottle, and any medications that your child uses.

Also students should bring a book to read and/or a journal to write in during quiet time before bed.

### What if my child is not able to go to Wolf Ridge?

Students who are not able to attend the Wolf Ridge trip will come to school as normal and have regular work to complete as well as helping opportunities in other areas of the building.

### Can my student bring a cellphone?

**Wolf Ridge does not allow TECHNOLOGY such as ipods/mp3 players, ipads/notebooks, Kindles, and cell phones, etc.** as they tend to be distracting/problematic and take away from the outdoor experience.

### Can my child bring food with them?

No need! Meals and snacks will be provided. They are well fed (all 3 meals), snacks are provided twice per day. Extra food in dwelling areas attracts mice as doors are often open with people going in and out. **Please do not allow your child to bring any candy, snack, or any food with them. Food is not allowed in the dorms.**

### How does the overnight experience of the trip work?

There will be dorm rooms for students and adults with 6-8 people per room (4 bunk beds). Boys and girls will have separate assigned rooms with an adult in each room as well (as long as we have enough chaperones). There are sinks and a private bathroom/shower in each room with cubie areas for things. Quiet hours are 9:30pm to 6:30 am.

**Wolf Ridge Packing List**  
**(subject to change due to weather)**

- Clothes (Long pants, shorts, short sleeve shirts, sweatshirt, light jacket, socks (long) and underwear)
- Shoes (good for walking/hiking and a pair boots for slush/snow/mud)
- Pajamas
- Bedding (sleeping bag + pillow or blanket, sheet, and pillow)
- Book/Journal & Pen/Pencil
- Hat
- Water Bottle
- Toiletries (toothbrush, toothpaste, soap, deodorant)  
NO body spray! (If you smell good, you'll smell good to any bugs.)
- Towel
- Sunscreen & Bug Repellent

**PLEASE DO NOT BRING THE FOLLOWING ITEMS**

- |               |            |                 |                    |
|---------------|------------|-----------------|--------------------|
| Toys          | Candy      | Stuffed Animals | <b>Electronics</b> |
| Flashlights   | Body Spray | Gum             | <b>Snacks</b>      |
| Slime/fidgets |            |                 |                    |

## Wolf Ridge - Student & Guardian Agreement

\*\*\*Please read through together & return signed to school before winter break -  
DUE BACK by December 20th, 2024

We all agree to the following....

Students	Guardians (Families)	Teachers
<ul style="list-style-type: none"> <li>● I will SOAR in school and in the community</li> <li>● I will have fewer than 3 major Referrals 2nd semester</li> <li>● I will attend school to be prepared for the trip (80% 2nd Semester, excluding excused absences)</li> <li>● I will represent my school with pride &amp; outstanding behavior at Wolf Ridge</li> </ul>	<ul style="list-style-type: none"> <li>● We will be reachable and responsive before and during the trip</li> <li>● We will make sure that forms are completed and turned on time</li> <li>● We will help our student fundraise/pay for this experience</li> <li>● <i>If required: I will attend Wolf Ridge with my student to support positive participation.</i></li> </ul>	<ul style="list-style-type: none"> <li>● Plan, supervise, and organize a successful experience.</li> <li>● Communicate important field trip information to families at conferences, in newsletters, and electronically</li> <li>● Notify families of behavior incidents that may affect trip participation.</li> <li>● Prepare students for the trip by pre teaching</li> </ul>

**Behavior Expectation at School** - This overnight field trip opportunity is a privilege, not a right, even if you have paid. In order for everyone to be safe and participate fully in this experience, students must demonstrate that they can SOAR at school. We hold students to the following standards for behavior during second semester:

Invited to Attend Wolf Ridge Independently	Invited to Attend Wolf Ridge ONLY WITH a Parent or Guardian Chaperone
<ul style="list-style-type: none"> <li>● 3 or fewer Major Office Discipline Referrals 2nd Semester</li> <li>● No In School or Out of School Suspension 2nd Semester</li> </ul>	<ul style="list-style-type: none"> <li>● More than 3 Office Discipline Referrals 2nd Semester</li> <li>● Any In or Out of School Suspension 2nd Semester</li> </ul>

- Teachers or Administrators will contact parents whenever a discipline event occurs in school that will affect Wolf Ridge.
- Notice will be given if your child will require a chaperone.

## Behavior Expectations at Wolf Ridge

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<b>Minor Behaviors</b>	<ul style="list-style-type: none"> <li>• Students will be reminded by staff/chaperones to meet our SOARing expectations</li> <li>• If a second minor incident occurs, students will problem solve with a teacher and parent contact will be made.</li> </ul>
<b>Major Behaviors</b>	<ul style="list-style-type: none"> <li>• Any major behavior incident occurring on this trip will result in a student being asked to leave Wolf Ridge. This will require an adult to come and pick up this student, or a staff member to drive them back to school at parent expense.</li> </ul>

### School Levels of Referral Write-Ups:

Staff/Teacher Managed		Administration/Office Managed	
<p style="text-align: center;"><b><u>Level 1 - Incidental</u></b></p> <p><i>Doesn't significantly violate the rights of others. Doesn't put others at risk. Not chronic.</i></p> <ul style="list-style-type: none"> <li>-out of seat</li> <li>-noise making</li> <li>-horseplay</li> <li>-minor arguments</li> <li>-loud noise</li> <li>-refusal to follow directions (non chronic)</li> <li>-unprepared for class</li> <li>-missing homework</li> <li>-running in hallway</li> <li>-Dress Code</li> <li>-consensual display of affection</li> </ul>	<p style="text-align: center;"><b><u>Level 2 - Minor</u></b></p> <p><i>Doesn't significantly violate the rights of others. Doesn't put others at risk.</i></p> <ul style="list-style-type: none"> <li>-disruption</li> <li>-disrespect</li> <li>-defiance</li> <li>-inappropriate language</li> <li>-cell phone violation</li> <li>-leaving assigned area</li> <li>-misuse of technology</li> <li>-avoiding staff</li> <li>-refusal to participate in class</li> <li>-refusal to follow directions</li> <li>-property misuse</li> <li>-interruptions</li> <li>-academic dishonesty</li> </ul>	<p style="text-align: center;"><b><u>Level 3 - Major</u></b></p> <p><i>Violates the rights of others. Puts self or others at risk, or chronic</i></p> <ul style="list-style-type: none"> <li>-verbal aggression/abusive language</li> <li>-physical aggression</li> <li>-harassment</li> <li>-bullying/cyber bullying</li> <li>-minor property damage/vandalism</li> <li>-leaving building without permission</li> <li>-repeated or prolonged defiance or disrespect</li> <li>-gang display</li> <li>-forgery/plagiarism</li> <li>-attendance issues</li> <li>-technology violation</li> <li>-hazing</li> <li>-gambling</li> <li>-photographic or recording misuse</li> <li>-Intimidation</li> <li>-tobacco</li> <li>-theft</li> <li>-record and identification falsification</li> <li>-threats/intimidation</li> <li>-extortion</li> </ul>	<p style="text-align: center;"><b><u>Level 4 - Unlawful</u></b></p> <p><i>Unlawfully violates the rights of others. Puts self or others at risk, or are chronic.</i></p> <ul style="list-style-type: none"> <li>-robbery</li> <li>-significant property damage/vandalism</li> <li>-assault</li> <li>-sexual assault</li> <li>-illegal or prescription drug, alcohol possession</li> <li>-weapon possession</li> <li>-arson</li> <li>-bomb threats</li> <li>-homicide</li> <li>-gang activity</li> <li>-pyrotechnics</li> <li>-fighting</li> <li>-terroristic threats</li> <li>-trespassing</li> </ul>

*We are not expecting any early trips home for students if expectations are being followed and students are striving to do their personal best!*

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Please contact us with any questions or concerns!

5th Grade Team

Kalina Pavlisich ext. 2230

[kalina.pavlisich@isd709.org](mailto:kalina.pavlisich@isd709.org)

Adam Metzger ext. 1291

[adam.metzer@isd709.org](mailto:adam.metzer@isd709.org)

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# Wolf Ridge Student/Guardian Agreement Signature Sheet 484

RETURN BY DECEMBER 20TH, 2024

By signing below, I understand the following and am willing to comply with the set expectations:

- I have reviewed the Wolf Ridge Student and Guardian Agreement regarding everyone's expectations. I understand that this is a requirement for students.
- I understand that if it is required, students may be asked to leave Wolf Ridge due to not complying with the behavior expectations. If my child is required to come home, **I will drive to Wolf Ridge to pick him/her up.** If I cannot drive there, I know that I will be charged approx \$0.75/per mile to offset staff costs of driving him/her home and will pay this cost within 5 school days of the incident.

\_\_\_\_\_  
Student Name (Printed)

\_\_\_\_\_  
Student Signature

\_\_\_\_\_  
Guardian Signature

\_\_\_\_\_  
Date

**Please return by 3/1/2025**

## Permission Form

I give my student permission to attend the 5<sup>th</sup> Grade Wolf Ridge field trip Wednesday May 16th - Friday May 18th 2025. I understand this is a three-day/two-night trip.

- Yes, I give permission
- No, I do not give permission/ my student is not attending this trip

Student Name: \_\_\_\_\_

Guardian Signatarure \_\_\_\_\_

### Payment (check one please)

\*Checks can be made payable to Laura MacArthur PTO

- I am enclosing the full amount of \$80.00
- Other amount (please write in/explain) \_\_\_\_\_
- We are fundraising the money by selling carwash cards
- I am not paying because my student will not be attending

**Chaperones** - If you are interested in being a chaperone for this trip please indicate below and we will contact you with additional information. Chaperones must be over 18 years of age - preferably the guardian of one of the students in attendance for the trip. Chaperones will need to have a background check completed (no charge).

- I would like to be considered for chaperoning the Wolf Ridge trip.

Name (print) \_\_\_\_\_

Email \_\_\_\_\_

Phone \_\_\_\_\_





**STUDENT NAME:**

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<b>Medication Name</b>		<b>What is this med for?</b>	
<b>How many doses are you sending?</b>		<b>What is the dose size?</b>	
<b>When should the child take this?</b>			
<b>Side Effects?</b>			

**For Staff Use ONLY (Please record your initials)**

<b>Wed Noon</b>	<b>Wed Evening</b>	<b>Thur Morning</b>	<b>Thur Noon</b>	<b>Thur Evening</b>	<b>Fri Morning</b>

Notes:

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**DATA SHARING AGREEMENT FOR RELEASE  
OF DATA UNDER “SCHOOL OFFICIAL” EXCEPTION**

This Data Sharing Agreement (“Agreement”) between Independent School District No. 709, Duluth Public Schools (“District”) and THE COLLEGE OF ST. SCHOLASTICA, UPWARD BOUND, is entered into as of July 1, 2025 (“Effective Date”). The District and THE COLLEGE OF ST. SCHOLASTICA, UPWARD BOUND are referred to collectively as the “Parties.”

WHEREAS, certain individuals affiliated with THE COLLEGE OF ST. SCHOLASTICA, UPWARD BOUND (hereinafter “Requesting Entity”) will provide *EDUCATIONAL SUPPORT* to the District for the 2025-2026 school year; and

WHEREAS, the services to be provided by individuals affiliated with Requesting Entity are institutional services and functions for which the District would otherwise use its own employees; and

WHEREAS, the District anticipates individuals affiliated with Requesting Entity will be required to access personally identifiable information related to students and educational data in order to effectively provide services to the District; and

WHEREAS, both the Family Educational Rights and Privacy Act (“FERPA”) and the Minnesota Government Data Practices Act (“MGDPA”) allow certain contractors, consultants, volunteers, and other parties to access information that would otherwise be protected from disclosure under a “school official” exception; and

WHEREAS, individuals affiliated with Requesting Entity will be providing services in a manner that meets the relevant requirements to qualify as a “school official” under both FERPA and the MGDPA; and

WHEREAS, the Parties wish to enter into this Agreement in order to outline in greater detail the terms and conditions upon which individuals affiliated with Requesting Entity will be granted access to certain protected student data as a “school official.”

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree to the following:

1. **Services Provided to District.** Requesting Entity is a NON-PROFIT ORGANIZATION whose TUTOR will provide *EDUCATIONAL SUPPORT* to the District. The services to be provided to the District are institutional services and functions for which the District would otherwise use its own employees.
2. **Protected Student Data Defined.** “Protected Student Data” means any data defined as “personally identifiable information” contained in educational records as the term is defined in FERPA and its implementing regulations, 20 U.S.C. §

3. **Types of Data to be Accessed.** In the course of providing the services described in Paragraph 1, individuals affiliated with Requesting Entity will have a legitimate need to access Protected Student Data in the form of ATTENDANCE, GRADES, GRADEBOOK, TRANSCRIPTS, TEST SCORES AND SCHEDULES. The data described in this Paragraph is subject to disclosure restrictions imposed by FERPA and the MGDPA.
  
4. **District’s Control over Use and Maintenance of Data.** The following terms and conditions will govern the manner in which individuals affiliated with Requesting Entity will have access to Protected Student Data:
  - a. *TUTOR* shall be the only representatives of Requesting Entity granted access to Protected Student Data in accordance with the terms of this Agreement. Protected Student Data shall not be shared with any employee, agent, volunteer, or other affiliate of Requesting Entity who is not within the group of individuals defined in this Paragraph. Prior to being granted access to Protected Student Data, each TUTOR must review and sign the acknowledgement and consent form attached hereto as Exhibit A.
  
  - b. Requesting Entity shall not attempt to use, access, or maintain Protected Student Data for any reason other than purposes legitimately necessary for its TUTOR to provide the services referenced in Paragraph 1. Requesting Entity shall not maintain its own files, documents, or any other form of records containing Protected Student Data or attempt to obtain access to Protected Student Data for anyone other than an individual described Paragraph 4(a).
  
  - c. The use and maintenance of Protected Student Data by TUTOR shall be at all times subject to the District’s direct control.
  
  - d. Individuals providing services as TUTOR shall be granted access to Protected Student Data through the District’s Infinite Campus system in a manner deemed appropriate by the District. Requesting Entity shall supply the District with a list of the names of the individuals providing services as TUTOR to the principal of the building in which each individual will be providing services. Upon receipt of the list of names, the District will determine using its sole discretion the extent to which each individual will be granted access to Protected Student Data through the Infinite Campus system. Under no circumstance will an individual be granted greater access to Protected Student Data than what is legitimately necessary to effectively provide the services listed in Paragraph 1. The District retains the right to alter at any time and in its sole discretion the manner in which individuals

providing services as TUTOR access Protected Student Data. No individual will be granted access to Protected Student Data unless the person has signed the form attached as Exhibit A and provided a copy to the principal of the building in which the individual will be providing services.

- e. The individuals providing services as TUTOR shall not copy, duplicate, alter, modify, or otherwise make changes to or reproductions of Protected Student Data unless legitimately necessary to perform the services described in Paragraph 1. If any individual who has been granted access to data in accordance with this agreement has maintained copies or other reproductions of Protected Student Data for legitimate purposes, such copies or other reproductions must be destroyed within 30 days of the expiration of this Agreement.
  - f. The District reserves the right to restrict, modify, or discontinue the use and maintenance of Protected Student Data authorized by this agreement for any reason. If the District exercises its sole discretion to restrict or cancel access to data, Requesting Entity and/or its affected representatives shall destroy any copies or reproductions of data which they no longer have access in accordance with the timeframe and requirements of Paragraph 4(f) of this Agreement.
5. **Redisclosure of Protected Student Data.** In the course of performing the services described in Paragraph 1, the Parties agree that individuals providing services to the district as TUTOR shall not redisclose Protected Student Data to any representative of Requesting Entity not within the class of individuals identified in Paragraph 4(a) or any person or party other than a school official with a legitimate need to access the data unless disclosure is specifically authorized or required by law. In the event a parent or eligible student requests disclosure of Protected Student Data to a third party, Requesting Entity and its representatives shall direct the requesting parent or eligible student to the appropriate building principal, who will process each request to disclose Protected Student Data in accordance with applicable District policies and procedures.
6. **Data Related to TUTOR Evaluations.** The Parties agree that data maintained by the District with respect to individuals who perform services on a voluntary basis for the District is defined as personnel data by the MGDPA, Minn. Stat. § 13.43. In the event Requesting Entity requests information from the District that is not classified as public data pursuant to Minn. Stat. § 13.43, subd. 2, Requesting Entity shall obtain a written consent of the subject of the data prior to requesting the data from the District.

- 7. **Term.** This agreement shall be valid from the date duly approved by both Parties through June 30, 2026. On July 1, 2026, this agreement shall terminate and the District will terminate the ability of the individuals described in Paragraph 4(a) to access Protected Student Data.
- 8. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign or transfer this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party.
- 9. **Amendment/Modification.** This Agreement may be amended or modified only by a writing executed by the Parties. No custom or practice of the Parties at variance with the terms hereof will have any effect.
- 10. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties relative to the subject matter hereof. The parties have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date first written above.

DATE: 3.13.25

By: *[Signature]*  
Director of Assessment / Evaluation / Performance

DATE: 3-13-25

By: AMY GALAROWICZ agalarow@css.edu

Title: DIRECTOR, UPWARD BOUND @ CSS

Phone: 218.723-6760

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
School Board Chair, Duluth School District 709

**DATA SHARING AGREEMENT FOR RELEASE  
OF DATA UNDER "SCHOOL OFFICIAL" EXCEPTION**

This Data Sharing Agreement ("Agreement") between Independent School District No. 709, Duluth Public Schools ("District") and THE REGENTS OF THE UNIVERSITY OF MINNESOTA THROUGH ITS DULUTH CAMPUS UPWARD BOUND, is entered into as of July 1, 2025 ("Effective Date"). The District and THE REGENTS OF THE UNIVERSITY OF MINNESOTA THROUGH ITS DULUTH CAMPUS UPWARD BOUND PROGRAM are referred to collectively as the "Parties."

WHEREAS, certain individuals affiliated with THE REGENTS OF THE UNIVERSITY OF MINNESOTA THROUGH ITS DULUTH CAMPUS UPWARD BOUND (hereinafter "Requesting Entity") will provide *EDUCATIONAL SUPPORT* to the District for the 2025-2026 school year; and

WHEREAS, the services to be provided by individuals affiliated with Requesting Entity are institutional services and functions for which the District would otherwise use its own employees; and

WHEREAS, the District anticipates individuals affiliated with Requesting Entity will be required to access personally identifiable information related to students and educational data in order to effectively provide services to the District; and

WHEREAS, both the Family Educational Rights and Privacy Act ("FERPA") and the Minnesota Government Data Practices Act ("MGDPA") allow certain contractors, consultants, volunteers, and other parties to access information that would otherwise be protected from disclosure under a "school official" exception; and

WHEREAS, individuals affiliated with Requesting Entity will be providing services in a manner that meets the relevant requirements to qualify as a "school official" under both FERPA and the MGDPA; and

WHEREAS, the Parties wish to enter into this Agreement in order to outline in greater detail the terms and conditions upon which individuals affiliated with Requesting Entity will be granted access to certain protected student data as a "school official."

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree to the following:

1. **Services Provided to District.** Requesting Entity is a CONSTITUTIONAL CORPORATION whose TUTOR will provide *EDUCATIONAL SUPPORT* to the District. The services to be provided to the District are institutional services and functions for which the District would otherwise use its own employees.

2. **Protected Student Data Defined.** “Protected Student Data” means any data defined as “personally identifiable information” contained in educational records as the term is defined in FERPA and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. § 99.31, or “educational data” as defined in the MGDPA, Minn. Stat. § 13.32.
3. **Types of Data to be Accessed.** In the course of providing the services described in Paragraph 1, individuals affiliated with Requesting Entity will have a legitimate need to access Protected Student Data in the form of ATTENDANCE, GRADES, GRADEBOOK, TRANSCRIPTS, TEST SCORES AND SCHEDULES. The data described in this Paragraph is subject to disclosure restrictions imposed by FERPA and the MGDPA.
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  - b. Requesting Entity shall not attempt to use, access, or maintain Protected Student Data for any reason other than purposes legitimately necessary for its TUTOR to provide the services referenced in Paragraph 1. Requesting Entity shall not maintain its own files, documents, or any other form of records containing Protected Student Data or attempt to obtain access to Protected Student Data for anyone other than an individual described Paragraph 4(a).
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to Protected Student Data than what is legitimately necessary to effectively provide the services listed in Paragraph 1. The District retains the right to alter at any time and in its sole discretion the manner in which individuals providing services as TUTOR access Protected Student Data. No individual will be granted access to Protected Student Data unless the person has signed the form attached as Exhibit A and provided a copy to the principal of the building in which the individual will be providing services.

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  - f. The District reserves the right to restrict, modify, or discontinue the use and maintenance of Protected Student Data authorized by this agreement for any reason. If the District exercises its sole discretion to restrict or cancel access to data, Requesting Entity and/or its affected representatives shall destroy any copies or reproductions of data which they no longer have access in accordance with the timeframe and requirements of Paragraph 4(f) of this Agreement.
5. **Rediscovery of Protected Student Data.** In the course of performing the services described in Paragraph 1, the Parties agree that individuals providing services to the district as TUTOR shall not redisclose Protected Student Data to any representative of Requesting Entity not within the class of individuals identified in Paragraph 4(a) or any person or party other than a school official with a legitimate need to access the data unless disclosure is specifically authorized or required by law. In the event a parent or eligible student requests disclosure of Protected Student Data to a third party, Requesting Entity and its representatives shall direct the requesting parent or eligible student to the appropriate building principal, who will process each request to disclose Protected Student Data in accordance with applicable District policies and procedures.
6. **Data Related to TUTOR Evaluations.** The Parties agree that data maintained by the District with respect to individuals who perform services on a voluntary basis for the District is defined as personnel data by the MGDPA, Minn. Stat. § 13.43. In the event Requesting Entity requests information from the District that is not classified as public data pursuant to Minn. Stat. § 13.43, subd. 2, Requesting Entity shall obtain a written consent of the subject of the data prior to requesting the data from the District.

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- 8. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign or transfer this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other Party.
- 9. **Amendment/Modification.** This Agreement may be amended or modified only by a writing executed by the Parties. No custom or practice of the Parties at variance with the terms hereof will have any effect.
- 10. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties relative to the subject matter hereof. The parties have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date first written above.

DATE: 3.13.25

By:   
Director of Assessment / Evaluation / Performance

DATE: 03/13/2025

By: Jill A. Pinkney Pastrana

Title: Dean, College of Education and Human Service Professions, UMD

Phone: 218-726-6537

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
School Board Chair, Duluth School District 709

## **519 INTERVIEWS OF STUDENTS BY OUTSIDE AGENCIES**

### **I. PURPOSE**

There are occasions in which persons other than school district officials and employees find it necessary to speak with a student during the school day. Student safety and disruption of the educational program is of concern to the school district. The purpose of this policy is to establish the procedures for access to students by authorized individuals during the school day.

### **II. GENERAL STATEMENT OF POLICY**

- A. Generally, students may not be interviewed during the school day by persons other than a student's parents, school district officials, employees and/or agents, except as otherwise provided by law and/or this policy.
- B. Requests from law enforcement officers and those other than a student's parents, school district officials, employees and/or agents to interview students shall be made through the principal's office. Upon receiving a request, it shall be the responsibility of the principal and/or assistant principal to determine whether the request will be granted. Prior to granting a request, the principal and/or assistant principal shall attempt to contact the student's parents to inform them of the request, except where otherwise prohibited by law.

### **III. INTERVIEWS CONDUCTED UNDER THE MALTREATMENT OF MINORS ACT**

- A. In the case of an investigation pursuant to the Reporting of Maltreatment of Minors Act, Minnesota Statutes Chapter 260E, a local welfare agency, the agency responsible for investigating the report, and a local law enforcement agency may interview, without parental consent, an alleged victim and any minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school and during school hours. School district officials will work with the local welfare agency, the agency responsible for investigating the report, or law enforcement agency to select a place appropriate for the interview. When it is possible and the report alleges substantial child endangerment or sexual abuse, the interview may take place outside the presence of the alleged offender and may take place prior to any interviews of the alleged offender.
- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school district property. Where the interviews are conducted by the local welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the

interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal and/or assistant principal and without proper warrant.

**Legal References:** Minn. Stat. § 13.32 (Educational Data)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

**Cross References:** MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

First Reading: 02.11.25  
Second Reading:

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 519

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2024

## 519 INTERVIEWS OF STUDENTS BY OUTSIDE AGENCIES

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- B. Requests from law enforcement officers and those other than a student's parents, school district officials, employees and/or agents to interview students shall be made through the principal's office. Upon receiving a request, it shall be the responsibility of the principal **and/or assistant principal** to determine whether the request will be granted. Prior to granting a request, the principal **and/or assistant principal** shall attempt to contact the student's parents to inform them of the request, except where otherwise prohibited by law.

### III. INTERVIEWS CONDUCTED UNDER THE MALTREATMENT OF MINORS ACT

- A. In the case of an investigation pursuant to the Reporting of Maltreatment of Minors Act, Minnesota Statutes Chapter 260E, a local welfare agency, the agency responsible for investigating the report, and a local law enforcement agency may interview, without parental consent, an alleged victim and any minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school and during school hours. School district officials will work with the local welfare agency, the agency responsible for investigating the report, or law enforcement agency to select a place appropriate for the interview. When it is possible and the report alleges substantial child endangerment or sexual abuse, the interview may take place outside the presence of the alleged offender and may take place prior to any interviews of the alleged offender.

**[NOTE: This change is found in Minnesota Statutes, section 260E.22.]**

- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an

interview on school district property. Where the interviews are conducted by the local welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal **and/or assistant principal** and without proper warrant.

**Legal References:** Minn. Stat. § 13.32 (Educational Data)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

**Cross References:** MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

First Reading: 02.11.25

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 519

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2024

## **519 INTERVIEWS OF STUDENTS BY OUTSIDE AGENCIES**

### **I. PURPOSE**

There are occasions in which persons other than school district officials and employees find it necessary to speak with a student during the school day. Student safety and disruption of the educational program is of concern to the school district. The purpose of this policy is to establish the procedures for access to students by authorized individuals during the school day.

### **II. GENERAL STATEMENT OF POLICY**

- A. Generally, students may not be interviewed during the school day by persons other than a student's parents, school district officials, employees and/or agents, except as otherwise provided by law and/or this policy.
- B. Requests from law enforcement officers and those other than a student's parents, school district officials, employees and/or agents to interview students shall be made through the principal's office. Upon receiving a request, it shall be the responsibility of the principal to determine whether the request will be granted. Prior to granting a request, the principal shall attempt to contact the student's parents to inform them of the request, except where otherwise prohibited by law.

### **III. INTERVIEWS CONDUCTED UNDER THE MALTREATMENT OF MINORS ACT**

- A. In the case of an investigation pursuant to the Reporting of Maltreatment of Minors Act, Minnesota Statutes Chapter 260E, a local welfare agency, the agency responsible for investigating the report, and a local law enforcement agency may interview, without parental consent, an alleged victim and any minors who currently reside with or who have resided with the alleged perpetrator. The interview may take place at school and during school hours. School district officials will work with the local welfare agency, the agency responsible for investigating the report, or law enforcement agency to select a place appropriate for the interview. When it is possible and the report alleges substantial child endangerment or sexual abuse, the interview may take place outside the presence of the alleged offender and may take place prior to any interviews of the alleged offender.

**[NOTE: This change is found in Minnesota Statutes, section 260E.22.]**

- B. If the interview took place or is to take place on school district property, an order of the juvenile court pursuant to Minnesota Statutes, Chapter 260E may specify that school district officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school district property and/or any other related information regarding the interview that may be a part of the child's record. The school district official must receive a copy of the order from the local welfare or law enforcement agency.
- C. When the local welfare agency, local law enforcement agency, or agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school district property, school district officials must receive written notification of intent to interview the child on school district property prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school district property. Where the interviews are conducted by the local

welfare agency, the notification must be signed by the chair of the local social services agency or the chair's designee. The notification is private educational data on the student. School district officials may not disclose to the parent, legal custodian or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until school district officials receive said notification, all inquiries regarding the nature of the investigation or assessment should be directed to the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosure regarding the nature of the assessment or investigation.

- D. School district officials shall have discretion to reasonably schedule the time, place, and manner of an interview by a local welfare or local law enforcement agency on school district premises. However, where the alleged perpetrator is believed to be a school district official or employee, the local welfare or local law enforcement agency will have discretion to determine where the interview will be held. The interview must be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school district officials and the local welfare or law enforcement agency. However, school district officials must yield to the discretion of the local welfare or law enforcement agency concerning other persons in attendance at the interview. School district officials will make every effort to reduce the disruption to the educational program of the child, other students, or school staff when an interview is conducted on school district premises.
- E. Students shall not be taken from school district property without the consent of the principal and without proper warrant.

**Legal References:** Minn. Stat. § 13.32 (Educational Data)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)

**Cross References:** MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

## 722 PUBLIC DATA AND DATA SUBJECT REQUESTS

### I. PURPOSE

The school district recognizes its responsibility relative to the collection, maintenance, and dissemination of public data as provided in state statutes.

### II. GENERAL STATEMENT OF POLICY

The school district will comply with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13 (MGDPA), and Minnesota Rules parts 1205.0100-1205.2000 in responding to requests for public data.

### III. DEFINITIONS

#### A. Confidential Data on Individuals

Data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data.

#### B. Data on Individuals

All government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

#### C. Data Practices Compliance Officer

The data practices compliance official is the designated employee of the school district to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems. The responsible authority may be the data practices compliance official.

#### D. Government Data

All data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

#### E. Individual

"Individual" means a natural person. In the case of a minor or an incapacitated person as defined in Minnesota Statutes section 524.5-102, subdivision 6, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

#### F. Inspection

"Inspection" means the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the school district, unless printing a copy is the only method to provide for inspection of the data. For data stored in electronic form and made available in electronic form on a remote access basis to the public by the school district, typically through an online portal or the government entity's website, inspection includes remote access to the data by the public and the

ability to print copies of or download the data on the public's own computer equipment.

G. Not Public Data

Any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

H. Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

I. Private Data on Individuals

Data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data.

J. Protected Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

K. Public Data

All government data collected, created, received, maintained, or disseminated by the school district, unless classified by statute, temporary classification pursuant to statute, or federal law, as nonpublic or protected nonpublic; or, with respect to data on individuals, as private or confidential.

L. Public Data Not on Individuals

Data accessible to the public pursuant to Minnesota Statutes section 13.03.

M. Public Data on Individuals

Data accessible to the public in accordance with the provisions of section 13.03.

N. Responsible Authority

The individual designated by the school board as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law. Until an individual is designated by the school board, the responsible authority is the superintendent.

O. Summary Data

Statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable. Unless classified pursuant to Minnesota Statutes section 13.06, another statute, or federal law, summary data is public.

#### **IV. REQUESTS FOR PUBLIC DATA**

A. All requests for public data must be made in writing using the data practices form and directed to the responsible authority.

1. A request for public data must include the following information:

- a. Date the request is made;
  - b. A clear description of the data requested;
  - c. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
  - d. Method to contact the requestor (such as phone number, address, or email address).
2. Unless specifically authorized by statute, the school district may not require persons to identify themselves, state a reason for, or justify a request to gain access to public government data. A person may be asked to provide certain identifying or clarifying information for the sole purpose of facilitating access to the data.
  3. The identity of the requestor is public, if provided, but cannot be required by the government entity.
  4. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- B. The responsible authority will respond to a data request at reasonable times and places as follows:
1. The responsible authority will notify the requestor in writing as follows:
    - a. The requested data does not exist; or
    - b. The requested data does exist but either all or a portion of the data is not accessible to the requestor; or
      - (1) If the responsible authority determines that the requested data is classified so that access to the requestor is denied, the responsible authority will inform the requestor of the determination in writing, as soon thereafter as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based.
      - (2) Upon the request of a requestor who is denied access to data, the responsible authority shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.
    - c. The requested data does exist and provide arrangements for inspection of the data, identify when the data will be available for pick-up, or indicate that the data will be sent by mail. If the requestor does not appear at the time and place established for inspection of the data or the data is not picked up within ten (10) business days after the requestor is notified, the school district will conclude that the data is no longer wanted and will consider the request closed.
  2. The school district's response time may be affected by the size and complexity of the particular request, including necessary redactions of the data, and also

by the number of requests made within a particular period of time.

3. The school district will provide an explanation of technical terminology, abbreviations, or acronyms contained in the responsive data on request.
4. The school district is not required by the MGDPA to create or collect new data in response to a data request, or to provide responsive data in a specific form or arrangement if the school district does not keep the data in that form or arrangement.
5. The school district is not required to respond to questions that are not about a particular data request or requests for data in general.

## **V. REQUEST FOR SUMMARY DATA**

- A. All requests for the preparation of summary data must be made in writing using the data practices form and directed to the responsible authority.
  1. A request for the preparation of summary data must include the following information:
    - a. Date the request is made;
    - b. A clear description of the data requested;
    - c. Identify the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
    - d. Method to contact requestor (phone number, address, or email address).
- B. The responsible authority will respond within ten (10) business days of the receipt of a request to prepare summary data and inform the requestor of the following:
  1. The estimated costs of preparing the summary data, if any; and
  2. The summary data requested; or
  3. A written statement describing a time schedule for preparing the requested summary data, including reasons for any time delays; or
  4. A written statement describing the reasons why the responsible authority has determined that the requestor's access would compromise the private or confidential data.
- C. The school district may require the requestor to pre-pay all or a portion of the cost of creating the summary data before the school district begins to prepare the summary data.

## **VI. DATA BY AN INDIVIDUAL DATA SUBJECT**

- A. Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.

- B. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by the school district for any purposes other than those stated to the individual at the time of collection in accordance with Minnesota Statutes section 13.04, except as provided in Minnesota Statutes section 13.05, subdivision 4.
- C. Upon request to the responsible authority or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data.
- D. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created.
- E. The responsible authority or designee shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.
- F. The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.
- G. An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.
- H. The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by Minnesota Statutes chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.
- I. Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by a government entity without regard to the requirements of Minnesota Statutes section 138.17.
- J. After completing, correcting, or destroying successfully challenged data, the school district may retain a copy of the commissioner of administration's order issued under Minnesota Statutes chapter 14 or, if no order were issued, a summary of the dispute between the parties that does not contain any particulars of the successfully challenged data.

## **VII. REQUESTS FOR DATA BY AN INDIVIDUAL SUBJECT OF THE DATA**

- A. All requests for individual subject data must be made in writing directed to the responsible authority.

- B. A request for individual subject data must include the following information:
1. Statement that one is making a request as a data subject for data about the individual or about a student for whom the individual is the parent or guardian;
  2. Date the request is made;
  3. A clear description of the data requested;
  4. Proof that the individual is the data subject or the data subject's parent or guardian;
  5. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
  6. Method to contact the requestor (such as phone number, address, or email address).
- C. The identity of the requestor of private data is private.
- D. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- E. Policy 515 (Protection and Privacy of Pupil Records) addresses requests of students or their parents for educational records and data.

### **VIII. COSTS**

- A. Public Data
1. The school district will charge for copies provided as follows:
    - a. 100 or fewer pages of black and white, letter or legal sized paper copies will be charged at 25 cents for a one-sided copy or 50 cents for a two-sided copy.
    - b. More than 100 pages or copies of other materials are charged based upon the actual cost of searching for and retrieving the data and making the copies or electronically sending the data, unless the cost is specifically set by statute or rule.
      - (1) The actual cost of making copies includes employee time, the cost of the materials onto which the data is copied (paper, CD, DVD, etc.), and mailing costs (if any).
      - (2) Also, if the school district does not have the capacity to make the copies, e.g., photographs, the actual cost paid by the school district to an outside vendor will be charged.
  2. All charges must be paid for [in cash, check, or online service] in advance of receiving the copies.

**B. Summary Data**

1. Any costs incurred in the preparation of summary data shall be paid by the requestor prior to preparing or supplying the summary data.
2. The school district may assess costs associated with the preparation of summary data as follows:
  - a. The cost of materials, including paper, the cost of the labor required to prepare the copies, any schedule of standard copying charges established by the school district, any special costs necessary to produce such copies from a machine-based record-keeping system, including computers and microfilm systems;
  - b. The school district may consider the reasonable value of the summary data prepared and, where appropriate, reduce the costs assessed to the requestor.

**C. Data Belonging to an Individual Subject**

1. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.

The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies. Based on the factors set forth in Minnesota Rule 1205.0300, subpart 4, the school district determines that a reasonable fee would be the charges set forth in section VIII.A of this policy that apply to requests for data by the public.

2. The school district may not charge a fee to search for or to retrieve educational records of a child with a disability by the child's parent or guardian or by the child upon the child reaching the age of majority.

**IX. Annual Review and Posting**

- A. The responsible authority shall prepare a written data access policy and a written policy for the rights of data subjects (including specific procedures the school district uses for access by the data subject to public or private data on individuals). The responsible authority shall update the policies no later than August 1 of each year, and at any other time as necessary to reflect changes in personnel, procedures, or other circumstances that impact the public's ability to access data.
- B. Copies of the policies shall be easily available to the public by distributing free copies to the public or by posting the policies in a conspicuous place within the school district that is easily accessible to the public or by posting them on the school district's website.

## Data Practices Contacts

### Responsible Authority:

Superintendent  
709 Portia Johnson Dr.  
Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

### Data Practices Compliance Official:

Executive Director of Business Services and Finance  
709 Portia Johnson Dr.  
Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

### Data Practices Designee(s):

Business Services Coordinator  
709 Portia Johnson Dr.  
Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

### Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. § 13.01 (Government Data)  
Minn. Stat. § 13.02 (Definitions)  
Minn. Stat. § 13.025 (Government Entity Obligation)  
Minn. Stat. § 13.03 (Access to Government Data)  
Minn. Stat. § 13.04 (Rights of Subjects to Data)  
Minn. Stat. § 13.05 (Duties of Responsible Authority)  
Minn. Stat. § 13.32 (Educational Data)  
Minn. Rules Part 1205.0300 (Access to Public Data)  
Minn. Rules Part 1205.0400 (Access to Private Data)

### Cross References:

MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

New Policy  
Replacing: Policy 108  
First Reading: 09-18-2018  
Adopted: 10-16-2018  
Reviewed: 10-15-2019  
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First Reading: 11-15-2022  
Second Reading: 12-20-2022  
Reviewed: 01-23-2024  
Reviewed:

## 722 PUBLIC DATA AND DATA SUBJECT REQUESTS

### I. PURPOSE

The school district recognizes its responsibility relative to the collection, maintenance, and dissemination of public data as provided in state statutes.

### II. GENERAL STATEMENT OF POLICY

The school district will comply with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13 (MGDPA), and Minnesota Rules parts 1205.0100-1205.2000 in responding to requests for public data.

### III. DEFINITIONS

#### A. Confidential Data on Individuals

Data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data.

#### B. Data on Individuals

All government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

#### C. Data Practices Compliance Officer

The data practices compliance official is the designated employee of the school district to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems. The responsible authority may be the data practices compliance official.

#### D. Government Data

All data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.

#### E. Individual

"Individual" means a natural person. In the case of a minor or an incapacitated person as defined in Minnesota Statutes section 524.5-102, subdivision 6, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

#### F. Inspection

"Inspection" means the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the school district, unless printing a copy is the only method to provide for inspection of the data. For data stored in electronic form and made available in electronic form on a remote access basis to the public by the school district, typically through an online portal or the government entity's website, inspection includes remote access to the data by the public and the

ability to print copies of or download the data on the public's own computer equipment.

G. Not Public Data

Any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

H. Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

I. Private Data on Individuals

Data made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of those data.

J. Protected Nonpublic Data

Data not on individuals made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

K. Public Data

All government data collected, created, received, maintained, or disseminated by the school district, unless classified by statute, temporary classification pursuant to statute, or federal law, as nonpublic or protected nonpublic; or, with respect to data on individuals, as private or confidential.

L. Public Data Not on Individuals

Data accessible to the public pursuant to Minnesota Statutes section 13.03.

M. Public Data on Individuals

Data accessible to the public in accordance with the provisions of section 13.03.

N. Responsible Authority

The individual designated by the school board as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law. Until an individual is designated by the school board, the responsible authority is the superintendent.

O. Summary Data

Statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable. Unless classified pursuant to Minnesota Statutes section 13.06, another statute, or federal law, summary data is public.

#### **IV. REQUESTS FOR PUBLIC DATA**

A. All requests for public data must be made in writing using the data practices form and directed to the responsible authority.

1. A request for public data must include the following information:

- a. Date the request is made;
  - b. A clear description of the data requested;
  - c. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
  - d. Method to contact the requestor (such as phone number, address, or email address).
2. Unless specifically authorized by statute, the school district may not require persons to identify themselves, state a reason for, or justify a request to gain access to public government data. A person may be asked to provide certain identifying or clarifying information for the sole purpose of facilitating access to the data.
  3. The identity of the requestor is public, if provided, but cannot be required by the government entity.
  4. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- B. The responsible authority will respond to a data request at reasonable times and places as follows:
1. The responsible authority will notify the requestor in writing as follows:
    - a. The requested data does not exist; or
    - b. The requested data does exist but either all or a portion of the data is not accessible to the requestor; or
      - (1) If the responsible authority determines that the requested data is classified so that access to the requestor is denied, the responsible authority will inform the requestor of the determination in writing, as soon thereafter as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based.
      - (2) Upon the request of a requestor who is denied access to data, the responsible authority shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.
    - c. The requested data does exist and provide arrangements for inspection of the data, identify when the data will be available for pick-up, or indicate that the data will be sent by mail. If the requestor does not appear at the time and place established for inspection of the data or the data is not picked up within ten (10) business days after the requestor is notified, the school district will conclude that the data is no longer wanted and will consider the request closed.
  2. The school district's response time may be affected by the size and complexity of the particular request, including necessary redactions of the data, and also

by the number of requests made within a particular period of time.

3. The school district will provide an explanation of technical terminology, abbreviations, or acronyms contained in the responsive data on request.
4. The school district is not required by the MGDPA to create or collect new data in response to a data request, or to provide responsive data in a specific form or arrangement if the school district does not keep the data in that form or arrangement.
5. The school district is not required to respond to questions that are not about a particular data request or requests for data in general.

## **V. REQUEST FOR SUMMARY DATA**

- A. All requests for the preparation of summary data ~~must~~ be made in writing using the data practices form and directed to the responsible authority.
  1. A request for the preparation of summary data must include the following information:
    - a. Date the request is made;
    - b. A clear description of the data requested;
    - c. Identify the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
    - d. Method to contact requestor (phone number, address, or email address).
- B. The responsible authority will respond within ten (10) business days of the receipt of a request to prepare summary data and inform the requestor of the following:
  1. The estimated costs of preparing the summary data, if any; and
  2. The summary data requested; or
  3. A written statement describing a time schedule for preparing the requested summary data, including reasons for any time delays; or
  4. A written statement describing the reasons why the responsible authority has determined that the requestor's access would compromise the private or confidential data.
- C. The school district may require the requestor to pre-pay all or a portion of the cost of creating the summary data before the school district begins to prepare the summary data.

## **VI. DATA BY AN INDIVIDUAL DATA SUBJECT**

- A. Collection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.

- B. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by the school district for any purposes other than those stated to the individual at the time of collection in accordance with Minnesota Statutes section 13.04, except as provided in Minnesota Statutes section 13.05, subdivision 4.
- C. Upon request to the responsible authority or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data.
- D. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created.
- E. The responsible authority or designee shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.
- F. The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.
- G. An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either: (1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or (2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.
- H. The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by Minnesota Statutes chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.
- I. Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by a government entity without regard to the requirements of Minnesota Statutes section 138.17.
- J. After completing, correcting, or destroying successfully challenged data, the school district may retain a copy of the commissioner of administration's order issued under Minnesota Statutes chapter 14 or, if no order were issued, a summary of the dispute between the parties that does not contain any particulars of the successfully challenged data.

## **VII. REQUESTS FOR DATA BY AN INDIVIDUAL SUBJECT OF THE DATA**

- A. All requests for individual subject data must be made in writing directed to the responsible authority.

- B. A request for individual subject data must include the following information:
1. Statement that one is making a request as a data subject for data about the individual or about a student for whom the individual is the parent or guardian;
  2. Date the request is made;
  3. A clear description of the data requested;
  4. Proof that the individual is the data subject or the data subject's parent or guardian;
  5. Identification of the form in which the data is to be provided (e.g., inspection, copying, both inspection and copying, etc.); and
  6. Method to contact the requestor (such as phone number, address, or email address).
- C. The identity of the requestor of private data is private.
- D. The responsible authority may seek clarification from the requestor if the request is not clear before providing a response to the data request.
- E. Policy 515 (Protection and Privacy of Pupil Records) addresses requests of students or their parents for educational records and data.

### **VIII. COSTS**

- A. Public Data
1. The school district will charge for copies provided as follows:
    - a. 100 or fewer pages of black and white, letter or legal sized paper copies will be charged at 25 cents for a one-sided copy or 50 cents for a two-sided copy.
    - b. More than 100 pages or copies of other materials are charged based upon the actual cost of searching for and retrieving the data and making the copies or electronically sending the data, unless the cost is specifically set by statute or rule.
      - (1) The actual cost of making copies includes employee time, the cost of the materials onto which the data is copied (paper, CD, DVD, etc.), and mailing costs (if any).
      - (2) Also, if the school district does not have the capacity to make the copies, e.g., photographs, the actual cost paid by the school district to an outside vendor will be charged.
  2. All charges must be paid for [in cash, check, or online service] in advance of receiving the copies.

**B. Summary Data**

1. Any costs incurred in the preparation of summary data shall be paid by the requestor prior to preparing or supplying the summary data.
2. The school district may assess costs associated with the preparation of summary data as follows:
  - a. The cost of materials, including paper, the cost of the labor required to prepare the copies, any schedule of standard copying charges established by the school district, any special costs necessary to produce such copies from a machine-based record-keeping system, including computers and microfilm systems;
  - b. The school district may consider the reasonable value of the summary data prepared and, where appropriate, reduce the costs assessed to the requestor.

**C. Data Belonging to an Individual Subject**

1. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.

The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data.

The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies. Based on the factors set forth in Minnesota Rule 1205.0300, subpart 4, the school district determines that a reasonable fee would be the charges set forth in section VIII.A of this policy that apply to requests for data by the public.

2. The school district may not charge a fee to search for or to retrieve educational records of a child with a disability by the child's parent or guardian or by the child upon the child reaching the age of majority.

**IX. Annual Review and Posting**

- A. The responsible authority shall prepare a written data access policy and a written policy for the rights of data subjects (including specific procedures the school district uses for access by the data subject to public or private data on individuals). The responsible authority shall update the policies no later than August 1 of each year, and at any other time as necessary to reflect changes in personnel, procedures, or other circumstances that impact the public's ability to access data.
- B. Copies of the policies shall be easily available to the public by distributing free copies to the public or by posting the policies in a conspicuous place within the school district that is easily accessible to the public or by posting them on the school district's website.

## Data Practices Contacts

### Responsible Authority:

Superintendent  
709 Portia Johnson Dr.  
Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

### Data Practices Compliance Official:

Executive Director of Business Services and Finance  
709 Portia Johnson Dr.  
Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

### Data Practices Designee(s):

Business Services Coordinator  
709 Portia Johnson Dr.  
Duluth, MN 55811  
[data.request@isd709.org](mailto:data.request@isd709.org)

### Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. § 13.01 (Government Data)  
Minn. Stat. § 13.02 (Definitions)  
Minn. Stat. § 13.025 (Government Entity Obligation)  
Minn. Stat. § 13.03 (Access to Government Data)  
Minn. Stat. § 13.04 (Rights of Subjects to Data)  
Minn. Stat. § 13.05 (Duties of Responsible Authority)  
Minn. Stat. § 13.32 (Educational Data)  
Minn. Rules Part 1205.0300 (Access to Public Data)  
Minn. Rules Part 1205.0400 (Access to Private Data)

### Cross References:

MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)

New Policy  
Replacing: Policy 108  
First Reading: 09-18-2018  
Adopted: 10-16-2018  
Reviewed: 10-15-2019  
Reviewed: 07-21-2020  
First Reading: 11-15-2022  
Second Reading: 12-20-2022  
Reviewed: 01-23-2024  
Reviewed:



# DULUTH PUBLIC SCHOOLS - DATA REQUEST FORM

Date of Request: \_\_\_\_\_

Description of requested data (please be specific, include date spans):

### Requested method to access data:

Inspection Only: \_\_\_\_\_ Copies Only:\* \_\_\_\_\_ Both Inspection and Copies:\* \_\_\_\_\_

**\* Note:** There will be a cost charged to provide copies of public data

### Contact Information (optional) \*\*

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email address: \_\_\_\_\_

Address: \_\_\_\_\_

**\*\* Note:** You do not have to provide any contact information. However, if you want Duluth Public Schools to mail/email copies of data to you, some type of contact information must be provided. Duluth Public Schools would also need contact information from you if it is necessary to clarify your request. We will not work on such a request until clarified.

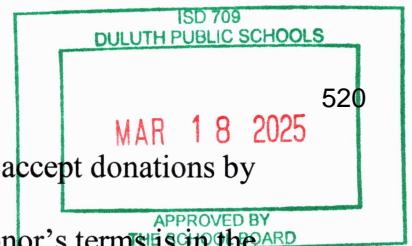
**Duluth Public Schools will respond to your request as soon as possible.**

Written requests for data can be returned several ways:

- Email: [data.request@isd709.org](mailto:data.request@isd709.org)
- Fax: 218-336-8773
- Mail: ISD 709 – Attn: Business Services  
709 Portia Johnson Drive  
Duluth, MN 55811
- In Person: See mail address above

## RESOLUTION

### Acceptance of Donations to Duluth Public Schools



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

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

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

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

SCHOOL	DONOR	AMOUNT	RESTRICTION	COMMENTS
Denfeld HS	Jodi Bergh	\$765.00	Track Team	Memorial donation on behalf of her late husband Roger -
Denfeld HS	Dale & Jennifer Kukiela	\$20.00	Track Team	Roger Burgh memorial donation
Denfeld HS	Jessica Manor	\$50.00	Debate Team	GiveMN
Denfeld HS	Joan Hesin	\$5.00	Debate Team	GiveMN
Denfeld HS	Cheryl Ward	\$25.00	Debate Team	GiveMN
Denfeld HS	Henry Eichman	\$5.00	Debate Team	GiveMN
Denfeld HS	Anonymous	\$5.00	Debate Team	GiveMN
Denfeld HS	Anonymous	\$5.00	Debate Team	GiveMN
Denfeld HS	Ron and Theresa Lorentz	\$1,800.00	The donation is designated to be used for Denfeld's DCD/ASD Setting 3 programs.	
Head Start	Jane Killough	\$50.00	Head Start Fuel Cards	
Lincoln Park MS	Christine Good	In-kind	Clothes Closet	Christine stated that these yearly donations are in memory of her husband Sam Good.
Lincoln Park MS	Dave Broska	In-kind		Various Art, Gym, Math items for students
Myers-Wilkins ES	Phi Sigma Sigma	\$3,206.28	Sources of Strength	We have the invoice for \$3000 for the curriculum. The other \$206.28

	Foundation		Curriculum	is for a para reimbursement. 521
Myers-Wilkins ES	Toppers Pizza	\$36.26		
Washington Center ECFE	Whole Foods Coop	\$200.00	ECFE Family Resource Navigation / Help Me Connect \$5 Incentive Gift Cards	

**COW Agenda Cover Sheet****Meeting Date:****Topic:** Revised 2025-2026 District School Calendar**Presenter(s):** Anthony Bonds, Assistant Superintendent**Attachment:** Yes**Brief Summary of Presentation or Topic (no more than a few sentences):**

The 2025-2026 District Calendar was approved on February 25, 2025. A couple of weeks later, we were informed that the number of teacher contract days was short by one day. As a result, an additional work day must be added to the calendar.

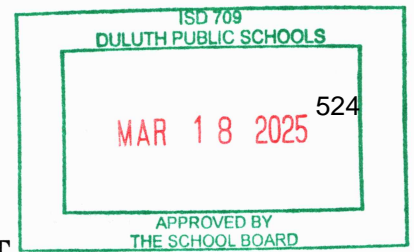
The revised 2025-26 District School Calendar (see attachment) was revised with the new updates:

Change- January 2nd is now a Professional Development Day. Students are out of school.

Change- April 6th is now a regular school day for students.

**This Requires School Board Approval : Yes**





## **SOLAR DEVELOPMENT AGREEMENT**

THIS SOLAR DEVELOPMENT CONTRACT (“Contract”) dated as of January 24th, 2025 by and between Duluth School District ISD 709 (“Owner”) and Wolf Track Energy, LLC, a Minnesota Limited Liability Company (“Solar Developer”).

Owner and Solar Developer, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **Article 1. Work.**

Solar Developer will perform the solar project management, finance and construction services identified in Exhibit “A” (“Work”) in accordance with the Contract Documents, as identified in Article 5 of this Contract on property which is located at 709 Portia Johnson Drive, Duluth, Minnesota 55811 (“Property”).

### **Article 2. Contract Time.**

The Work will be completed on or before December 31<sup>st</sup>, 2025 (“Completion Date”), subject to modifications in approved Change Orders. Solar Developer’s estimated progress schedule identifying the various stages of the Work and the corresponding payments to be made to the Solar Developer is identified in Exhibit “B” (“Payment Schedule”).

### **Article 3. Contract Price.**

Owner will pay to Solar Developer an amount equal to \$361,725.00 (“Contract Price”) for completion of the Work, see Exhibit “B.”

### **Article 4. Change Orders.**

Any increase or decrease in the Contract Price, change in the Work or change in the Contract Time must be set forth in a change order signed by Owner and Solar Developer and approved by the Lender (“Change Order”).

### **Article 5. Contract Documents.**

The Contract Documents which comprise the entire Contract between Owner and Solar Developer concerning the Work consist of this Contract, Exhibit “A,” Exhibit “B,” the blue prints, shop drawings, plans and specifications for the Work (“Plans”), an itemized description of each segment of the Work that sets the timetable for completing the Work, and the corresponding payments for the Work (“Work” and “Payment Schedule”) and any Change Orders.

## Article 6. Payment Procedures

6.1 **Progress Payments.** Solar Developer will submit to Owner a request for payment in a format agreed to by Owner and Solar Developer and approved by Lender ("Request for Disbursement") which will cover completed and inspected work consistent with Exhibit "B."

Within ten calendar days after a Request for Disbursement is presented, Owner will notify Solar Developer if Owner has any concerns about the Request for Disbursement that Owner believes should be resolved before Owner pays the amounts specified in the Request for Disbursement, and, in this event, Owner and Solar Developer will promptly meet to address such concerns. Owner will pay Solar Developer ninety percent (90%) of the full amount covered by the Request for Disbursement within ten calendar days from the day it was presented while retaining ten percent (10%) thereof ("Holdback") to be paid simultaneously with the final payment. Payment may be withheld for: (1) failure to perform the Work in accordance with the Contract Documents; (2) defective Work that is not corrected; or (3) failure of the Solar Developer to pay Subcontractors or to pay for labor, materials or equipment when due.

6.2 **Final Payment.** Final payment of the balance of the Contract Price including the Holdback will be made in accordance with Exhibit "B" and the following procedures:

a. When Solar Developer considers the Work substantially complete, Solar Developer will notify Owner in writing. Within a reasonable time thereafter, Owner and Solar Developer will inspect the Work. Promptly after such inspection, Owner will deliver to Solar Developer a written punch list of the items that must be completed in order for the Work to reach final completion ("Final Completion"). Alternatively, Owner will deliver to Solar Developer a written statement that Final Completion has been reached because no punch list items remain to be completed.

b. If Owner delivers a written punch list to Solar Developer, then Solar Developer will deliver to Owner a written notice that the Work is finally complete when Solar Developer believes that the punch list items have been completed. Then Owner and Solar Developer will promptly inspect the punch list items. Promptly after such inspection, Owner will deliver to Solar Developer either (i) a written statement that Final Completion has been reached or (ii) another written punch list of the items that still must be completed in order for the Work to reach Final Completion in which event the punch list procedure described above will be repeated until all punch list items have been completed.

c. When Final Completion has been reached and after Solar Developer has delivered to Owner all maintenance and operating instructions, schedules, guarantees, certificates of inspection, marked-up record documents and other documents, Solar Developer may make application for final payment following the procedure for progress payments. The final Request for Disbursement will be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to Owner and Lender) of all potential liens arising out of or filed in connection with the Work.

**Article 7. Interest.**

Payments due and unpaid to Solar Developer will bear no interest.

**Article 8. Solar Developer's Representation.**

In order to induce Owner to enter into this Contract, Solar Developer makes the following representation:

Solar Developer has familiarized itself with the nature and extent of the Contract Documents, Work site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

**Article 9. Solar Developer's Responsibilities.**

9.1. **Performance.** Solar Developer will perform the Work in accordance with the Contract Documents. Solar Developer will be solely responsible for the means, methods, techniques, sequences and procedures of construction.

9.2. **Personnel.** Solar Developer will provide competent, suitable personnel to perform construction services as required by the Contract Documents. Solar Developer will at all times maintain good discipline and order at the Property.

9.3. **Furnished Items.** Solar Developer will furnish and be fully responsible for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work, except as specified in the Contract Documents.

9.4. **Materials.** All materials and equipment will be of good quality and new, except as otherwise provided in the Contract Documents. All materials and equipment will be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier.

9.5. **Subcontractors.** Solar Developer will be fully responsible to Owner for all acts and omissions of its subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Solar Developer just as Solar Developer is responsible for Solar Developer's own acts and omissions. Nothing in the Contract Documents will create any contractual relationship between Owner and any such subcontractors, supplier or other person or organization, nor will it create any obligation on the part of Owner to pay any such subcontractors, supplier or other person or organization except as may otherwise be required by laws and regulations.

9.6. **Pre-lien Notice.** Any person or company supplying labor or materials for this improvement to the property may file a lien against the property if that person or company is not paid for the contributions. Under Minnesota law, Owner has the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from the Solar Developer contract price, or withhold the amounts due them from Solar Developer until 120 days

after completion of the improvement unless Solar Developer gives Owner a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice.

9.7. **Permits; Inspections.** Solar Developer will obtain and will pay for all construction permits and licenses unless otherwise agreed to by the Owner in writing. Owner will assist Solar Developer, when necessary, in obtaining such permits and licenses. Solar Developer will pay all governmental charges and inspection fees necessary for the Work and arrange for all such inspections to occur if required. Solar Developer will give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work.

9.8. **Taxes.** Solar Developer will pay all sales, consumer, use and other similar taxes required to be paid by Solar Developer in accordance with the laws and regulations of the place of the Work which are applicable during the performance of the Work.

9.9. **Use of Premises.** Solar Developer will confine construction equipment, the storage of materials and equipment and the operations of workers to the Property, and will not unreasonably encumber the Property with materials or equipment. Solar Developer will be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. During the progress of the Work, Solar Developer will keep the Property free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Solar Developer will remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and will leave the Property clean and ready for occupancy by Owner.

9.10. **Record Documents.** Solar Developer will maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, Change Orders, and the like in good order and annotated to show all changes made during construction which will be delivered to Owner.

9.11. **Safety.** Solar Developer will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Solar Developer will comply with all applicable laws and regulations relating to the safety of persons or property.

9.12. **Continuing the Work.** Solar Developer will carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner.

9.13. **Damage to the Work.** Solar Developer will repair or replace, at Solar Developer's sole expense, every portion of the Work that is damaged or destroyed prior to Final Completion and caused in whole or in part by the acts or omissions of Solar Developer. Notwithstanding the foregoing, Owner will bear the cost of such repair or replacement if the sole cause of the damage or destruction of the Work was Owner's negligence.

9.14. **Warranty.** Solar Developer warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. If within twenty years after the date of Final Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any specific provision or applicable special guarantee in the

Contract Documents, any Work is found to be defective, Solar Developer will promptly, without cost to Owner and in accordance with Owner's written instructions, promptly either correct such defective Work, or if it has been rejected by Owner, remove it from the Property and replace it with non-defective Work. If Solar Developer does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Solar Developer.

9.15. **Indemnity and Hold Harmless.** Solar Developer will indemnify and hold harmless Owner against all loss, liability, cost expense, damage and economic detriment of any kind whatsoever that arises out of or results from performance of the Work but only to the extent caused in whole or in part by the acts or omissions of the Solar Developer.

9.16. **Related Work at Property.** Owner may perform other work at the Property which is not part of the Work by Owner's own forces or let other direct contracts therefor. Solar Developer will afford Owner's own forces and each other Solar Developer who is a party to such a direct contract proper and safe access to the Property and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work. Solar Developer will do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Solar Developer will not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected.

#### **Article 10. Insurance.**

10.1. **Solar Developer's Insurance.** Solar Developer will purchase and maintain the following insurance policies: (i) public liability insurance with limits of liability equal to at least \$300,000 per occurrence; (ii) workers' compensation insurance as required by applicable state law; (iii) automobile liability insurance as required by applicable state law.

10.2 **Owner's Insurance.** Owner will be responsible for purchasing and maintaining Owner's liability insurance and other reasonably appropriate insurance.

#### **Article 11. Termination.**

11.1 **Termination by Owner.** If the Solar Developer breaches any of its obligations under this Agreement, then Owner may give Solar Developer written notification identifying such breach. If Solar Developer has not cured such breach within seven (7) calendar days from its receipt of Owner's written notification or if such breach cannot be cured within such seven (7) day period, then if Solar Developer either does not begin cure within such seven (7) day period or fails to diligently prosecute cure to completion, Owner may terminate this Contract and take possession of the Work. Alternatively, instead of terminating the Contract, Owner may cure the breach and deduct the cost thereof from amounts otherwise owed to the Solar Developer.

11.2 **Termination by Solar Developer.** If the Owner breaches any of its obligations

under this Agreement, then Solar Developer may give Owner written notification identifying such breach. If Owner has not cured such breach within seven (7) calendar days from its receipt of Solar Developer's written notification, or if such breach cannot be cured within such seven (7) day period, then if Owner either does not begin cure within such seven (7) day period or fails to diligently prosecute cure to completion, Solar Developer may terminate this Contract. Should Solar Developer find it necessary to take legal action of any kind to enforce the terms of this contract, Solar Developer shall be entitled to all costs of such legal action, including reasonable attorney fees.

#### **Article 12. Miscellaneous.**

12.1. Assignment of any rights or interests under this Contract will not be binding on any party to this Contract without the written consent of such party. Payments due under this Contract may not be assigned.

12.2. Owner and Solar Developer each binds itself, its partners, successors, assigns and legal representatives, to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

12.3. This Contract and all issues, disputes and matters arising out of it will be governed by and construed in accordance with the law of the State of Minnesota, exclusive of that body of law governing conflicts of laws. Any claims arising out of this contract shall be brought in State District Court within St. Louis County, State of Minnesota.

12.4. Notwithstanding anything contained in this Agreement to the contrary, neither Party will be deemed liable or to be in default for any delay or failure in performance under this Agreement deemed to result, directly or indirectly, from acts of God, acts of civil or military authority, acts of public enemy, war, or any like cause beyond its reasonable control unless such delay or failure in performance is expressly addressed elsewhere in this Agreement.

12.5 Owner hereby grant permission to Solar Developer to use my/our likeness, names, images, digital assets, property photographs/videos, and appearances in any photographs or videos and other media relating to the work being performed on our personal property taken or produced for Solar Developer's marketing purposes including but not limited to website publications, social media channels, case study materials, print materials, or any other print and digital materials for Solar Developer .

Owner understands and agrees that Solar Developer owns all rights and publications to the aforementioned marketing materials and may use, edit, reproduce, and distribute these materials for any and all marketing purposes.

Owner hereby releases Solar Developer and its employees from any and all actions, claims, and causes of action that arise from or are in any way connected to such use of the marketing materials. Solar Developer will not use your nonpublic personal information including your personal property address and financial information.

#### **Article 13. Contingencies**

13.1. Ground Mount Solar Array In the event Solar Developer discovers bedrock within 6.5 feet (78 inches) of the surface, Solar Developer will notify Owner of the discovery of bedrock and the ensuing change in installation procedure and price.

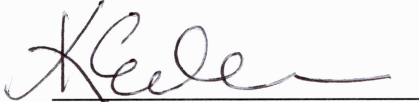
13.2. Contract Price does not include any upgrades required by the local utility company that are not specifically outlined in Exhibit A.

IN WITNESS WHEREOF, Owner and Solar Developer have signed this Contract.

This Contract will be effective on \_\_\_\_\_, \_\_\_\_\_.

OWNER

WOLF TRACK ENERGY

  
\_\_\_\_\_

By \_\_\_\_\_

Address:

709 Portia Johnson Drive

Duluth, Minnesota 55811

Address:

818 6<sup>th</sup> Ave

Two Harbors, Minnesota 55616

**EXHIBIT A  
CONSTRUCTION SERVICES**

The project scope includes the installation of a 108 kW-DC, 86.40 kW-AC rated roof-mounted solar photovoltaic system at the property located at address listed above.

This includes all equipment, labor, and construction materials needed to complete this project. Photovoltaic system shall consist of:

- (180) VSUN 600 Watt Solar Modules
- (180) Enphase IQ8 3P-US Microinverters
- (1) Enphase IQ Commercial Gateway 2
- (1) Ecofoot2+ Ballasted Racking System
- (1) Wire and Conduit
- (1) Engineering Letter
- (1) All Electrical Labor (Prevailing Wage)
- (1) Permitting
- (1) Interconnection Application

System shall be supported by Premium Grade aluminum mounting system, and other balance of system (BOS) components, including but not limited to Solar Performance Meter Box (if required), AC disconnect, and electrical hardware (circuit breakers, wire, conduit, junction boxes, etc.).

All equipment will be installed as required by applicable codes, the local utility company, and Homeowner's Association guidelines (if applicable). During daylight hours this photovoltaic system (solar electric) will provide electricity in parallel with the local utility service provider. Or to Batteries in a Stand-Alone system.

At completion of work remove all waste, debris, rubbish, tools, equipment, machinery and surplus materials.

Solar Developer shall not be responsible for landscaping improvement services as part of this contract.

**EXHIBIT B**  
**PAYMENT SCHEDULE**

Purchaser shall pay Solar Developer for the materials and labor to be performed under this agreement in an amount of: \$361,725.00

Contractor shall invoice for, and purchaser shall make, payments under this contract in accordance with the following schedule:

Ten percent (10%) (\$36,172.50) of the contract price is due upon signing of this agreement;

Fifty Percent (50%) (\$180,862.50) of the contract price is due upon scheduling of solar installation date.

Forty percent (40%) (\$144,690.00) of the contract price is due upon completion of Solar Modules installation (roof or ground mount) and all connecting circuitry. Dissemination of appropriate documents, warranties, approved final inspection.

Payment shall be made to the order of Wolf Track Energy, in one of three ways: (1) check, (2) credit card (2.9% fee applies), (3) or cashier's check.