

# WAYZATA PUBLIC SCHOOLS

Independent School District 284  
Wayzata, Minnesota

## **BOARD OF EDUCATION**

Special Meeting - February 24, 2014 - 4:00 PM  
District Administration Building, 210 County Road 101 North, Plymouth, MN

### **AGENDA**

- |   |    |
|---|----|
| 1. CALL TO ORDER AND ROLL CALL - Board Chair Cohen  | 3  |
| 2. BUSINESS AND FINANCE   |    |
| A. Resolution Approving Lease of Administrative Space <i>J. Westrum</i>                               | 4  |
| B. Petition to the Commissioner - Lease Levy Exception <i>J. Westrum</i>                              | 6  |
| C. Approve Lease Agreement with Zoltar Investment Group <i>J. Westrum</i>                             | 19 |
| D. Award - Multi-Site Gym Floor Replacement 2014 Project <i>J. Westrum</i>                            | 37 |
| E. Bid Award - Oakwood Elementary School 2014 Mechanical Upgrades Equipment Package <i>J. Westrum</i> | 42 |
| 3. ADJOURN  | 45 |

**WAYZATA PUBLIC SCHOOLS**  
**Independent School District 284**  
**Wayzata, Minnesota**

**MISSION**

*Our Core Purpose;*

*The Mission of Wayzata Public Schools is to ensure a world-class education that prepares each and every student to thrive today and excel tomorrow in an ever-changing global society.*

**VISION**

*What We Intend to Create and Experience;*

The Vision of Wayzata Public Schools is to be a model of excellence where all students discover their unique talents, develop a love and tenacity for learning and demonstrate confidence and capacity for success through:

Exceptional Student Learning, Experiences and Relationships:

- High achievement by each and every student – no exceptions, no excuses;
- Content-rich, rigorous and personalized education;
- Meaningful relationships with teachers, staff, mentors and peers in a welcoming, nurturing and safe environment.

Community Trust, Confidence and Partnership:

- Comprehensive learning opportunities meeting diverse learner needs and community aspirations;
- Committed to being the first choice for students and families;
- Maintaining the highest levels of satisfaction and pride by staff, parents and community.

Operational Excellence:

- Attraction, development and retention of exemplary, creative and valued employees;
- Effective and efficient use of time and human, financial and physical resources;
- Culture of continuous improvement and responsive innovation;
- High performing district governance, management and partnerships.

**WAYZATA PUBLIC SCHOOLS**  
Independent School District 284  
Wayzata, Minnesota

**BOARD OF EDUCATION**

Regular Meeting – February 24, 2014

**AGENDA SECTION:** CALL TO ORDER/ROLL CALL

**ITEM:** Roll Call Attendance

**COMMENTS BY:** Ms. Linda Cohen, Board Chair

School Board Chair, Ms. Linda Cohen, will call the meeting to order.

|                                   | <u>Present</u> | <u>Absent</u> |
|-----------------------------------|----------------|---------------|
| Ms. Linda A. Cohen                | _____          | _____         |
| Ms. Andrea Cuene                  | _____          | _____         |
| Ms. Sarah Johansen                | _____          | _____         |
| Mr. Jay A. Hesby                  | _____          | _____         |
| Mr. Chris McCullough              | _____          | _____         |
| Ms. Carter G. Peterson            | _____          | _____         |
| Ms. Cheryl Polzin                 | _____          | _____         |
| Dr. Chace B. Anderson, Ex Officio | _____          | _____         |

**WAYZATA PUBLIC SCHOOLS**

Independent School District 284  
Wayzata, Minnesota

**BOARD OF EDUCATION**

Special Meeting – February 24, 2014

**AGENDA SECTION: BUSINESS AND FINANCE**

**ITEM: Resolution Approving Lease of Administrative Space**

**COMMENTS BY: Mr. Jim Westrum, Executive Director of Business & Finance**

**Resolution Approving Lease of Administrative Space**

To accommodate all day kindergarten in 2014-15 and 2015-16 at Central Middle School and additional middle school enrollment growth thereafter, the district administration recommends relocating certain administrative functions, meeting rooms, and storage from Central Middle School to a lease office/warehouse facility. Minnesota Statutes, section 126C.40, subdivision 1, (j) states that a district may levy for the purpose of leasing administrative space if the district can demonstrate, to the satisfaction of the commissioner, that the lease cost for the administrative space is no greater than the lease cost for instructional space that the district would otherwise lease.

The attached resolution is required by the Commissioner of Education to grant the district this authority. A consultation letter was submitted to the Commissioner of Education and the Commissioner of Education has determined that this plan is economically advisable and will be eligible for lease levy authority subject to lease levy limits.

**RECOMMENDED ACTION:** Approve the Resolution Approving Lease of Administrative Space and use lease levy authority.

Motion by: \_\_\_\_\_ Roll Call Passed \_\_\_\_\_

Second by: \_\_\_\_\_ Vote Failed \_\_\_\_\_

Abstentions: \_\_\_\_\_



Independent School District 284  
Wayzata, Minnesota

## RESOLUTION APPROVING LEASE OF ADMINISTRATIVE SPACE

WHEREAS, Whereas, Minnesota Statutes, section 126C.40, subdivision 1, (j) states that a district may levy under this subdivision for the purpose of leasing administrative space if the district can demonstrate to the satisfaction of the commissioner that the lease cost for the administrative space is no greater than the lease cost for instructional space that the district would otherwise lease and;

WHEREAS, the commissioner must deny this levy authority unless the district passes a resolution stating its intent to lease instructional space under this section if the commissioner does not grant authority under this paragraph and;

WHEREAS, the resolution must also certify that the lease cost for administrative space under this paragraph is no greater than the lease cost for the district's proposed instructional lease and;

WHEREAS, due to enrollment growth and the recent legislation authorizing a school district to offer all-day kindergarten, the Wayzata Public Schools has an immediate need for 14-16 additional classrooms, six of which exist at Central Middle School, but are currently being used for non-instructional purposes and;

WHEREAS, certain kindergarten students will be transported from their home elementary school to classrooms at the Central Middle School and, classrooms currently being used for adult meeting space will now be used for instructional space, and classrooms being used as administrative space will now be used for instructional space, and classrooms currently being used for storage will now be used for instructional space and;

WHEREAS, if these non- instructional spaces were not repurposed within the Central Middle School campus for instructional purposes, the District would have needed to construct additional classrooms at a cost of approximately \$4 million, financed with certificates of participation and thus resulting in an annual lease cost of \$400,000;

NOW, THEREFORE BE IT RESOLVED, that the board of Independent School District 284 certifies that the lease cost for administrative space, in the approximate annual amount of \$180,000 is no greater than the lease cost for the district's proposed instructional lease of \$400,000 and, that the district intends lease \$400,000 of instructional space if the commissioner does not grant authority under this program.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name as Clerk of said Board of Education be hereunto affixed this 24th day of February 2014.

---

Clerk

**WAYZATA PUBLIC SCHOOLS**

Independent School District 284  
Wayzata, Minnesota

**BOARD OF EDUCATION**

Special Meeting – February 24, 2014

**AGENDA SECTION: BUSINESS AND FINANCE**

**ITEM: Petition to the Commissioner – Lease Levy Exception**

**COMMENTS BY: Mr. Jim Westrum, Executive Director of Business & Finance**

**Petition to the Commissioner – Lease Levy Exception**

To accommodate all day kindergarten in 2014-15 and 2015-16 at Central Middle School, the district administration recommends relocating certain administrative functions, meeting rooms, and storage from Central Middle School to a leased office/warehouse facility. Lease levy revenue provides the financial resources to make payment of the monthly lease amounts. The district is currently at the lease levy limit.

Minnesota Statutes, section 126C.40, subdivision 1, (g) states *“The commissioner of education may authorize a school district to exceed the limit in paragraph (e) if the school district petitions the commissioner for approval. The commissioner shall grant approval to a school district to exceed the limit in paragraph (e) for not more than five years if the district meets the following criteria:*

- *the school district has been experiencing pupil enrollment growth in the preceding five years and;*
- *the purpose of the increased levy is in the long-term public interest and;*
- *the purpose of the increased levy promotes colocation of government services and;*
- *the purpose of the increased levy is in the long-term interest of the district by avoiding over construction of school facilities.*

The attached letter has been submitted to the Commissioner of Education to grant the District this authority.

**RECOMMENDED ACTION:** Approve and direct the administration to Petition the Commissioner of Education to grant approval to exceed the limit in M.S. 126C40, Subd(e) for lease levy authority.

Motion by: \_\_\_\_\_ Yes \_\_\_\_\_ Passed \_\_\_\_\_

Second by: \_\_\_\_\_ No \_\_\_\_\_ Failed \_\_\_\_\_

Abstentions: \_\_\_\_\_



Jim Westrum, Executive Director of Finance & Business Services  
210 County Road 101 North, P.O. Box 660 | Wayzata, MN 55391-0660  
763.745.5023 | Fax: 763.745.5091 | [www.wayzata.k12.mn.us](http://www.wayzata.k12.mn.us)

February 6, 2014

Mr. Christopher Kubesh  
Mr. Bill Kiesow  
Minnesota Department of Education  
1500 Highway 36 West  
Roseville, MN 55113

Dear Mr. Kubesh and Mr Kiesow:

The Wayzata school district has identified the need to lease approximately 16,000 square feet of office space and 6,900 square feet of warehouse space as it relocates non-instructional functions, meeting spaces, and storage from Central Middle School to a leased facility for the purpose of accommodating and offering All Day Kindergarten beginning in the 2014-2015 fiscal year.

The District has determined that by repurposing existing spaces in Central Middle School into classrooms, the District can accommodate approximately 506 additional kindergarten students who are now eligible for all day kindergarten programming due to recent legislative changes. Total district-wide All Day Kindergarten enrollment is projected to be 800 students in the Fall of 2014 and the District has identified an immediate need for 14-16 additional classrooms to serve these students. The spaces to be repurposed and relocated are currently occupied by adults, used for storage, or used for meeting space.

In the Positive Review and Comment letter dated January 21, 2014, the Commissioner of Education provided a positive opinion that will allow the District to seek voter approval to issue bonds. This bond funding will be used to increase capacity in its facilities with additions at the secondary level and a new building at the elementary level. It is important to note that while the new elementary school could open in the Fall of 2016, the need for an additional 14-16 classrooms is immediate.

As it is not considered prudent to construct additional classrooms or offices to existing elementary or middle school facilities, the District respectfully submits this request to seek lease levy approval for the annual operating lease payments. These lease payments are required to provide replacement spaces as the District repurposes all existing non-instructional spaces, adult meeting spaces, and storage to serve students and moves all non-instructional staff, adult meeting spaces, and storage to a separate leased facility. (See Appendix A for space requirements for relocated functions)

District administration, in conjunction with our architects, Wold Architects and Engineers, have determined that repurposing existing spaces within Central Middle School could allow the district to accommodate this projected enrollment growth and need for instructional spaces until a new elementary school can be opened in the Fall of 2016. In addition to providing classrooms for Kindergarten students for the next two years, these spaces will be repurposed from kindergarten to middle school instruction in the Fall of 2016 and will serve projected middle school enrollment growth. This plan is consistent with the recent Review and Comment approved by the Commissioner of Education on January 21, 2014. (See Appendix B for space repurposing at Central Middle School)

The District has located a suitable property and seeks to enter into an operating lease with the owner of this office and warehouse building. This 23,000 square foot facility is a stand-alone facility and has recently been vacated in a highly useable form. The office space is mostly functional in an "AS IS" basis and thus, the District would not need to invest significant resources in making the leased facility usable. In addition, due to its close proximity to facilities operated by Intermediate District 287, the City of Plymouth, Hennepin County, and the Three Rivers Park District, meeting spaces will be shared between the four governmental entities and fiber optic connectivity is readily available.

The Wayzata school district would utilize lease levy authority to make the annual lease payments and would use internal staff for custodial and maintenance services.

In 2015-2016, there is adequate lease levy capacity in the district's total certified property tax levy as certain levy components are anticipated to decrease in 2015-2016. Currently, the District has \$400,000 in lease levy obligations and authority that will be retiring in 2015-2016. Preliminary estimates indicate that annual payments for this lease request would be less than the amount retiring; \$185,000 for the office space (16,000 sq ft) and 80,000 for the warehouse space (6,900 sq ft). In 2015-2016, this would be well within the statutory limits of the District's lease levy authority. (See Appendix C for leased space floorplans)

The District has requested an appeal from the Commissioner of Education to exceed the lease levy limit for the 2014-2015 fiscal year. If this exemption is granted, the District would attempt to minimize any taxpayer impact by under-levying in other components of its local property tax levy in Pay 2015. If approval is not granted by the Commissioner, other District resources would be utilized to bridge this one year gap in lease levy authority.

Repurposed instructional spaces at CMS are included in Appendix B. All costs of converting these spaces to instructional spaces are funded through operating capital and do not require additional approvals as the amounts do not exceed \$500,000.

District administration has been and will continue to work in consultation with MDE staff as careful consideration is given to accommodate the district's increasing residential student growth and All Day Kindergarten instructional space and classroom needs.

Please confirm that this Consultation Report meets MDE requirements that will allow the Wayzata district to proceed with executing a lease, obtaining lease levy approval, and planning for these capital improvements at Central Middle School. The District seeks to provide adequate instructional space for all day kindergarten programming and increased resident student enrollment growth in the Wayzata Public Schools.

If you need further information, please contact Jim Westrum, Executive Director of Finance, and Business Services, at (763) 745-5023.

Sincerely,



Chace B. Anderson  
Superintendent of Schools

# Appendix A

## Space Requirements for Relocated Functions



**Independent School District #284 - Wayzata Public Schools**

Relocation of Adults out of Central Middle School

Draft: December 4, 2013

**PRELIMINARY SPACE PROGRAM**

|                                     |                  |
|-------------------------------------|------------------|
| Community Education                 | 4,809 SF         |
| Teaching and Learning               | 7,413 SF         |
| Special Services                    | 1,693 SF         |
| <b>TOTAL SPACE NEED FOR ADULTS:</b> | <b>13,915 SF</b> |



**Independent School District #284 - Wayzata Public Schools**

Relocation of Adults out of Central Middle School

Draft: December 4, 2013

**PRELIMINARY SPACE PROGRAM**

|                                       | <b>Existing<br/>Space</b> |           | <b>Program</b> |           |
|---------------------------------------|---------------------------|-----------|----------------|-----------|
| <b>Community Education</b>            |                           |           |                |           |
| Director of Community Education       | 254                       | SF        | 250            | SF        |
| Coordinator: Youth and Operations     | 155                       | SF        | 150            | SF        |
| Coordinator: Volunteers               | 189                       | SF        | 150            | SF        |
| Coordinator: Driver's Ed              | 48                        | SF        | 48             | SF        |
| Coordinator: Vacant                   | 99                        | SF        | 150            | SF        |
| Coordinator: Vacant                   | N/A                       |           | 150            | SF        |
| Manager: Enrichment                   | 114                       | SF        | 120            | SF        |
| Manager: Facility Use                 | 80                        | SF        | 120            | SF        |
| Secretary: Registrar/Reception        | 80                        | SF        | 80             | SF        |
| Secretary: Scheduling                 | 80                        | SF        | 80             | SF        |
| Secretary: Billing (Home Base)        | 80                        | SF        | 80             | SF        |
| Para: Volunteer/DE Support            | 64                        | SF        | 64             | SF        |
| Para: Enrichment/HB Support           | 64                        | SF        | 64             | SF        |
| Para: HB Billing Support              | 64                        | SF        | 64             | SF        |
| Para: Vacant                          | N/A                       |           | 64             | SF        |
| Work Room                             | 150                       | SF        | 150            | SF        |
| Break Room / Storage                  | 150                       | SF        | 300            | SF        |
|                                       | <u>1,671</u>              | SF        | <u>2,084</u>   | SF        |
| Department Gross Factor (Circulation) | x 1.8                     |           | x 1.3          |           |
|                                       | <u>3,008</u>              | SF        | <u>2,709</u>   | SF        |
| Large Meeting/Classroom               | Shared<br>(A413)          |           | 1,000          | SF        |
| Medium Meeting Room                   | Shared<br>(Studio 'C')    |           | 300            | SF        |
| Computer Lab (16 Stations)            | Shared                    |           | 800            | SF        |
|                                       | <u>3,008</u>              | SF        | <u>4,809</u>   | SF        |
| <b>Total Community Ed Space</b>       | <b>3,008</b>              | <b>SF</b> | <b>4,809</b>   | <b>SF</b> |



**Independent School District #284 - Wayzata Public Schools**

Relocation of Adults out of Central Middle School

Draft: December 4, 2013

PRELIMINARY SPACE PROGRAM

|   | Existing Space |           | Program      |           |
|---|----------------|-----------|--------------|-----------|
| <b>Teaching and Learning</b>                    |                |           |              |           |
| Executive Director                              | 377            | SF        | 350          | SF        |
| Secretary of Executive Director                 | 184            | SF        | 150          | SF        |
| Director of Curriculum and Instruction          | 204            | SF        | 200          | SF        |
| Director of Personalization and Intervention    | 150            | SF        | 200          | SF        |
| Director of Research and Evaluation             | 200            | SF        | 200          | SF        |
| Q-Comp / Peer Coach                             | 99             | SF        | 120          | SF        |
| Prof. Dev. TOSA                                 | 80             | SF        | 80           | SF        |
| Data Resource Teacher                           | 64             | SF        | 64           | SF        |
| Math Resource Teacher                           | 64             | SF        | 64           | SF        |
| Resource Meeting Area                           | 80             | SF        | 80           | SF        |
| TOSAS (6 at 40 SF each now; 64 SF each program) | 240            | SF        | 384          | SF        |
| Assessment Support (2 at 80 SF)                 | 160            | SF        | 160          | SF        |
| Reading Office / 2 Staff                        | 749            | SF        | 750          | SF        |
| Math Office                                     | 0              | SF        | 200          | SF        |
| Testing Machines / Copy / Kitchen               | 201            | SF        | 200          | SF        |
| Large Training                                  | 1,190          | SF        | 1,000        | SF        |
| Large Training                                  | 1,141          | SF        | 1,000        | SF        |
| Curriculum Processing/Conference                | 0              | SF        | 500          | SF        |
|   | <u>5,183</u>   | <u>SF</u> | <u>5,702</u> | <u>SF</u> |
| Shared CMS Hallway/Gross Factor (Circulation)   | +1,000         | SF        | x 1.3        |           |
| <b>Total Teaching and Learning Space</b>        | <b>6,183</b>   | <b>SF</b> | <b>7,413</b> | <b>SF</b> |



**Independent School District #284 - Wayzata Public Schools**

Relocation of Adults out of Central Middle School

Draft: December 4, 2013

**PRELIMINARY SPACE PROGRAM**

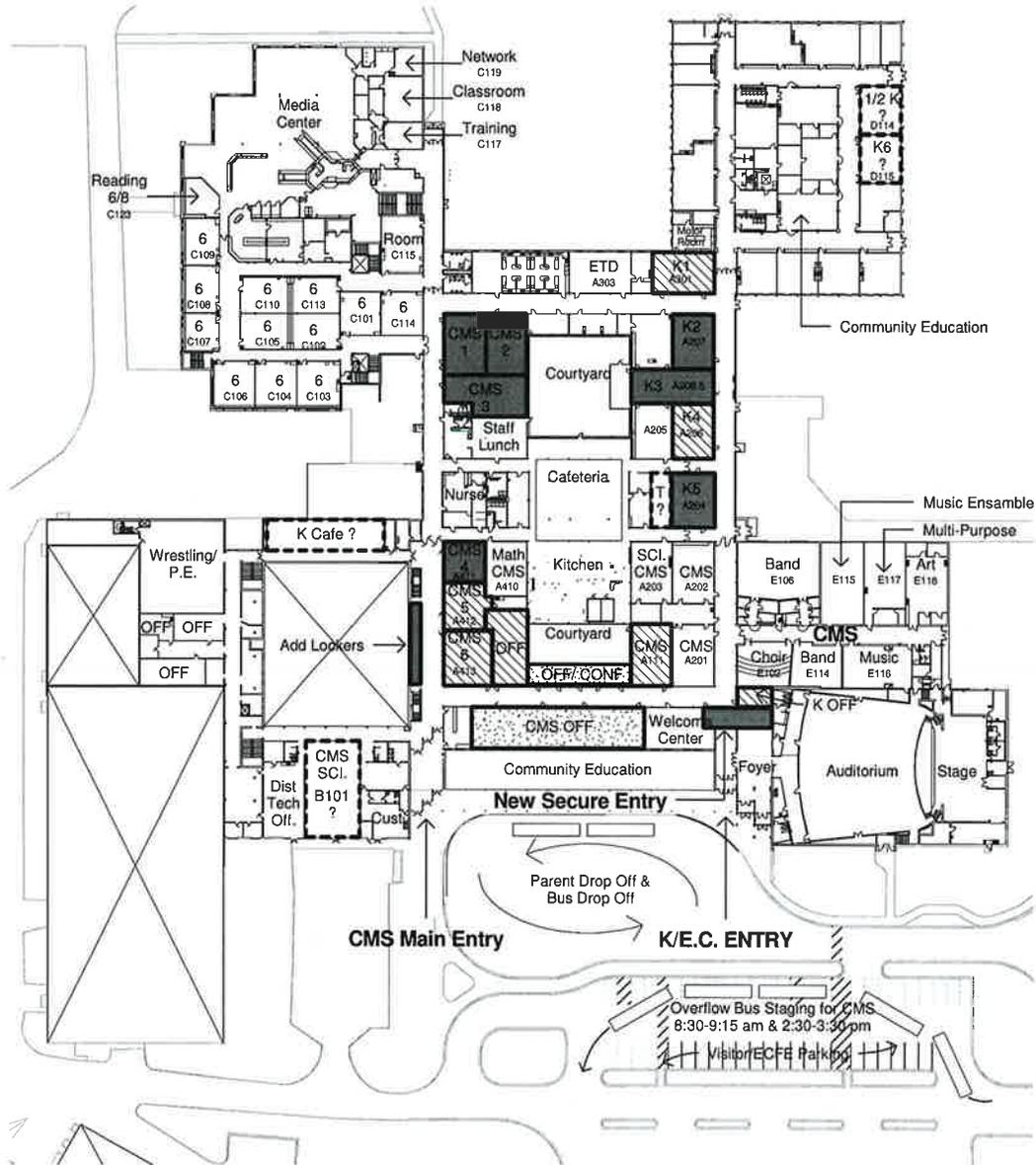
|  | <b>Existing<br/>Space</b> |           | <b>Program</b> |           |
|--|---------------------------|-----------|----------------|-----------|
| <b>Special Services</b>                            |                           |           |                |           |
| Director of Special Services                       | 157                       | SF        | 200            | SF        |
| Supervisor of Special Education                    | 150                       | SF        | 150            | SF        |
| Supervisor of Special Education                    | 311                       | SF        | 150            | SF        |
| Special Services Office Manager                    | 161                       | SF        | 150            | SF        |
| Special Services Student Data Secretary            | 363                       | SF        | 80             | SF        |
| Special Services Student Program Support Secretary | incl.                     | SF        | 80             | SF        |
| *Program Support Specialists (2 at 64 SF)          | 128                       | SF        | 128            | SF        |
| * Adapted P.E. Teacher                             | 64                        | SF        | 64             | SF        |
|  | <u>1,334</u>              | <u>SF</u> | <u>1,002</u>   | <u>SF</u> |
| Work Room  | incl.                     | SF        | 150            | SF        |
| File Area  | incl.                     | SF        | 150            | SF        |
|  | <u>1,334</u>              | <u>SF</u> | <u>1,302</u>   | <u>SF</u> |
| Shared CMS Hallway/Gross Factor (Circulation)      | + 300                     | SF        | x 1.3          |           |
| <b>Total Special Service Space</b>                 | <b>1,634</b>              | <b>SF</b> | <b>1,693</b>   | <b>SF</b> |

Note:

\* It is ideal to have these staff move out of CMS with the Special Education team, but not a first priority if the space is not available.

# Appendix B

## Space Repurposing at Central Middle School



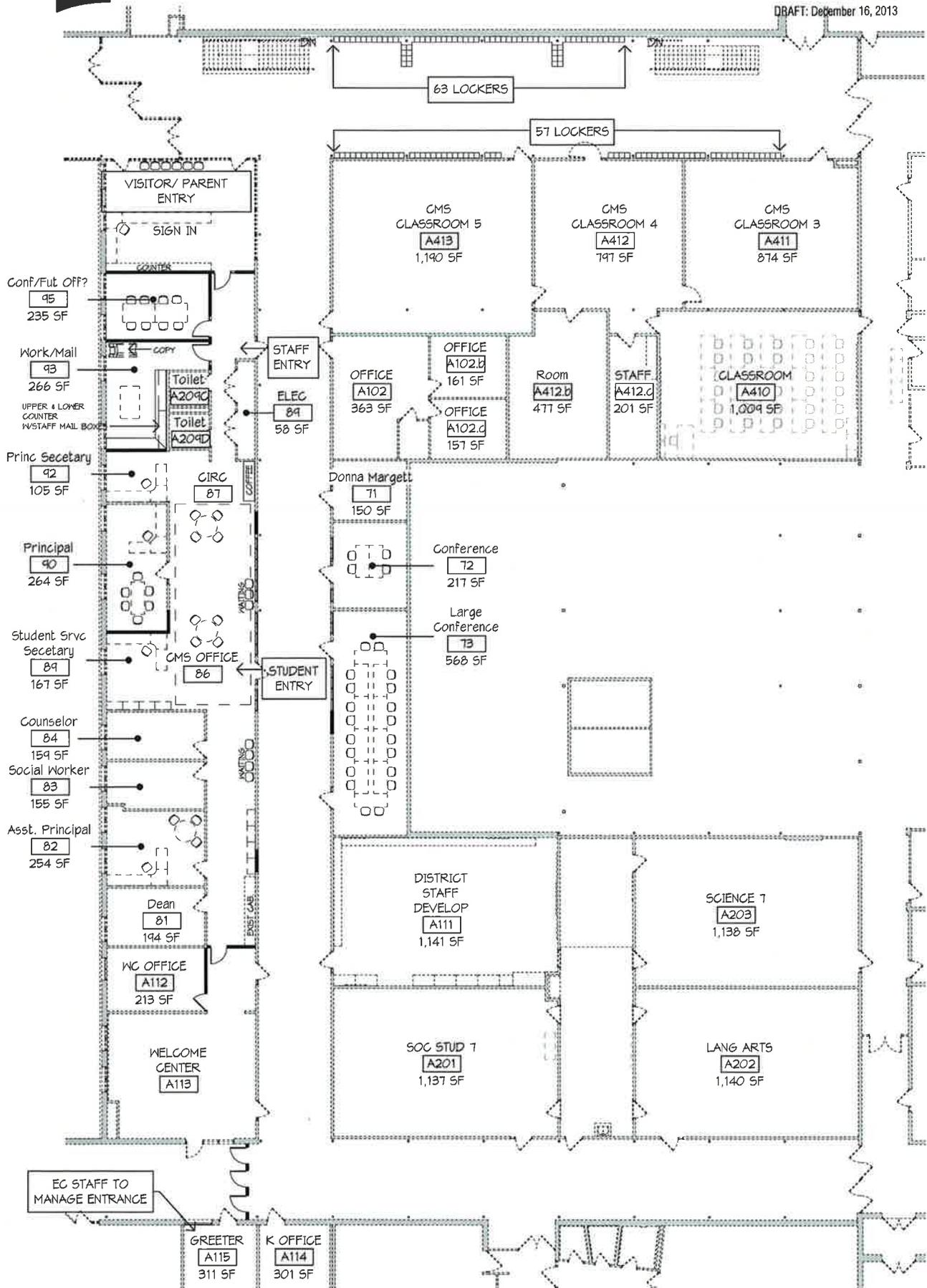
Scope of Work Legend

- Work required for 2014/15 K/CMS reorganization
- No work for 2014/15 K/CMS reorganization
- Undecided scope of work
- Work required for CMS Office relocation

Undecided Scope of Work Summary

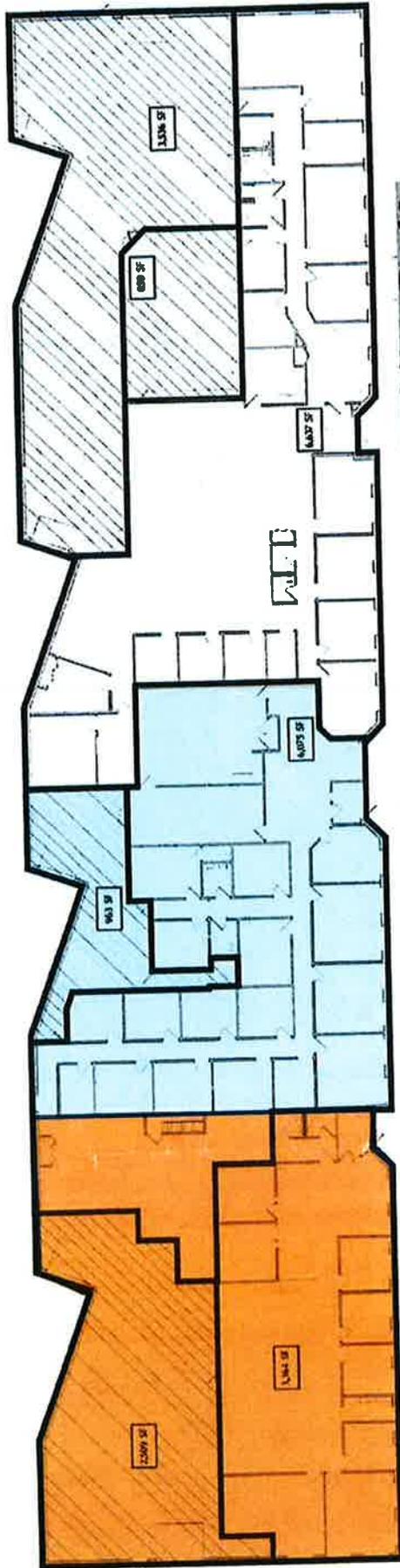
- Cafeteria/Serving area for Kindergarten
- Optional Toilet Room Upgrades @ Cafeteria
- Possible 1/2 Day K
- CMS B101 - Science Center

1 SCOPE OF WORK



# Appendix C

## Leased Space Floor Plans



Suite A  
6637 Office  
3435 Whse  
Total 11062 SF

Suite B  
6075 Office  
963 Whse  
Total 7038 SF

Suite C  
3364 Office  
2509 Whse  
5873 SF Total

**WAYZATA PUBLIC SCHOOLS**

Independent School District 284  
Wayzata, Minnesota

**BOARD OF EDUCATION**

Special Meeting – February 24, 2014

**AGENDA SECTION: BUSINESS AND FINANCE**

**ITEM: Approve Lease Agreement with Zoltar Investment Group, LLC**

**COMMENTS BY: Mr. Jim Westrum, Executive Director of Business & Finance**

**Approve Lease Agreement with Zoltar Investment Group, LLC**

To accommodate all day kindergarten in 2014-15 and 2015-16 at Central Middle School and additional middle school enrollment growth thereafter, the district administration recommends relocating certain administrative functions, meeting rooms, and storage from Central Middle School to a leased office/warehouse facility owned by Zoltar Investment Group, LLC.

A consultation letter was submitted to the Commissioner of Education and the Commissioner of Education has determined that this plan is economically advisable and will be eligible for lease levy authority subject to lease levy limits.

The terms and conditions of the lease agreement by and between Zoltar Investment Group, LLC, a Minnesota limited liability company and Wayzata Independent School District No. 284 are included herein. Highlights of the agreement include the following:

- Term: 5 years with 2 year renewal options
- Space: 23,973 square feet (16,066 square feet of office space and 7,907 square feet of service space)
- Functions: Teaching and Learning, Community Education, Special Education, Transportation, and Meeting and Storage
- Annual Rate: \$6.50 Square foot
- Other: Usual and Customary, including the right of first offer to purchase

**RECOMMENDED ACTION:** Approve the Lease Agreement and Right of First Offer to Purchase by and between Zoltar Investment Group, LLC, a Minnesota limited liability company and Wayzata Independent School District No. 284.

Motion by: \_\_\_\_\_ Yes \_\_\_\_\_ Passed \_\_\_\_\_

Second by: \_\_\_\_\_ No \_\_\_\_\_ Failed \_\_\_\_\_

Abstentions: \_\_\_\_\_

## LEASE AGREEMENT AND RIGHT OF FIRST OFFER TO PURCHASE

**THIS LEASE AGREEMENT AND RIGHT OF FIRST OFFER TO PURCHASE** (this "**Lease Agreement**") is made as February \_\_\_\_, 2014 by and between **ZOLTAR INVESTMENT GROUP, LLC**, a Minnesota limited liability company ("**Landlord**") and **WAYZATA INDEPENDENT SCHOOL DISTRICT NO. 284**, a Minnesota independent school district ("**Tenant**").

### ARTICLE 1 - DESCRIPTION OF PREMISES

Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the entire office/service building (the "**Building**") located at 12901 – 16<sup>th</sup> Avenue in the City of Plymouth (the "**City**"), County of Hennepin, State of Minnesota containing 23,973 square feet (16,066 square feet of office space and 7,907 square feet of service space) and depicted on Exhibit A to this Lease Agreement (the "**Premises**"). The Building consists of the following Suites depicted on Exhibit A:

| <u>Suite</u> | <u>Square Footage</u> |
|--------------|-----------------------|
| A            |                       |
| B            |                       |
| C            |                       |

From the Commencement Date (as defined below) until the Rent Commencement Date (as defined below), Tenant shall have the non-exclusive right to use, in common with Landlord or any other tenants and occupants of the Building, the land upon which the Building is located (the "**Land**"), including, without limitation, the parking lots and driveways thereon (together the "**Parking Areas**"), all as depicted on Exhibit A attached hereto. From and after the Rent Commencement Date, Tenant shall have the exclusive right to use such Land and Parking Areas which shall be deemed additional "Premises" under this Lease Agreement.

### ARTICLE 2 - TERM AND MINIMUM RENT

**TO HAVE AND TO HOLD** the Premises together with all appurtenant rights and privileges, unto Tenant for a term commencing on that date (the "**Commencement Date**") when Landlord has delivered possession of Suites B and C to Tenant in the condition required by Article 5 of this Lease Agreement, and expiring June 30, 2019 (hereafter called the "**Term**"). Beginning on the Rent Commencement Date, Tenant shall pay during the Term for the Premises, without notice, set-off or demand, as minimum rent ("**Minimum Rent**") the following amounts per month:

| <u>Period of Term</u> | <u>Annual Rate Per SF</u> | <u>Monthly Minimum Rent</u> |
|-----------------------|---------------------------|-----------------------------|
| RCD-6/30/15           | \$6.50                    | \$12,985.38                 |
| 7/1/15-6/30/16        | \$6.66                    | \$13,305.02                 |
| 7/1/16-6/30/17        | \$6.83                    | \$13,644.63                 |
| 7/1/17-6/30/18        | \$7.00                    | \$13,984.25                 |
| 7/1/18-6/30/19        | \$7.18                    | \$14,343.85                 |

As used herein, the "**Rent Commencement Date**" or "**RCD**" shall be that date when Landlord has delivered possession of Suite A to Tenant in the condition required by Article 5 of this Lease Agreement.

Said monthly installments shall be due and payable in advance on the first day of each calendar month during the Term of this Lease Agreement or any extension or renewal thereof. If the Rent Commencement Date shall be a day other than the first day of a calendar month, the Minimum Rent installment for such first month shall be prorated accordingly. Tenant agrees to pay, as Additional Rent, which shall be collectible to the same extent as Minimum Rent, all amounts which may become due to Landlord under this Lease Agreement and any sales, use or similar tax that may be imposed upon the rents payable under this Lease Agreement by any governmental authority acting under any present or future law or regulation.

### ARTICLE 3 - USE OF PREMISES

The Premises shall be used by Tenant for general office purposes and for no other purpose, subject to reasonable rules and regulations which may be promulgated by Landlord from time to time. In no event shall Tenant permit the storage of any materials, equipment or other personal property outside of the Building.

### ARTICLE 4 - (INTENTIONALLY OMITTED)

### ARTICLE 5 - POSSESSION

Landlord shall deliver possession of the Premises to Tenant in their existing "as is" condition without any obligation on the part of Landlord to demolish any of the existing improvements or make any alterations, modifications or improvements thereto or provide any allowances therefore; provided, however, such Premises shall be delivered in broom-clean condition. Landlord shall deliver possession of Suites B and C to Tenant upon full execution of this Lease Agreement by the parties. Landlord shall deliver possession of Suite A to Tenant on or about June 1, 2014. Following delivery of possession of Suite A to Tenant and within ten (10) days of Landlord's request, Landlord and Tenant shall execute a ratification agreement which shall set forth the respective delivery dates for Suites B and C and Suite A and the Rent Commencement Date, shall acknowledge the Minimum Rent, the square footage of the Premises (office space and service space), delivery of the Premises in the condition required by this Lease Agreement and shall include such other matters as Landlord may reasonably request (hereafter the "**Ratification Agreement**"). Any improvements to the Premises shall be made by Tenant at its sole cost and expense and in compliance with the provisions of Article 23 below.

### ARTICLE 6 - NET LEASE AND ADDITIONAL RENT

A. Net Lease. Unless otherwise expressly provided in this Lease Agreement, this is an absolutely net lease to Landlord. It is the intent of the parties hereto that the Minimum Rent payable under this Lease Agreement shall be an absolutely net return to the Landlord and that the Tenant shall pay all costs and expenses relating to the Premises and the business carried on therein, unless otherwise expressly provided in this Lease Agreement. Any amount or obligation herein relating to the Premises which is not expressly declared to be that of the Landlord shall be deemed to be an obligation of the Tenant to be performed by the Tenant at the Tenant's expense. Minimum Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice (except only as expressly provided herein), demand, setoff, counterclaim, abatement, suspension or deduction.

B. Operating Expenses. Beginning on the Rent Commencement Date and continuing thereafter for the remainder of the Term of this Lease Agreement and any renewals or extensions thereof, Tenant shall be responsible for paying directly, as Additional Rent, all of the Operating Expenses incurred in the operation, maintenance and repair of the Building and Land. The term "**Operating Expenses**" herein shall include, but not be limited to, all costs for maintenance, operation, repair, replacement and care of all heating, lighting, fire protection and plumbing fixtures in or serving the Building and Land and of all equipment, systems, roofs, exterior glass, signs, Building exteriors and parking lots (including seal coating); and all costs for landscaping, snow removal and trash/refuse removal.

C. Real Estate Taxes and Insurance Premiums. Beginning on the Rent Commencement Date and continuing thereafter for the remainder of the Term of this Lease Agreement and any renewals or extensions thereof, Tenant shall be responsible for paying, as Additional Rent and in accordance with the provisions of Articles 6 D and 6 E below, all of the (i) Real Estate Taxes and (ii) premiums for the property insurance maintained by Landlord for the Building pursuant to Article 12 C below (the "**Insurance Premiums**"). As used herein, the "**Real Estate Taxes**" shall mean the total of all taxes, fees, charges and assessments, general and special, ordinary and extraordinary, foreseen or unforeseen, which become due and payable against or upon the Building and/or Land. All attorneys' fees and other costs and expenses

incurred by Landlord during negotiations for or contests of the amount of Real Estate Taxes shall be included within the term "Real Estate Taxes." The term "Real Estate Taxes" shall not include (i) federal, state or local income taxes, or any other tax measured by Landlord's net income; and (ii) franchise, gift, transfer, excise, capital stock, estate, succession or inheritance taxes.

D. Estimates of Real Estate Taxes and Insurance Premiums. Prior to the Rent Commencement Date, and prior to the commencement of each calendar year thereafter during the Term of this Lease Agreement and any renewals or extensions thereof, Landlord shall estimate for the following calendar year, or portion thereof remaining, the Real Estate Taxes and Insurance Premiums payable by Tenant, as Additional Rent, during such calendar year or portion thereof to cover those charges on a current basis. Said estimates will be in writing and will be delivered or mailed to Tenant at the Premises. The Additional Rent so estimated shall be payable by Tenant in equal monthly installments, in advance, on the first day of each month during such calendar year. In the event that such estimate is delivered to Tenant after the first day of January of such calendar year, the estimated Additional Rent for that year shall be payable as Additional Rent in equal monthly installments, in advance, on the first day of each month over the balance of such calendar year, with the number of installments being equal to the number of full calendar months remaining in such calendar year after delivery of the estimate. Landlord reserves the right to adjust during the calendar year the amount of the monthly installments of Additional Rent payable hereunder if the estimated Real Estate Taxes and/or Insurance Premiums change.

E. Adjustments. Upon completion of each calendar year during the Term or any renewal or extension thereof, Landlord shall determine the actual amount of the Additional Rent for Real Estate Taxes and Insurance Premiums payable by Tenant in such calendar year and deliver a written certification of the amounts thereof to Tenant. If Tenant has underpaid the Additional Rent for Real Estate Taxes and Insurance Premiums for such calendar year, Tenant shall pay the balance thereof within ten (10) days after the receipt of such statement. If Tenant has overpaid the same, Landlord shall either (i) refund such excess, or (ii) credit such excess against the next monthly installment of Additional Rent payable by Tenant under this Article for Real Estate Taxes and Insurance Premiums. A pro rata adjustment shall be made for a fractional calendar year occurring during the Term of this Lease Agreement or any renewals or extensions thereof based upon the number of days of the Term of this Lease Agreement during said calendar year as compared to three hundred sixty-five (365) days and all additional sums payable by Tenant or credits due Tenant as a result of the provisions of this Article shall be adjusted accordingly.

F. Real Estate Tax Contests. Landlord reserves, and Tenant hereby assigns to Landlord, the sole and exclusive right to contest, protest, petition for review, or otherwise seek a reduction in the Real Estate Taxes.

## **ARTICLE 7 - TENANT'S RESPONSIBILITY, CARE OF PREMISES AND UTILITIES**

A. Maintenance and Repair. At Tenant's sole cost, Tenant shall be responsible for the maintenance and repair of the Premises (including the Building and Parking Areas), including but not limited to (i) maintenance, repair and/or replacement of entrance doors, overhead garage doors, truck dock doors, dock levelers, bumpers and seals, doors, roof, floors, exterior/interior walls and columns, and the plumbing, electrical, mechanical and heating, ventilating and air conditioning fixtures ("HVAC") of the Building, (ii) maintenance, repair and/or replacement of the Parking Areas, including sweeping and seal coating, and (iii) maintenance and replacement of the lawns and the landscaped areas.

B. Maintenance of HVAC. Maintenance of the HVAC shall specifically include the reasonable cost of semi-annual inspections performed by an independent mechanical contractor selected and retained by Tenant and approved by Landlord. A copy of each such inspection report shall be promptly delivered by Tenant to Landlord.

C. Trash and Refuse. Tenant shall provide its own dumpster for trash and store the dumpster in compliance with applicable governmental laws, ordinances, rules and regulations, and Tenant shall contract directly with a qualified trash hauler for the timely removal of all trash. Tenant shall not leave or store any materials or trash in the Parking Areas or elsewhere on the Land and shall not litter such Parking Areas and Land.

D. Snow Removal. Tenant shall be responsible for the prompt removal of snow, ice and other hazardous conditions accumulating or occurring on the sidewalks, walkways and Parking Areas.

E. Landlord's Right to Perform and/or Make Payments. If Tenant shall fail, refuse or neglect to pay any of the Operating Expenses or utilities required to be paid by Tenant under Article 6 or this Article 7 or to perform any of the

work required to be performed by Tenant under this Article 7, the Landlord may, but shall not be required to, pay or perform the same and the amount so incurred by Landlord, including attorneys' fees and expenses which have been incurred because of or in connection with such payment or work, shall be paid by Tenant to Landlord, upon the written demand of the Landlord. The payment thereof by Tenant may be collected or enforced by the Landlord as Additional Rent due upon the date when the Landlord demands payment thereof or reimbursement therefore of and from Tenant. The election of Landlord to make any payment or perform any work shall not waive the default committed by Tenant. Landlord agrees that except in the case of an emergency, Landlord will first give Tenant not less than ten (10) days' prior written notice before making any payment or performing any work.

F. Utilities. Beginning on the Rent Commencement Date, Tenant shall pay, and contract directly with the utility or other service provider, for all water, sewer, electricity, gas and all other utility or other services furnished to the Premises during the Term of this Lease Agreement and any renewals or extensions thereof, together with any related installation or connection charges or deposits (collectively, the "**Utility Costs**"). Notwithstanding foregoing, for the period beginning on the Commencement Date and ending immediately prior to the Rent Commencement Date, Tenant shall be responsible for reimbursing Landlord, as Additional Rent, for Tenant's pro rata share of the Utility Costs incurred by Landlord based on the ratio of the square footage of Suites B and C to the total square footage of the Building of 23,973 square feet.

#### **ARTICLE 8 - CAPITAL IMPROVEMENTS AND QUIET ENJOYMENT**

A. Capital Improvements. Landlord shall be responsible for all improvements to the Building which under generally accepted accounting principles, consistently applied, are required to be capitalized. Notwithstanding the foregoing, if an HVAC, plumbing, electrical or other mechanical or utility system or fixture of the Building requires replacement and same constitutes a capital improvement, then in such case the costs incurred by Landlord in replacing same together with accrued interest thereon at the rate of seven percent (7%) per annum shall be amortized in equal monthly installments over an assumed useful life of one hundred eighty (180) months and Tenant shall thereafter pay Landlord the monthly amortized amount, as Additional Rent, in advance on the first (1<sup>st</sup>) day of each and every month thereafter until the earlier to occur of (i) the expiration of the Term of this Lease Agreement, including any renewals or extensions thereof or (ii) the expiration of such useful life.

B. Quiet Enjoyment. Landlord warrants that it has full right to execute and perform this Lease Agreement and to grant the estate demised, and that Tenant, upon payment of the rents and other amounts due and the performance of all the terms, conditions, covenants and agreements on Tenant's part to be observed and performed under this Lease Agreement, may peaceably and quietly enjoy the Premises for the uses permitted hereunder, subject, nevertheless, to the terms and conditions of this Lease Agreement.

#### **ARTICLE 9 - ESTOPPEL CERTIFICATES**

Each party hereto agrees that at any time, and from time to time during the Term (but not more often than twice in each calendar year), within ten (10) days after request by the other party hereto, it will execute, acknowledge and deliver to such other party or to any prospective purchaser or Mortgagee designated by Landlord, an estoppel certificate in a form reasonably acceptable to Landlord.

#### **ARTICLE 10 - NON PERMITTED USE**

Tenant agrees not to commit or permit any act to be performed on the Premises or any omission to occur which will be in violation of any statute, regulation, or ordinance of any governmental body or which will increase the insurance rates on the Building or which will be in violation of any insurance policy carried on the Building by Landlord. Tenant, at its expense, shall comply with all governmental laws, ordinances, rules and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders, rulings and directives for the correction, prevention and abatement of any violation upon, or in connection with the Premises or Tenant's use or occupancy of the Premises, including the making of any alterations or improvements to the Premises, all at Tenant's sole cost and expense. Without limiting the scope of the foregoing provisions of this Article, Tenant's use of the Premises shall comply with all applicable requirements of the 1998 Minnesota Uniform Fire Code, as amended and as may hereafter be amended from time to time and of any replacement and/or successor law, ordinance, code or rule or

regulation, including, without limitation, the 2003 Minnesota State Fire Code, expressly including requirements relating to the types of materials that may be stored in the Premises, the storage containers that may be used, the heights such storage containers may be stacked and the separation that must exist between materials and stacks. Tenant shall not disturb other occupants of the Building by making any undue or unseemly noise or otherwise and shall not do or permit to be done in or about the Premises or Building anything which will be dangerous to life or limb. The employees of Tenant shall not be permitted, during their breaks or otherwise, to congregate or loiter in any of the areas of the Land, including the Parking Areas, entryways, hallways and landscaped areas, in such a manner that would be disruptive of the use of such Land by other occupants of the Building or that would obstruct access to, from or within the Building.

#### **ARTICLE 11 - ENVIRONMENTAL**

A. Tenant will not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept or used on the Premises in a manner or for a purpose prohibited by or which could result in liability under any Hazardous Materials Law (as defined below). Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Premises required for Tenant's use of the Premises and its operations therein and will notify Landlord in writing in advance of any and all Hazardous Materials Tenant brings upon, keeps or uses on the Premises (other than small quantities of office cleaning or other office supplies as are customarily used in the ordinary course of a general office use). On or before the expiration or earlier termination of this Lease Agreement, Tenant will, at its sole cost and expense, cause all Hazardous Materials in, on, under or about the Premises as a result of or in any way related to Tenant's use of the Premises or its operations therein, whether prior to or following the commencement date of this Lease Agreement, to be removed from the Premises in accordance and in compliance with all Hazardous Materials Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Premises, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims (as defined below) relating to or in any way connected with the Premises, without first notifying Landlord of Tenant's intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene or otherwise appropriately assert and protect Landlord's interest in the Premises.

B. Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant or the Premises and resulting from or in any way relating to Tenant's use of the Premises or its operations therein immediately after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any Claim made or threatened by any person relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (c) any reports made by any person, including Tenant, to any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings or asserted violations. Tenant will also provide Landlord, as promptly as possible and in any event within ten (10) days after Tenant first receives or sends the same, with copies of all Claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises. Upon Landlord's written request, Tenant will promptly deliver to Landlord notices of manifests reflecting the legal and proper disposal of all Hazardous Materials removed or to be removed from the Premises. All such manifests will list Tenant or its agent as a responsible party and will not attribute responsibility for any such Hazardous Materials to Landlord.

C. Subject to the provisions of Article 25 below, Landlord shall have the right, from time to time, by itself or by its agent, to enter upon the Premises for purposes of inspecting the compliance thereof, and the operations conducted thereon, with Hazardous Materials Laws, and to take such samples or perform such intrusive testing, or "Phase II" investigation, as Landlord may, in its discretion, determine; provided that any such entry, or such intrusive testing, shall not unreasonably interfere with the business operations of Tenant on the Premises. Tenant shall afford Landlord, or its agent, access to Tenant's books and records evidencing compliance with Hazardous Materials Laws, including, but not limited to, access to appropriate licenses and permits, as well as manifests or other records relative to the handling, treatment, storage, shipment, or disposal of Hazardous Materials, as required under applicable Hazardous Materials Laws. The costs incurred in exercising Landlord's rights under this Article 11 C shall be paid by Landlord unless such entry and/or testing by Landlord reveals either a violation of Hazardous Materials Laws or the presence of Hazardous Materials requiring remediation, in either which case and in addition to being responsible for all of the costs of remedying such

violation and/or remediating such Hazardous Materials, Tenant shall reimburse Landlord for the costs incurred by Landlord under this Article 11 C within thirty (30) days following Tenant's receipt of an invoice therefore.

D. Tenant acknowledges and agrees that all reporting and warning obligations required under Hazardous Materials Laws resulting from or in any way relating to Tenant's use of the Premises or its operations therein are Tenant's sole responsibility, regardless whether such Hazardous Materials Laws permit or require Landlord to report or warn.

E. With respect to all Hazardous Materials generated, used or otherwise located on the Premises, whether prior to or following the Commencement Date of this Lease Agreement, as a result of or in any way related to Tenant's use of the Premises or its operations therein, the following specific rules shall govern:

(i) Tenant shall at all times be in full compliance with all Hazardous Materials Laws. Tenant shall advise Landlord prior to the generation or handling of Hazardous Materials (other than small quantities of office cleaning or other office supplies as are customarily used in the ordinary course of a general office use). Upon request by Landlord, Tenant shall deliver to Landlord copies of all contracts, programs, management plans or certifications regarding the generation, storage, removal or disposal of Hazardous Materials which are required in order for Tenant to be in compliance with the Hazardous Materials Laws.

(ii) All Hazardous Materials located upon the Premises shall be transported therefrom, and appropriately disposed of directly by Tenant pursuant to Hazardous Materials removal contracts executed by Tenant and in compliance with all Hazardous Materials Laws.

(iii) Tenant shall, immediately upon receipt provide Landlord with copies of, and shall comply with, all Environmental Requirements.

(iv) In no event shall any Hazardous Materials be stored, handled or disposed of on the Premises other than in strict compliance herewith.

F. Tenant will indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord Parties (as defined below) from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, upon or from the Premises (including water tables and atmosphere) resulting from or in any way related to Tenant's use of the Property or its operations therein, whether prior to or following the commencement date of this Lease Agreement. Tenant's obligations under this Article 11 F include, without limitation and whether foreseeable or unforeseeable, the costs of (a) any required or necessary repair, clean-up, detoxification or decontamination of the Premises, and (b) implementing any closure, remediation or other required action in connection therewith as stated above.

G. As used herein, the following terms shall have the following meanings:

(i) "**Hazardous Materials**" means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "pollutants," "contaminants," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation now or hereafter existing, including, without limiting the generality of the foregoing, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, et seq., and the Minnesota Environmental Response and Liability Act, Minn. Stat. Chapter 115B, as any of the same may be interpreted by government offices and agencies.

(ii) “**Hazardous Materials Laws**” means any federal, state or local statutes, laws, ordinances or regulations now or hereafter existing that control, classify, regulate, list or define Hazardous Materials, or the generation, storage, transportation, treatment or disposal of Hazardous Materials.

(iii) “**Landlord Parties**” means Landlord and its property manager and their respective officers, governors, members, managers and employees.

(iv) “**Claims**” means all claims, actions, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys’ fees.

(v) “**Environmental Requirements**” means all permits, inspection reports, monitoring reports, licenses, orders, demands, compliance requests, edicts or other documentation filed, served, delivered or transmitted either with, to or from the Minnesota Pollution Control Agency, Minnesota Department of Health or the Environmental Protection Agency or any other governmental body, including Hazardous Materials Laws.

H. The obligations of Tenant under this Article shall survive the expiration or earlier termination of this Lease Agreement.

## **ARTICLE 12 - INSURANCE AND INDEMNITY**

A. Tenant’s Insurance; Indemnity. Tenant will keep in force at its own expense for so long as this Lease Agreement remains in effect commercial general liability insurance insuring Tenant, on an “occurrence” rather than a “claims made” basis, against liability for bodily injury, property damage (including loss of use of property) and personal injury, which insurance shall (i) name Landlord, its property manager and such other parties as Landlord may designate, as additional insureds, (ii) use the standard ISO CGL or equivalent form of policy and be with companies acceptable to Landlord, and (iii) have a minimum limit of liability of Five Million and 00/100ths Dollars (\$5,000,000.00). Said insurance shall also provide for contractual liability coverage. Tenant may satisfy its obligation hereunder to maintain commercial general liability insurance by Tenant’s primary policy or by such primary policy in combination with umbrella or excess policies so long as the coverage afforded is at least as broad as that required herein. The amount and coverage of such commercial general liability insurance shall not limit Tenant’s liability nor relieve Tenant of any of its obligations under this Lease Agreement. Tenant shall further maintain (i) business interruption insurance to cover a period of not less than six (6) months and (ii) if and to the extent required by law, worker’s compensation insurance. Tenant will continuously keep on deposit with Landlord for so long as this Lease Agreement remains in effect current certificate(s), and upon Landlord’s request, copies of the current policy or policies of the insurance required of Tenant under this Article, which shall provide that Landlord shall be notified in writing thirty (30) days prior to cancellation, material change, or failure to renew the insurance. Said liability insurance maintained by Tenant shall be primary without right of contribution. Liability insurance maintained by Landlord, if any, shall be excess and non-contributory. Tenant further covenants and agrees to indemnify and hold Landlord and Landlord’s property manager harmless from and defend them against all claims, liabilities, judgments, demands, causes of action, losses, damages and costs and expenses, including reasonable attorneys’ fees, for damage to any property or injury to or death of any person arising from: (i) any act or omission by Tenant, its contractors, agents, employees or invitees in, at, or around the Premises or the Building; (ii) the negligence or willful misconduct of Tenant; (iii) Tenant’s failure to comply with any and all governmental laws, rules, ordinances or regulations applicable to the use of the Premises and its occupancy; and/or (iv) any breach or default by Tenant under this Lease Agreement. Tenant’s indemnity obligations under this Article shall survive the expiration or earlier termination of this Lease Agreement. If Tenant shall not comply with its covenants made in this Article, Landlord may, at its option, cause insurance as aforesaid to be issued and in such event Tenant agrees to pay the premium for such insurance promptly upon Landlord’s demand.

B. Tenant's Casualty Insurance. Tenant shall maintain in force throughout the Term of this Lease Agreement, an ISO or equivalent form of "special perils" property insurance policy, including systems breakdown coverage upon all inventory, furnishings, equipment, trade fixtures and other personal property in or about the Premises and upon any alterations, additions, fixtures, or improvements in the Premises acknowledged by Landlord to be the property of Tenant.

C. Landlord's Casualty Insurance. Landlord shall carry and cause to be in full force and effect an ISO or equivalent form of "special perils" property insurance policy on the Building, but not on any inventory, furnishings, equipment, trade fixtures or other personal property in or about the Premises. The premiums for such insurance shall be paid by Tenant in accordance with the provisions of Article 6 above.

D. Waiver of Subrogation. Landlord and Tenant 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 any of the perils insured under an ISO or equivalent form of "special perils" property insurance policy, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

### **ARTICLE 13 - NON-LIABILITY OF LANDLORD**

Landlord will not be liable for any damage or injury to the person, business (or any loss of income therefrom), inventory, furnishings, equipment or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises, whether such damage or injury to the person or property is caused by or results from: (i) fire, steam, electricity, water, gas or rain; (ii) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (iii) conditions arising in or about the Premises or from other sources or places; (iv) any curtailment or interruption in utility services; or (v) any act or omission of any other occupant of the Building. The provisions of this Article will not exempt Landlord from liability for its gross negligence or willful misconduct; provided, however, in no event shall Landlord be liable for any consequential damages.

### **ARTICLE 14 - LOSS BY CASUALTY**

If the Building is damaged or destroyed by fire or other casualty, the Landlord shall have the right to terminate this Lease Agreement, provided it gives written notice thereof to the Tenant within ninety (90) days after such damage or destruction. If a portion of the Building is damaged by fire or other casualty, and Landlord does not elect to terminate this Lease Agreement, the Landlord shall, at its expense, restore the Building to as near the condition which existed immediately prior to such damage or destruction, as reasonably possible, and the rent shall abate during such period of time as the Building is untenable, in the proportion that the untenable portion of the Building bears to the entire Building.

### **ARTICLE 15 - CONDEMNATION LOSS**

Should all of the Premises or Building be taken in condemnation proceedings or by exercise of any right of eminent domain, then this Lease Agreement shall automatically terminate as of the date the condemning authority or the authority exercising its right of eminent domain takes possession of the Premises or Building. If there is a partial taking of the Building but Tenant continues to occupy the Building in part, the rent shall be reduced in the proportion that the unoccupied part of the Building bears to the entire Building. If, as a result of a partial taking, the Building is no longer usable for the purpose(s) specified in Article 3 of this Lease Agreement, Tenant may terminate this Lease Agreement as of the date the condemning authority or the authority exercising its right of eminent domain takes possession of the Building by giving written notice thereof to Landlord. If there is a partial taking of the Building or of the Parking Areas, Landlord may terminate this Lease Agreement as of the date specified in the foregoing sentence by giving written notice thereof to Tenant. All damages awarded for any such taking shall belong to and be the property of Landlord irrespective of the basis upon which they are awarded provided, however, that nothing contained herein shall prevent Tenant from making a separate claim to the condemning authority for its moving expenses and trade fixtures. For purposes of this Article, a taking by eminent domain shall include Landlord's giving of a deed under threat of condemnation.

## **ARTICLE 16 - ASSIGNMENT AND SUBLETTING**

A. Tenant Assignment. Tenant agrees not to assign, sublet, license, mortgage or encumber this Lease Agreement, the Premises, or any part thereof, whether by voluntary act, operation of law, or otherwise, without the specific prior written consent of Landlord in each instance. If Tenant is a corporation, partnership or other legal entity, transfer of a controlling interest of Tenant shall be considered an assignment of this Lease Agreement for purposes of this Article. Consent by Landlord in one such instance shall not be a waiver of Landlord's rights under this Article as to requiring consent for any subsequent instance. Any purported assignment, subletting, licensing, mortgaging or other transfer of this Lease Agreement or the Premises hereunder by Tenant that does not comply with the provisions of this Article shall be void. In connection with any assignment of this Lease Agreement or subletting of the Premises made or requested by Tenant, Tenant shall pay Landlord (i) a processing fee of \$500.00 and (ii) all out-of-pocket costs incurred by Landlord, including reasonable attorneys' fees. In the event Tenant desires to sublet a part or all of the Premises, or assign this Lease Agreement, Tenant shall give written notice to Landlord at least thirty (30) days prior to the proposed subletting or assignment, which notice shall state the name of the proposed subtenant or assignee and the terms of any sublease or assignment documents and shall include copies of financial statements or other relevant financial information of the proposed subtenant or assignee. Any rents and other consideration received by Tenant from an assignment of this Lease Agreement or subletting of the Premises which exceed the rents then payable by Tenant under this Lease Agreement shall be immediately paid by Tenant to Landlord as Additional Rent hereunder. At Landlord's option following a default by Tenant under this Lease Agreement, any and all payments by the subtenant with respect to the sublease shall be paid directly to Landlord. In any event no assignment or subletting shall release Tenant of its obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the Term of this Lease Agreement. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. At Landlord's option, Landlord may terminate this Lease Agreement in lieu of giving its consent to any proposed assignment of this Lease Agreement or subletting of all of the Premises (which termination may be contingent upon the execution of a new lease with the proposed assignee or subtenant).

B. Landlord Assignment. Landlord's right to assign this Lease Agreement is and shall remain unqualified upon any sale or transfer of the Building and Premises and, provided the purchaser succeeds to the interests of Landlord under this Lease Agreement, Landlord shall thereupon be entirely freed of all obligations of the Landlord's hereunder and shall not be subject to any liability resulting from any act or omission or event occurring after such conveyance.

## **ARTICLE 17 - MECHANICS' LIEN**

In the event any mechanic's lien shall at any time be filed against the Premises or Building by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record. If Tenant shall fail to cause such lien forthwith to be discharged within fifteen (15) days after being notified of the filing thereof, then, in addition to any other right or remedy for Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding, and the amount so paid by Landlord and all costs and expenses, including reasonable attorneys' fees incurred by Landlord in procuring the discharge of such lien, shall be due and payable in full by Tenant to Landlord on demand.

## **ARTICLE 18 - (INTENTIONALLY OMITTED)**

## **ARTICLE 19 - SURRENDER**

On the last day of the Term or upon the sooner termination thereof, Tenant shall peaceably vacate and surrender possession of the Premises in good condition and repair consistent with Tenant's duty to make repairs as provided in Article 7 hereof. On or before the last day of the Term or the sooner termination thereof, Tenant shall at its expense remove all of its furnishings, equipment and other personal property from the Premises, repairing any damage caused thereby, and any property not so removed shall be deemed abandoned. At the election of Landlord, all alterations, additions and fixtures, other than Tenant's trade fixtures, which have been made or installed by either Landlord or Tenant upon the Premises shall remain as Landlord's property and shall be surrendered with the Premises as a part thereof, or Landlord may require removal of the same at the end of the Term or upon the sooner termination thereof, in which event Tenant shall repair any damage caused thereby. It is specifically agreed that any and all telephonic, coaxial, ethernet, or other computer, wordprocessing, facsimile, or

electronic wiring installed for or by Tenant within the Premises (hereafter, "**Wiring**") shall be removed at Tenant's cost using a qualified contractor at the expiration of the Term, unless Landlord has specifically requested in writing that said Wiring shall remain, whereupon said Wiring shall be surrendered with the Premises as Landlord's property. If the Premises are not vacated and surrendered at the end of the Term or sooner termination thereof, Tenant shall indemnify Landlord against any and all loss, cost, damage, liability and expense resulting from delay by Tenant in so vacating and surrendering the Premises, including, without limitation, claims made by any succeeding tenant founded on such delay, which indemnity obligation shall survive the expiration or earlier termination of this Lease Agreement. Tenant shall promptly surrender all keys for the Premises to Landlord.

#### **ARTICLE 20 - HOLDING OVER**

Tenant will, at the expiration of this Lease Agreement, whether by lapse of time or termination, vacate and surrender immediate possession of the Premises to Landlord. If Tenant fails to vacate and surrender possession of the Premises, the Landlord may, at its option, serve written notice upon Tenant that such holdover constitutes the creation of a month-to-month tenancy. If Landlord does not give said notice, Tenant's holdover shall create a tenancy at sufferance. In any event, the tenancy shall be upon the terms and conditions of this Lease Agreement, except that the Minimum Rent shall be double the Minimum Rent Tenant was obligated to pay Landlord under this Lease Agreement immediately prior to expiration (in the case of tenancy at sufferance such Minimum Rent shall be prorated on the basis of a 365 day year for each day Tenant remains in possession); excepting further that in the case of a tenancy at sufferance, no notices shall be required prior to commencement of any legal action to regain possession of the Premises. The provisions of this Article shall not constitute a waiver by Landlord of any right of re-entry as otherwise available to Landlord; nor shall receipt of any rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to terminate this Lease Agreement for a breach by Tenant hereof.

#### **ARTICLE 21 - DEFAULT OF TENANT**

If any one or more of the following occurs: (1) a rent payment or any other payment due from Tenant to Landlord shall be and remain unpaid in whole or in part for more than ten (10) days after same is due and payable; (2) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein or in any other agreement between Landlord and Tenant relating to the Premises and such violation or default shall continue for a period of thirty (30) days after written notice from Landlord of such violation or default; (3) if Tenant or any guarantor of this Lease Agreement shall commence or have commenced against Tenant or any guarantor proceedings under a bankruptcy, receivership, insolvency or similar type of action; or (4) if Tenant shall vacate any substantial portion of the Premises for a period of more than fifteen (15) days; then it shall be optional for Landlord, without further notice or demand, to cure such default or to declare this Lease Agreement forfeited and the said Term ended, or to terminate only Tenant's right to possession of the Premises, and to re-enter the Premises, subject to applicable law, and Landlord shall not be liable for damages by reason of such forfeiture or re-entry; but notwithstanding re-entry by Landlord or termination only of Tenant's right to possession of the Premises, the liability of Tenant for the rent and all other sums provided for herein shall not be relinquished or extinguished for the balance of the Term of this Lease Agreement and Landlord shall be entitled to periodically sue Tenant for all sums due under this Lease Agreement or which become due prior to judgment, but such suit shall not bar subsequent suits for any further sums coming due thereafter. Tenant shall be responsible for, in addition to the rentals and other sums agreed to be paid hereunder, the cost of any necessary maintenance, repair, restoration, reletting (including related cost of removal or modification of tenant improvements) or cure as well as reasonable attorneys' fees incurred or awarded in any suit or action instituted by Landlord to enforce the provisions of this Lease Agreement, regain possession of the Premises or the collection of the rentals due Landlord hereunder. Tenant shall also be liable to Landlord for the payment of a late charge in the amount of ten percent (10%) of the rental installment or other sum due Landlord hereunder if said payment has not been received within ten (10) days from the date said payment becomes due and payable. Tenant agrees to pay interest at the rate of twelve percent (12%) per annum or the maximum permissible rate under the applicable usury statutes, whichever is less, on all rentals and other sums due Landlord hereunder not paid within ten (10) days from the date the same becomes due and payable. Each right or remedy of Landlord provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement now or hereafter existing at law or in equity or by statute or otherwise.

#### **ARTICLE 22 - DEFAULT OF LANDLORD**

Landlord shall not be deemed to be in default under this Lease Agreement until the Tenant has given Landlord written notice specifying the nature of the default and Landlord does not cure such default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such a character as to reasonably require more than thirty (30) days to cure.

### **ARTICLE 23 - ALTERATIONS**

Tenant will not make any alterations, repairs, additions or improvements in or to the Premises (for purposes of this Article, any of the foregoing being referred to as the “**Work**”) or add, disturb or in any way change any plumbing, wiring, life/safety or mechanical systems, locks, or structural portions of the Building without the prior written consent of the Landlord as to the character of the Work, the manner of doing the Work, and the contractor(s) doing the Work. As a condition to Landlord’s consent to Work proposed by Tenant, Landlord may impose such conditions with respect thereto as Landlord deems appropriate, including, without limitation, requiring Tenant to furnish surety performance and/or payment bonds or other security for the payment of all costs incurred in connection with such Work, insurance against liabilities that may arise out of such Work, plans and specifications subject to approval by Landlord and permits necessary for such Work. If such Work is performed by contractor(s) not retained by Landlord, Tenant shall upon completion of such Work, (i) deliver to Landlord evidence that payment for all such Work has been made by Tenant, contractors’ affidavits and full and final mechanic’s lien waivers and (ii) pay to Landlord a construction supervision fee of five percent (5%) of the total cost of such Work, but in no event less than \$500.00 to reimburse Landlord for the costs incurred by its construction manager in inspecting and supervising such Work. All such Work shall be done in a good and workmanlike manner using quality materials and shall comply with all applicable governmental laws, ordinances, rules and regulations. Tenant agrees to indemnify and hold Landlord free and harmless from any liability, loss, cost, damage or expense (including attorney's fees) by reason of any of such Work. The provisions of Article 17 of this Lease Agreement shall apply to all Work performed under this Article.

### **ARTICLE 24 - SIGNAGE**

No signage of any type or description shall be erected, placed or painted in or about the Premises or Building which is visible from the exterior of the Premises unless (i) a rendering of such signage has first been submitted to, and approved by Landlord in writing, (ii) such signage is in conformance with Landlord’s sign criteria established for the Building, if any and (iii) such signage is in compliance with all applicable governmental laws, ordinances, rules and regulations, expressly including those of the City. Tenant agrees to maintain its signage in good repair, and to hold Landlord harmless from any loss, cost, or damages resulting from the erection, existence, maintenance, or removal of the signage. Landlord may without notice enter the Premises at any time and, at the expense of Tenant, remove unauthorized signs without liability for damages.

### **ARTICLE 25 - ENTRY**

Tenant agrees that no additional locks will be placed on any of the doors to the Premises without the written consent of Landlord. Landlord and its employees, agents and contractors shall have the right, upon reasonable verbal notice to Tenant at the Premises (except that no notice need be given in the case of an emergency) and without any diminution of rent or other charges payable hereunder by Tenant, to enter the Premises at all reasonable times to inspect, to conduct environmental tests, to make repairs, to exhibit the Premises to existing and prospective Mortgagees and prospective purchasers, to maintain the Building, and during the last twelve (12) months of the Term of this Lease Agreement or if Tenant has vacated the Premises, to exhibit the Premises to prospective tenants and to place upon the doors or in the windows of the Premises any usual or ordinary "For Lease" signs.

### **ARTICLE 26 - SUBORDINATION**

It is mutually agreed that this Lease Agreement shall be subordinate to any and all mortgages, including any renewals, modifications, consolidations, replacements and extensions thereof now or hereafter imposed on the Premises by Landlord, provided the mortgagee (“**Mortgagee**”) named in any such mortgage shall agree to recognize this Lease Agreement (other than Article 31 A) and not disturb Tenant’s rights hereunder in event of foreclosure so long as the Tenant is not in default under this Lease Agreement. This subordination and non-disturbance shall be self-operative and no further certificate or instrument of subordination need be required by any Mortgagee of Landlord. In the event Landlord's Mortgagee wishes to waive the subordination right set forth in this Article, then upon written notice to Tenant, this Lease shall be deemed prior in

encumbrance to said mortgage. In confirmation of such subordination or priority, Tenant shall, within ten (10) days of Tenant's receipt thereof, execute and deliver any instrument, as required by Landlord's Mortgagee.

## **ARTICLE 27 - (INTENTIONALLY OMITTED)**

## **ARTICLE 28 - PATRIOT ACT**

Tenant represents to Landlord, and Landlord represents to Tenant, that the representing party is not (and such party is not engaged in this transaction on behalf of) a person or entity with which either party is prohibited from doing business pursuant to any law, regulation or executive order pertaining to national security ("**Anti-Terrorism Laws**") and; such party has not violated and, to the best of such party's knowledge it is not under investigation for, the violation of any Anti-Terrorism Laws pertaining to money laundering. "Anti-Terrorism Laws", as referenced above, shall specifically include, but shall not be limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56 (aka, the USA Patriot Act); Executive Order 13224; the Bank Secrecy Act, 31 U.S.C. Section 5311 et. Seq.; the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. Seq.; the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. Seq.; sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control ("OFAC"), as well as laws related to the prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

## **ARTICLE 29 - OPTION TO EXTEND TERM**

A. Subject to the provisions of Article 29 B below and provided this Lease Agreement or Tenant's right of possession hereunder has not been earlier terminated, Tenant shall have the right to extend the Term of this Lease Agreement as to all, but not less than all, of the Premises being leased hereunder, for up to two (2) consecutive periods of three (3) years each, with the first such period beginning immediately following the end of the initial Term (each an "**Extended Term**" and the "**First**" and "**Second**" Extended Terms, respectively) subject to the following terms and conditions:

(i) Tenant shall give written notice to Landlord of the exercise of Tenant's right to extend the Term of this Lease Agreement no later than nine (9) months prior to the commencement of the applicable Extended Term, time being of the essence (the "**Renewal Notice**"). If no such Renewal Notice is timely given, this Lease Agreement shall terminate as of the end of the initial Term for First Extended Term, as applicable;

(ii) Tenant shall not be in default under this Lease Agreement beyond the passage of any applicable period of cure, grace or notice at the time of giving the Renewal Notice or at any time thereafter to and including the commencement of the applicable Extended Term; and

(iii) The extension of the Term hereunder for the applicable Extended Term shall be on the same terms and conditions as are applicable to the initial Term; provided, however, (i) Tenant shall have no further right to extend the Term of this Lease Agreement beyond the end of the Second Extended Term and (ii) the Minimum Rent payable by Tenant to Landlord in monthly installments during the applicable Extended Term shall be the Market Rent (as defined in Article 30 below) as reasonably determined by Landlord. Within ten (10) days following receipt of Tenant's Renewal Notice, but at Landlord's option no earlier than nine (9) months prior to the commencement of the applicable Extended Term, Landlord shall notify Tenant of Landlord's determination of the Market Rent for such Extended Term ("**Landlord's Market Rent Determination**"). If Tenant disagrees with Landlord's Market Rent Determination for such Extended Term, the parties shall negotiate in good faith for a period of twenty (20) days following receipt by Tenant of Landlord's Market Rent Determination as to the Minimum Rent payable during such Extended Term. If the parties are unable to agree in writing on the Minimum Rent payable during such Extended Term within said twenty (20) day period, Tenant shall have the right to rescind the giving of the Renewal Notice by giving written notice of rescission to Landlord no later than five (5) days following the end of said twenty (20) day period, time being of the essence (the "**Rescission Notice**"), in which event the giving of the Renewal Notice shall be deemed rescinded and this Lease Agreement shall expire as of the end of the initial Term or the First Extended Term, as applicable. In the event such Rescission Notice is not timely given, the Renewal Notice shall remain in full force and effect and the Minimum Rent payable during the applicable Extended Term shall be as set forth in Landlord's Market Rent Determination.

B. It is acknowledged and agreed by the parties that the right of Tenant to extend the Term of this Lease Agreement under Article 29 A above is personal to Wayzata Independent School District No. 284 (hereafter the “**Original Tenant**”) and should said Original Tenant either assign this Lease Agreement or sublet all or any part of the Premises to any person or entity, Article 29 A above shall automatically become null and void and of no further force or effect.

### **ARTICLE 30 - MARKET RENT**

For purposes of Article 29 above, “**Market Rent**” shall be the annual net rental rate per square foot of rentable area which a tenant renewing its lease would agree to pay, and a landlord would agree to accept, as of the date in question, for the term in question, for the space in question in its then existing condition, assuming reasonably prudent persons, each being fully knowledgeable in all the facts, and each being willing to deal but neither being under any compulsion to deal, and assuming a lease containing all of the terms, covenants and conditions of this Lease Agreement. Such Market Rent shall be based on prevailing rental rates being charged to tenants in comparable buildings in the Minneapolis-St. Paul west suburban area, including the Building. Market Rent shall be determined giving due consideration to whether or not improvement allowances, Leasing Commissions or other lease concessions (collectively, the “**Lease Concessions**”) are then customarily being offered in connection with the renewal of existing leases, it being the intention of the parties that Landlord shall provide Lease Concessions that are consistent with and determined contemporaneously with the determination of Market Rent.

### **ARTICLE 31 - RIGHT OF FIRST OFFER TO PURCHASE**

A. Subject to the provisions of Articles 31 B and 31 C below, Tenant shall have the following right of first offer to purchase the Premises (including the Building, Land and Parking Areas) from Landlord (the “**Tenant’s First Offer Right**”). In the event Landlord elects to sell the Premises and provided Tenant is not in default under this Lease Agreement beyond the passage of any applicable period of cure, grace or notice and is in possession of the Premises under this Lease Agreement, Landlord shall notify Tenant in writing of Landlord’s intent to sell (“**Landlord’s Notice**”) and the sales price at which Landlord will sell the Premises to any bona fide, non-affiliated third party (the “**Sales Price**”). Tenant shall have a period of fifteen (15) days following its receipt of Landlord’s Notice to elect to purchase the Premises from Landlord at the Sales Price by giving written notice of such election to Landlord, time being of the essence (“**Tenant’s Notice**”). If Tenant’s Notice is timely given by Tenant, the parties shall in good faith enter into a definitive purchase agreement providing for the purchase of the Premises by Tenant from Landlord at the Sales Price with customary earnest money and title examination, and the closing shall occur no later than forty-five (45) days following Tenant’s Notice. If either Tenant’s Notice is not timely given by Tenant or Tenant fails to close on its purchase of the Premises within said forty-five (45) day period, then in either such case, Landlord may proceed to sell the Premises to any third party so long as the purchase price paid by such third party is not less than ninety percent (90%) of the Sales Price set forth in Landlord’s Notice and in such event, Tenant shall have no further right under this Article 31 to purchase the Premises and Tenant’s First Offer Right hereunder shall become null and void and of no further force or effect. On the other hand, in the event Landlord intends to sell the Premises to a third party at less than ninety percent (90%) of the Sales Price set forth in Landlord’s Notice, Tenant’s First Offer Right hereunder shall remain in full force and effect and Landlord shall re-offer to sell the Premises to Tenant in accordance with the foregoing provisions of this Article 31 A. Notwithstanding anything in this Article 31 A to the contrary, Tenant’s First Offer Right hereunder shall not apply to, and Landlord may without having to comply with the foregoing provisions of this Article 31 A, convey the Building from time to time to one or more of the members of Landlord or an entity controlled by such member(s) or to an Affiliate of Landlord; provided, however, that any such transferee is bound by, and must comply with, the provisions of this Article 31. As used hereunder, an “**Affiliate of Landlord**” shall be deemed to be any entity which either controls, is controlled by or is under common control with Landlord, with “control” meaning the power to direct the management and policies, directly or indirectly, through the ownership of voting membership or other ownership interests. Nothing in this Article 31 A shall be construed so as to require the Landlord to elect to sell the Premises and give a Landlord’s Notice hereunder.

B. It is acknowledged and agreed by the parties that Tenant’s First Offer Right under Article 31 A above is personal to Original Tenant and should said Original Tenant either assign this Lease Agreement or sublet all or any of the Premises to any person or entity, Article 31 A above and Tenant’s First Offer Right thereunder shall automatically become null and void and of no further force or effect.

C. Notwithstanding anything in Article 31 A to the contrary, Tenant's First Offer Right thereunder shall be, and hereby is made subordinate and inferior to any and all mortgages, including any renewals, modifications, consolidations, replacements and extensions thereof now or hereafter imposed on the Premises by Landlord. In the event the Mortgagee under any such mortgage or its assign shall acquire ownership of the Premises by foreclosure of its mortgage or deed in lieu thereof, Article 31 A above and Tenant's First Offer Right thereunder shall automatically become null and void and of no further force or effect.

## **ARTICLE 32 - GENERAL**

This Lease Agreement does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of lessor and lessee. No waiver of any default by a party hereunder shall be implied from any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The covenants of Tenant to pay the Minimum Rent and the Additional Rent are each independent of any other covenant, condition, provision or agreement contained in this Lease Agreement. The marginal or topical headings of the several paragraphs and clauses are for convenience only and do not define, limit or construe the contents of such paragraphs or clauses. All preliminary negotiations are merged into and incorporated in this Lease Agreement. This Lease Agreement can only be modified or amended by an agreement in writing signed by the parties hereto. All provisions hereof shall be binding upon the heirs, successors and assigns of each party hereto. The place at which Tenant is to pay all rent shall be designated in a separate writing from Landlord. This Lease Agreement shall be construed under the laws of the State of Minnesota. If Tenant is a legal entity, each individual executing this Lease Agreement on behalf of said entity represents and warrants that s/he is duly authorized to execute and deliver this Lease Agreement on behalf of said entity in accordance with a duly adopted resolution of the governing body of said entity or in accordance with the organizational documents of said entity, and that this Lease Agreement is binding upon said entity in accordance with its terms. No receipt or acceptance by Landlord from Tenant of less than the monthly rent herein stipulated shall be deemed to be other than a partial payment on account for any due and unpaid stipulated rent; no endorsement or statement of any check or any letter or other writing accompanying any check or payment of rent to Landlord shall be deemed an accord and satisfaction, and Landlord may accept and negotiate such check or payment without prejudice to Landlord's rights to (i) recover the remaining balance of such unpaid rent or (ii) pursue any other remedy provided in this Lease Agreement. Neither party shall record this Lease Agreement or any memorandum thereof, and any such recordation shall be a breach of this Lease Agreement, void and without effect. Time is of the essence with respect to the due performance of the terms, covenants and conditions herein contained.

## **ARTICLE 33 - NOTICES, DEMANDS AND OTHER COMMUNICATIONS**

All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms of this Lease Agreement shall be in writing (unless a provision of this Lease Agreement shall expressly provide for verbal notice) and shall be deemed to have been properly given if: (a) with respect to Tenant, they are (i) deposited in the U.S. mails, certified mail with return receipt requested and postage prepaid, (ii) deposited with a reputable courier service for delivery no later than the next business day, or (iii) delivered by hand, in each case addressed to Tenant at the address for the Premises; and (b) with respect to Landlord, they are (i) deposited in the U.S. mails, certified mail with return receipt requested and postage prepaid, (ii) deposited with a reputable courier service for delivery no later than the next business day, or (iii) delivered by hand, in each case addressed to Landlord at the following address along with a copy to any Mortgagee, if Tenant has been advised of the address for such Mortgagee, delivered in the same manner to:

Zoltar Investment Group, LLC  
Attn: Phil Lamers  
12935 16<sup>th</sup> Avenue North  
Plymouth, MN 55441;

provided however that in no event shall Minimum Rent or Additional Rent be deemed to have been paid or delivered until actually received by Landlord. Tenant shall have the right to designate one (1) additional address to which copies of all

notices and other written communications to the Tenant pursuant to this Article shall be sent. Landlord and Tenant shall each have the right from time to time to specify as its address for purposes of this Lease Agreement any other address in the United States of America upon fifteen (15) days' written notice thereof, similarly given, to the other party and any Mortgagee. Landlord's property manager and attorneys are authorized to send notices and other written communications to Tenant on behalf of Landlord.

#### **ARTICLE 34 - SECURITY DEPOSIT**

Upon the execution hereof, Tenant agrees to pay Landlord the sum of \$13,000.00 (the "**Security Deposit**") to guarantee the payment of rent and the performance by Tenant of all the terms and provisions of this Lease Agreement. Such amount held as a Security Deposit shall bear no interest. Upon the occurrence of any default under this Lease Agreement by Tenant, Landlord may use said Security Deposit to the extent necessary to cure such default, whether rent or otherwise. Any remaining balance of said Security Deposit shall be returned to Tenant upon compliance with the terms and provisions of this Lease Agreement, including, without limitation, Article 19 hereof. Tenant understands that its potential liability under this Lease Agreement is not limited to the amount of the Security Deposit. Use of such Security Deposit by Landlord shall not constitute a waiver, but is in addition to any other remedies available to Landlord under this Lease Agreement and under law. Upon the use of all or any part of the Security Deposit to cure any default of Tenant, Tenant shall forthwith deposit with Landlord the amount of Security Deposit so used. In the event of any rightful and permitted assignment of Tenant's interest in this Lease Agreement, the Security Deposit shall be deemed to be held by Landlord as a deposit made by the assignee, and Landlord shall have no further liability to the assignor with respect to the return of the Security Deposit.

#### **ARTICLE 35 - BROKERAGE**

Each of the parties represents and warrants that except only as may be provided below in this Article, there are no claims for brokerage commissions or finder's fees (collectively "**Leasing Commissions**") in connection with this Lease Agreement, and agrees to indemnify the other party against, and hold it harmless from all liabilities arising from any claim for Leasing Commissions asserted by a broker, agent or other person or entity claiming through the indemnifying party, including without limitation, reasonable attorneys' fees incurred in connection therewith. Landlord agrees to pay any Leasing Commission payable to Landlord's broker, The C. Chase Company on account of this Lease Agreement. Landlord further agrees to pay a Leasing Commission to Tenant's broker, Cushman & Wakefield/NorthMarq pursuant to a separate written agreement with said broker.

#### **ARTICLE 36 - EXCULPATION**

Tenant agrees to look solely to Landlord's interest in the Building and Premises for the recovery of any judgment from Landlord, it being agreed that Landlord and Landlord's partners, whether general or limited (if Landlord is a partnership) or its directors, governors, officers, managers, members or shareholders (if Landlord is a limited liability company or corporation), shall never be personally liable for any such judgment.

#### **ARTICLE 37 - SUBMISSION**

Submission of this Lease Agreement by Landlord to Tenant for examination and/or execution shall not in any manner bind Landlord and no obligations on Landlord shall arise under this Lease Agreement unless and until this Lease Agreement is fully signed and delivered by Landlord and Tenant; provided, however, the execution and delivery by Tenant of this Lease Agreement to Landlord shall constitute an offer by Tenant of the terms, covenants and conditions contained in this Lease Agreement, which offer may not be revoked for a period of thirty (30) days after such delivery.

*[signature page follows]*

**IN WITNESS WHEREOF** this Lease Agreement has been duly executed by the parties hereto as of the day and year indicated above.

**TENANT:**

**WAYZATA INDEPENDENT SCHOOL DISTRICT NO. 284**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**LANDLORD:**

**ZOLTAR INVESTMENT GROUP, LLC**

By: \_\_\_\_\_

Name: Phil Lamer

Title: President

**EXHIBITS**

Exhibit A..... Site Plan

**EXHIBIT A**

**Site Plan**

(to be supplied)

**WAYZATA PUBLIC SCHOOLS**

Independent School District 284  
Wayzata, Minnesota

**BOARD OF EDUCATION**

**Special Meeting – February 24, 2014**

**AGENDA SECTION: BUSINESS AND FINANCE**

**ITEM: Award: Multi-Site Gymnasium Floor Replacement Bid 2014 Project**

**COMMENTS BY: Mr. Jim Westrum, Executive Director of Business & Finance**

**AWARD - Multi-Site Gym Floor Replacement 2014 Project**

A proposal was received for the Multi-Site Gym Floor Replacement project on Thursday, February 6, 2014 from Kiefer Specialty Flooring.

The scope of the project includes removal of existing carpet flooring, including any asbestos (if applicable), installation of new resilient athletic flooring, and adjustment of new flooring to existing doors and gym dividing walls at Birchview, Gleason Lake and Plymouth Creek Elementary Schools.

The quote received is based on pricing through National Joint Powers Agreement (NJPA):

|  |                     |
|--|---------------------|
| Base Quote A: Plymouth Creek Elementary School | \$115,815.00        |
| Base Quote B: Gleason Lake Elementary School   | \$112,690.00        |
| Base Quote C: Birchview Elementary School      | <u>\$ 97,630.00</u> |
| Total Contract Amount                          | \$326,135.00        |

This project will use Alternative Facilities funding. Please see the attached proposal and recommendation from Wold Architects and Engineers.

**RECOMMENDED ACTION:** Approve and Award the Multi-Site Gym Floor Replacement Project to Kiefer Specialty Flooring for the base quotes in the amounts of \$115,815.00 for Quote A, \$112,690.00 for Quote B, and \$97,630.00 for Quote C, for a total contract amount of \$326,135.00.

Motion by: \_\_\_\_\_ Yes \_\_\_\_\_ Passed \_\_\_\_\_

Second by: \_\_\_\_\_ No \_\_\_\_\_ Failed \_\_\_\_\_

Abstentions: \_\_\_\_\_



architects  
engineers  
www.woldae.com

305 St. Peter Street  
St. Paul, MN 55102

tel 651.227.7773  
fax 651.223.5646  
mail@woldae.com

February 18, 2014

Joe Matson  
Independent School District #284  
Wayzata Public Schools  
17305 19<sup>th</sup> Avenue North  
Plymouth, Minnesota 55447

Re: Independent School District #284  
Multi-Site Gym Floor Replacement  
Commission No.: 132263

Dear Joe:

We request that the following recommendation be presented to the school board for the award of the Birchview, Gleason Lake, and Plymouth Creek Elementary School Gym Floor Replacement project. On February 6<sup>th</sup>, 2014 a proposal was received for the Multi-Site Gym Floor Replacement project; see attached proposal.

The Multi-Site Gym Floor Replacement project is scheduled to be completed the summer of 2014. The work will include:

- Removal of existing carpet flooring, including any asbestos (if applicable)
- Installation of new resilient athletic flooring
- Adjustment of new flooring to existing doors and gym dividing walls

The quote received is based on prices established through the National Joint Powers Agreement (NJPA) and are in line with projects that occurred last year.

|  |              |
|--|--------------|
| Base Quote A: Plymouth Creek Elementary School | \$115,815.00 |
| Base Quote B: Gleason Lake Elementary School   | \$112,690.00 |
| Base Quote C: Birchview Elementary School      | \$97,630.00  |

Based on the above quotes, we recommend that the district award a contract for construction on all base quotes (A, B, & C) to Kiefer Specialty Flooring, Inc. 2910 Falling Waters Blvd Lindenhurst, IL 60046 as follows:

|                                  |                           |
|----------------------------------|---------------------------|
| Plymouth Creek Elementary School | <b>\$115,815.00</b>       |
| Gleason Lake Elementary School   | <b>\$112,690.00</b>       |
| Birchview Elementary School      | <b><u>\$97,630.00</u></b> |
| <b>Total Contract Amount:</b>    | <b>\$326,135.00</b>       |

Minnesota  
Illinois  
Michigan  
Colorado  
Iowa

Letter to Joe Matson  
Page Two

Upon your notice, we will provide notice to the contractor and draft a contract reflecting this amount.

Sincerely,

WOLD ARCHITECTS AND ENGINEERS

A handwritten signature in black ink, appearing to read "Gregory R. Dehler", with a long horizontal line extending to the right.

Gregory R. Dehler // AIA, LEED AP  
Associate

Enclosure

cc: Jim Westrum, ISD #284  
Jon Deutsch, ISD #284  
Valerie Peterson, Wold  
Jon Huffmaster, Wold

KL/ISD\_284/132263/crsp/feb14

QUOTE FORM

MULTI SITE GYM FLOOR REPLACEMENT 2014

QUOTE TO:

Independent School District #284
c/o Wold Architects and Engineers
305 St. Peter Street
St. Paul, Minnesota 55102
Attn: Jon Huffmaster
jhuffmaster@woldae.com

- 1. Dealer agrees to complete the Project on June 27, 2014, July 22, 2014, and August 8, 2014. It is anticipated the building will be ready for Owner on June 8, 2014.
2. I acknowledge receipt of Addendum Nos. 1 - 02/04/2014
3. Quotes are to be submitted with unit prices and stated quote amount for each group as indicated on the individual groups' Quote Forms.
4. Each quote includes all costs for appropriate required items including all necessary material, overhead, profit and applicable taxes, freight, handling, and installation. (School Districts are tax exempt).
5. Furnishings are to be shipped directly and installed at the Birchview Elementary, Gleason Lake Elementary, and Plymouth Creek Elementary in Plymouth, Minnesota. The Dealer will be responsible for removal and disposal of all cartons, debris, etc. from the job site.
6. Dealer is to submit custom finish samples and shop drawings to Architect for approval prior to fabrication on those items noted in the project manual.
7. Return completed quote form to Wold Architects and Engineers on or before February 6, 2014 at 3:00pm.
8. Owner reserves the right to add or delete items based upon unit pricing.
9. I understand this quote may not be withdrawn for a period of thirty (30) days from the date quotes are due.
A. Base Quote A:
1. The Quoter/Dealer agrees to perform all work prior to June 27, 2014 including General Construction at Plymouth Creek Elementary for the Base Bid Sum of:
One Hundred Fifteen Thousand, Eight Hundred Fifteen----Dollars \$ 115,815.00^1
B. Base Quote B:
1. The Quoter/Delaer agrees to perform all work prior to July 22, 2014 including General Conditions at Gleason Lake Elementary for the Base Sum of:
One Hundred Twelve Thousand, Six Hundred Ninety----- Dollars \$ 112,690.00^2
C. Base Quote C:
1. The Quoter/Dealer agrees to perform all work prior to August 8, 2014 including General Conditions at Birchview Elementary for the Base Sum of:
Ninety-Seven Thousand, Six Hundred Thirty----- Dollars \$ 97,630.00^3
D. Alternate No. 1: Liquidated Damages
1. The quoter agrees to add to or deduct from the base bid sum the following amounts to perform the alternate work described in Section 01 23 00, including all associated costs.
XXXXXX No Change if Notice to Proceed Rec'd by 3/1/14 Dollars \$ 0.00

1 If Door Cutting is not Needed, DEDUCT <\$1,500.00> from Plymouth Creek Bid.
2 If Door Cutting is not Needed, DEDUCT <\$1,700.00> from Gleason Lake Bid.
3 If Door Cutting is not Needed, DEDUCT <\$700.00> from Birchview Bid.

DATE February 5, 2014

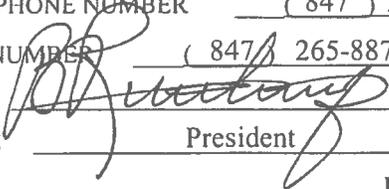
FIRM NAME Kiefer Specialty Flooring, Inc.

OFFICIAL ADDRESS 2910 Falling Waters Blvd.

Lindenhurst, IL 60046

TELEPHONE NUMBER ( 847 ) 245-8450

FAX NUMBER ( 847 ) 265-8877

BY  Brion Rittenberry

TITLE President

END OF SECTION 00 41 15

**WAYZATA PUBLIC SCHOOLS**

Independent School District 284  
Wayzata, Minnesota

**BOARD OF EDUCATION**

**Special Meeting – February 24, 2014**

**AGENDA SECTION: BUSINESS AND FINANCE**

**ITEM: Bid Award: Oakwood Elementary School 2014 Mechanical Upgrades Equipment Package**

**COMMENTS BY: Mr. Jim Westrum, Executive Director of Business & Finance**

**BID AWARD - Oakwood Elementary School 2014 Mechanical Upgrades Equipment Package**

The bid opening for Oakwood Elementary School 2014 Mechanical Upgrades Equipment Package was held at the Administration Building on February 18, 2014 at 2:00 PM.

The scope of the project includes the mechanical equipment main air handling units and the induction displacement air units for the classrooms. The equipment will become part of the overall 2014 Oakwood Mechanical Upgrades project and was bid separate from the general construction package in order to insure that the equipment will be available on site at the beginning of the summer construction period.

Trane Inc. submitted the lowest base bid “A” for the Air Handling Units in the amount of \$103,975 and Midwest Mechanical Solutions submitted the lowest base bid “B” for the Induction Displacement Units in the amount of \$166,900. This bid will be funded using Alternative Facilities. Please see the attached bid tabulation and recommendation from Wold Architects and Engineers..

**RECOMMENDED ACTION:** Approve the BID AWARD - Oakwood Elementary School 2014 Mechanical Upgrades Award the Oakwood Elementary School 2014 Mechanical Upgrades Equipment Package to Trane Inc. for base bid “A” in the amount of \$103,975 and to Midwest Mechanical Solutions for the base bid “B” in the amount of \$166,900.

Motion by: \_\_\_\_\_ Yes \_\_\_\_\_ Passed \_\_\_\_\_

Second by: \_\_\_\_\_ No \_\_\_\_\_ Failed \_\_\_\_\_

Abstentions: \_\_\_\_\_



February 20, 2014

Joe Matson  
Independent School District #284  
Wayzata Public Schools  
17305 19<sup>th</sup> Avenue North  
Plymouth, Minnesota 55447

305 Saint Peter Street  
Saint Paul, MN 55102

tel 651 227 7773  
fax 651 223 5646  
mail@woldae.com

Re: Independent School District #284  
Oakwood Elementary School 2014 Mechanical Equipment Upgrades Equipment Package  
Commission No.: 132193E

Dear Joe:

We request that the following recommendation be presented to the school board for the award of the Oakwood Elementary School 2014 Mechanical Equipment Upgrades Equipment Package. On February 18, 2014, three bids were received for the Oakwood Elementary School 2014 Mechanical Equipment Upgrades Equipment Package. The bids received reflect fair value and are within the budget set for the project. We have attached a tabulation of the bids for your reference.

The bids received are only for the mechanical equipment main air handling units, and the induction displacement air units for the classrooms. This equipment will become part of the overall 2014 Oakwood Mechanical Upgrades project and was bid separate from the general construction package in order to insure that the equipment will be available on site at the beginning of the summer construction period.

Based on our review we recommend the following:

Base Bid "A": Air Handling Units, we recommend accepting the low bid as submitted by Trane Inc., 775 Vandalia Street, Saint Paul, Minnesota 55114, for a contract amount of \$103,975.

Base Bid "B": Induction Displacement Units, we recommend accepting the bid as submitted by Midwest Mechanical Solutions, 8125 Lewis Road, Golden Valley, Minnesota for a contract amount of \$166,900.

Upon your notice, we will provide notice to the contractors and draft contracts reflecting this amount.

Sincerely,

WOLD ARCHITECTS AND ENGINEERS

A handwritten signature in black ink, appearing to read "Gregory R. Dehler", written over a horizontal line.

Gregory R. Dehler // AIA, LEED AP  
Associate

Enclosure

cc: Jim Westrum, ISD #284  
Jon Deutsch, ISD #284  
Valerie Peterson, Wold  
Jon Huffmaster, Wold

KL/ISD\_284/132193Ecrsp/feb14

Minnesota  
Illinois  
Michigan  
Colorado

designers and researchers for public environments



**Project Name: Wayzata Oakwood Elementary 2014  
Mechanical Upgrades Equipment Package**

**BID TABULATION**

Commission No.: 132193E  
Date: February 18, 2014  
Time: 2:00 p.m.

Wold Architects and Engineers  
305 St. Peter Street  
Saint Paul, Minnesota 55102  
651.227.7773 Fax: 651.223.5646

| Bidders Name  | Bid Security | Addenda (0) | Base Bid A:<br>Air Handling Units | Base Bid B:<br>Induction Displacement<br>Units | Remarks |
|---|--------------|-------------|-----------------------------------|--|---------|
| Midwest Mechanical Solutions<br>8125 Lewis Road<br>Golden Valley, MN 55427<br>P: 952.525.2004<br>F: 952.525.2051            | ✓            | None        | \$139,900                         | \$166,900.00                                   |         |
| Schwab Vollhaber Lubratt Inc.<br>4600 Churchhill Street<br>Shoreview, Minnesota 55126<br>P: 651.481.8000<br>F: 651.481.8621 | ✓            | 1           | \$152,194                         | NO BID   |         |
| Trane<br>775 Vandalia Street<br>Saint Paul, Minnesota 55114<br>P: 651.468.2700<br>F: 651.468.2720                           | ✓            | None        | \$103,975                         | NO BID   |         |

**WAYZATA PUBLIC SCHOOLS**  
Independent School District 284  
Wayzata, Minnesota

**BOARD OF EDUCATION**

Regular Meeting – February 24, 2014

**AGENDA SECTION:** ADJOURN

**ITEM:** Meeting Adjournment

**COMMENTS BY:** Ms. Linda Cohen, Board Chair

This agenda item brings closure to the school board meeting.

Motion by: \_\_\_\_\_ Yes \_\_\_\_\_ Passed \_\_\_\_\_

Second by: \_\_\_\_\_ No \_\_\_\_\_ Failed \_\_\_\_\_

Abstentions: \_\_\_\_\_