

# Exhibit 1

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "**Agreement**") is made as of \_\_\_\_\_, 2018 ("**Effective Date**"), by and between INDEPENDENT SCHOOL DISTRICT NO. 709, a Minnesota public corporation and political subdivision ("**Seller**") and the CITY OF DULUTH, a municipal corporation and political subdivision under the laws of the State of Minnesota ("**City**" or "**Buyer**").

### RECITALS

A. Seller is the owner of vacant real property in Duluth, St. Louis County, Minnesota legally described on the attached **Exhibit A** (the "**Real Property**"). Seller has agreed to convey the Property (as hereinafter defined) to City and City is desirous of purchasing the same.

B. Seller desires to sell and City desires to purchase the Property pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, and other good and valuable consideration, the receipt, sufficiency and mutuality of which are acknowledged, City and Seller agree as follows:

- 1.0 Property To Be Purchased. Subject to compliance with the terms and conditions of this Agreement, Seller shall sell to City and City shall purchase from Seller the following (collectively, the "**Property**"):
  - (a) the Real Property; and
  - (b) all improvements located on the Real Property, if any.
- 2.0 Purchase Price. The purchase price to be paid by City for the purchase of the Property shall be Three Hundred-Ninety Thousand, Two Hundred Fifty and no/100 Dollars (\$390,250.00) (the "**Purchase Price**"), to be paid in cash at Closing (defined below), plus or minus pro-rations and adjustments as set forth in this Agreement.
- 3.0 Closing Date and Grant Financing Contingency. The closing of the purchase and sale contemplated by this Agreement (the "**Closing**") shall occur on or before October 31, 2018 (the "**Closing Date**") or such earlier date as may be agreed upon by the parties. The Closing shall take place at the office of First American Title Insurance Company-Consolidated Title & Abstract Company ("**Title**") in Duluth, Minnesota, or at such other place as the parties shall mutually agree upon. Seller agrees to deliver possession of the Property to City on the Closing Date. City shall be entitled to walk through the Property on the Closing Date to ensure that the condition of the Property has not materially changed since the Effective Date. Notwithstanding anything in this Agreement to the contrary, City may terminate this Agreement in the event that it is unable to obtain the full amount of the grant funds it intends to use to purchase the Property (the "**Grant Funds**") on or before the Closing Date. Seller agrees to fully cooperate with City's efforts to obtain the Grant Funds, including providing the information required by Minn. Stat. 97A.056, subd. 13(e).

- 4.0 Evidence of Title. As soon as practicable after the Effective Date, City shall order, at Seller's sole cost and expense, a commitment from Title to issue an ALTA Owner's Policy of Title Insurance ("**Title Policy**"), in the amount of the Purchase Price, to insure City's title to the Property, including copies of documents referenced in Schedule B (collectively, the "**Title Commitment**"). The Title Commitment shall have an effective date of no earlier than the Effective Date. The Title Commitment shall include affirmative coverages for appurtenant easements, if any.
- 5.0 City's Objections to Title. Within twenty (20) days after receiving the Title Commitment, City shall make any written objections (the "**Objections**") to the content of the Commitment. Any matter disclosed by the Title Commitment and not objected to by City shall be a "**Permitted Exception**." Seller shall use its best efforts to attempt to cure the Objections within thirty (30) days after receipt of the Objections, during which period the Closing will be postponed as necessary. If Seller fails to cure the Objections within such thirty (30) day period, City will have the option to (a) terminate this Agreement (without either party being deemed at fault) or (b) waive the Objections and proceed to Closing (and all uncured Objections shall be deemed Permitted Exceptions). City shall exercise its option to terminate under this Section 5.0 by delivering written notice to Seller within ten (10) days after the expiration of the 30-day period. If City fails to deliver notice of termination, City shall be deemed to have waived the Objections. City agrees that Seller need not remove any Objections that are liens, mortgages, deeds of trust, trust deeds, security interests or contract interests affecting the Property constituting Objections prior to Closing.
- 6.0 City's Conditions To Closing. The Closing of the transaction contemplated by this Agreement and the obligation of City to purchase the Property shall be subject to the following conditions:
- (a) Intentionally Omitted.
  - (b) Inspection. City shall have determined on or before the Contingency Date that it is satisfied, in its sole discretion, with the condition of the Property. From and after the Effective Date, City, and its agents, employees, contractors and invitees, may, following reasonable notice to and cooperation with Seller, enter upon the Property in order to perform testing and inspections as City may deem necessary including, without limitation, environmental testing and inspections, provided that neither City nor its agents shall engage in any intrusive testing without the prior written consent of Seller which consent shall not be unreasonably withheld, conditioned or delayed. City and its agents, employees, contractors, and invitees shall, in performing City's inspections, comply with any and all laws, ordinances, rules, regulations applicable to the Property and will not engage in any activities which would violate any permit, license, or environmental law or regulation. City inspections will be conducted in accordance with the following procedures: (a) all persons performing any tests will be properly licensed and qualified and will have obtained all appropriate permits for performing such tests; (b) City will advise

Seller two (2) days in advance of the dates of all tests and inspections and will schedule all tests and inspections during normal business hours whenever feasible unless otherwise requested by Seller; (c) Seller will have the right to have a representative of Seller accompany City and its agents, employees, contractors, and invitees while they are on the Property; (d) City will promptly pay when due the costs of all entry and inspections, tests and examinations done with regard to the Property; (e) City will, at its sole cost and expense, repair and restore the Property to its original condition before any such entry upon the Property and inspection, test or examination was undertaken. City shall keep the Property free and clear of any mechanics', materialmen's or similar liens related to City's right of inspection and its due diligence activities. To the extent permitted by law, City shall indemnify, defend (with counsel reasonably satisfactory to Seller) and hold Seller and Seller's direct and indirect affiliates, members, partners, subsidiaries, shareholders, trustees, managers, investors, officers, officials, directors, representatives, agents and successors and assigns (collectively, the "**Seller-Related Parties**") harmless for, from and against any claims, damages, costs, liabilities, and losses ("**Claims**") arising out of any entry on the Property by City or its agents, employees, contractors, and invitees or City's inspections or tests of the Property, whether or not a Closing occurs; provided, however, that City's obligation to indemnify and hold harmless will not include Claims to the extent that they are caused by Seller's gross negligence or intentionally wrongful conduct. City will cause any person accessing the Property hereunder to be covered by not less than \$2,000,000 commercial general liability insurance (with, in the case of City's coverage, a contractual liability endorsement, insuring its indemnity obligation under this Agreement), insuring all activity and conduct of such person while exercising such right to access and naming Seller as an additional insured, issued by a licensed insurance company qualified to do business in Minnesota and otherwise reasonably acceptable to Seller. With the written consent of Seller, City may fulfill this insurance obligation through self-insurance. It is specifically agreed that the obligations of City to pay any sums and the indemnity provided for in this Section shall survive any termination or cancellation of this Agreement and shall survive the Closing. City will immediately provide to Seller a copy of any report City receives from any third party.

- (c) Intentionally Omitted.
- (d) Appraisal. On or before the Contingency Date, City shall have received an appraisal of the Property in an amount equal to or greater than the Purchase Price. Seller acknowledges that if the appraisal values the Property at less than the Purchase Price, City will not be able to obtain the Grant Funds and City may terminate this Agreement pursuant to this Section.
- (e) Representations. Seller's representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.

- (f) Title. Title shall have been accepted by City pursuant to the provisions of Section 5.0 of this Agreement and City shall have received the Title Policy, or a suitably marked up Title Commitment dated and initialed by Title, insuring City's title to the Real Property subject to the Permitted Exceptions and in form acceptable to City.
- (g) Subdivision. City shall have obtained, on or before the Contingency Date, any necessary approvals to subdivide the Property from adjacent land owned by Seller. Seller agrees to cooperate, at no expense to Seller, with any applications and procedures necessary to obtain such approvals, including but not limited to, execution of any necessary documents as owner of the Property; provided, however, that no such document shall impose any restriction or other encumbrance on adjacent land owned by Seller.

The contingency date shall be the date that is forty-five (45) days following the Effective Date (the "**Contingency Date**"). If any of the conditions set forth at Sections 6.0 (a)-(d) or (g) have not been satisfied or waived prior to the Contingency Date, this Agreement may be terminated, at the option of City, by written notice from City to Seller delivered to Seller no later than the Contingency Date. If any of the conditions set forth at Sections 6.0 (e) or (f) have not been satisfied or waived prior to the Closing Date, this Agreement may be terminated, at the option of City, by written notice from City to Seller delivered to Seller no later than the Closing Date. All of the contingencies set forth in Section 6.0 of this Agreement are for the sole and exclusive benefit of City and City shall have the right to unilaterally waive any contingency by written notice to Seller.

6.1 Seller's Conditions To Closing. The Closing of the transaction contemplated by this Agreement and the obligation of Seller to sell the Property shall be subject to the following conditions:

- (a) Representations. City's representations in this Agreement shall be true at the time of Closing as though such representations were made at such time.
- (b) Performance by City. City shall have performed all of its obligations under this Agreement.
- (c) Access to Neighboring Parcels. Seller shall have obtained assurance, satisfactory to Seller in its sole discretion, that (i) Kolstad Avenue can be opened to provide access to Seller's property in Blocks 1, 2, and 3, Hartley Hills Fourth Addition and (ii) Seller's property in Blocks 1, 2, and 3, Hartley Hills Fourth Addition can be sold and developed without uneconomic restrictions or requirements.

If the condition set forth at Section 6.1(c) has not been satisfied or waived prior to the Contingency Date, this Agreement may be terminated, at the option of Seller, by written notice from Seller to City delivered to City no later than the Contingency Date. In the event that Seller terminates this Agreement due to a failure of the condition set forth in

Section 6.1(c), Seller shall, within 30 days of an invoice from City, reimburse City for all of City's out-of-pocket expenses relating to City's due diligence and purchase of the Property, including but not limited to appraisals, surveys, inspections, title work, and other title company fees. If the conditions set forth at 6.1(a) and (b) have not been satisfied or waived prior to the Closing Date, this Agreement may be terminated, at the option of Seller, by written notice from Seller to City delivered to City no later than the Closing Date. All of the contingencies set forth in Section 6.1 of this Agreement are for the sole and exclusive benefit of Seller and Seller shall have the right to unilaterally waive any contingency by written notice to City.

7.0 Representations By Seller. Seller makes the following representations to City:

- (a) Subject to final approval of this Agreement by Seller's Board, the individuals executing this Agreement on behalf of Seller have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by Seller, and to bind Seller thereto; and Seller has the full and complete authority to sell the Property.
- (b) Seller is not a foreign person, foreign partnership, foreign trust or foreign estate as those terms are defined in Section 1445 of the Internal Revenue Code.
- (c) There have been no bankruptcy or dissolution proceedings involving Seller during the time Seller has had any interest in the Property, there are no unsatisfied judgments or state or federal tax liens of record against Seller, and there have been no labor or materials furnished to the Property for which payment has not been paid.
- (d) To Seller's knowledge, there are no unrecorded mortgages, contracts, purchase agreements, options, rights of first refusal, leases, easements or other agreements or interests relating to the Property.
- (e) To Seller's knowledge, Seller is not in default in the performance of any of Seller's obligations under any easement agreement, covenant, condition, restriction, or other instrument or agreement relating to the Property.
- (f) (vi) Seller does not know of any "wells" on the Real Property within the meaning of Minn. Stat. §103L. This representation is intended to satisfy the requirements of the statute.
- (g) (vii) Solely for the purpose of satisfying the requirements of Minn. Stat. §115.55, Seller certifies that there is no "subsurface sewage treatment system" within the meaning of that statute on or serving the Property.
- (h) (viii) To the best of Seller's knowledge, methamphetamine production has not occurred on the Property.

The foregoing representations shall be accurate on the Effective Date and on the date of Closing. If, at any time prior to the Closing, City acquires actual knowledge of events or circumstances which render a representation set forth in this Section inaccurate in any respect, and City elects to close, City shall be deemed to have waived and released any rights or remedies with respect to the representation. The representations made by Seller in this Agreement shall survive the delivery of the Deed (defined below) for a period expiring on the date that is twelve (12) months following the Closing (the "**Survival Date**") and any action for a breach of Seller's representations must be made and filed by the Survival Date. City shall not make or bring any claim for breach of Seller's representations unless the amount of such claim equals or exceeds \$25,000 and the full extent of Seller's liability for all representations shall not exceed \$60,000 in the aggregate. City's sole remedy after the delivery of the Deed for a breach of Seller's representations is an action for actual damages pursuant to this Section and City waives all other causes of action and claims including, without limitation, any action to rescind this Agreement. Any City claim for a breach of Seller's representations which is not made and filed by City by the Survival Date shall, from and after the Survival Date, be deemed to have been waived by City and rendered null and void and of no further force and effect.

- 7.1 As Is Provisions. City is purchasing the Property "AS IS" and "WHERE IS", and with all faults, and except as expressly set forth in Section 7.0, Seller makes no representations or warranties, whether express or implied, by operation of law or otherwise, with respect to the quality, physical condition or value of the Property, the compliance of the Property with applicable building or fire codes or other laws or regulations. City agrees that Seller is not liable or bound by any guarantees, promises, statements, representations or information pertaining to the Property made or furnished by Seller or any agent, officer, director, employee or other person representing or purporting to represent Seller, except as and to the extent expressly set forth in Section 7.0. To the fullest extent allowed by Minnesota and Federal law, City and Seller agrees as follows: City expressly waives the requirement of any disclosure not expressly contained in this Agreement (including, without limitation, any disclosure required pursuant to Minn. Stat. §513.52-513.60), and City agrees to take the Property "As Is" notwithstanding any matter set forth in any disclosure statement required by Minnesota law.

CITY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.0, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO:

- (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY;
- (B) THE INCOME TO BE DERIVED FROM THE PROPERTY;

(C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH CITY MAY CONDUCT THEREON;

(D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCE OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY OR ANY FRANCHISE LICENSE OR AGREEMENT OR ANY GRANT OR SIMILAR AGREEMENT;

(E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY;

(F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY;

(G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY;

(H) THE AVAILABILITY OF WATER OR OTHER RESOURCES OR UTILITIES; OR

(I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION OR POLLUTION RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING SOLID WASTE, AND INCLUDING THE DISPOSAL, RELEASE OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCE.

7.2 Representations by City. City makes the following representations to Seller:

- (a) The individuals executing this Agreement on behalf of City have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by City, and to bind City thereto; and City has the full and complete authority to purchase the Property.
- (b) City shall promptly pay when due any and all charges for engineering, surveying or other studies, reports, assessments or investigations which are commissioned or requested by City and not the responsibility of Seller under this Agreement.

The representations contained in this Section shall be true and correct on the Effective Date and the Closing Date.

7.3 Independent Investigation. The consummation of this transaction shall constitute City's acknowledgment that City has independently inspected and investigated the Property and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of the Property. Upon Closing, City shall

assume the risk that adverse matters, including but not limited to construction defects and adverse physical and environmental conditions and the suitability or unsuitability of the Property for City's intended uses, may not have been revealed by City's investigations. City, upon Closing, shall be deemed to have waived, relinquished and released Seller and its employees, agents, Board members and attorneys (collectively, the "**Seller-Related Parties**") from and against, and covenanted not to sue any of the foregoing with regard to, any and all claims, demands, causes of action (including causes of action in tort or under any environmental law), losses, damages, liabilities (whether based on strict liability or otherwise), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which City might have asserted or alleged against Seller and/or the Seller-Related Parties at any time (including without limitation to the extent covered by or that would be covered by [as opposed to paid] by insurance) by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws), the suitability of the Property for any purposes contemplated by City and any and all other acts, omissions, events, circumstances or matters regarding the Property. The foregoing shall not be interpreted to waive any claim of City with respect to any breach by Seller of any express representations made by Seller in Section 7.0 that expressly survive Closing pursuant to this Agreement.

7.4 City Reliance. City is experienced in and knowledgeable about the ownership, development, and management of real estate, and it has relied and will rely exclusively on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Property, its condition, value and potential. The Purchase Price and other terms and conditions contained in this Agreement are the result of arm's-length negotiations between sophisticated parties experienced in transactions of this kind, and the Purchase Price and other terms and conditions contained in this Agreement take into account the fact that City is not entitled to rely on any information provided by Seller, any of its agents, or any other person acting for or on behalf of Seller, except as expressly set forth in Section 7.0. All information, whether written or oral, previously, now, or hereafter made available to City by Seller, its agents, or any other person acting for or on behalf of Seller, whether in the form of appraisals, market studies, projections, brochures, maps, surveys, soil reports, engineering studies, environmental studies, inspection reports, plans and specifications, and all other information and materials have been or will be furnished by Seller to City solely as an accommodation, and neither Seller nor its agents has verified the accuracy of such information or the qualifications of the persons preparing such information, except as expressly set forth in Section 7.0. City agrees that, notwithstanding the fact that City has received certain information from Seller, or its respective agents or consultants, City has relied solely upon and will continue to rely solely upon its own analysis and will not rely on any information provided by Seller, or its agents or consultants, except as expressly set forth in Section 7.0.

7.5 City's Efforts Are for City's Benefit Only. City acknowledges that all actions taken or to be taken and all expenses or payments made or to be made and all obligations entered into



or incurred or to be entered into or incurred by or on behalf of or at the direction or request of City relating to this Agreement or City's acquisition of the Property or City's use, possible use or intended use of the Property are, have been and shall be solely for City's benefit and not for the benefit of or with the intention of benefitting Seller. This includes, without limitation, those relating to (i) City's due diligence, (ii) City's efforts to seek any governmental, quasi-governmental or other approval or entitlement, including, without limitation, any subdivision approval, zoning change, license, permit, approval, consent, utility reservation, water allocation or other entitlement of any kind or nature whatsoever ("**Approval**"), (iii) the preparation of any drawings, plans, specifications, surveys or architectural or engineering renderings (collectively, "**Plans**"), (iv) any third party report, study, survey, or analysis, including, without limitation, any survey, environmental investigation or report, soil report or traffic report (collectively, "**Reports**") or (v) any claims, damages, costs, expenses, liabilities, and losses incidental to or arising out of relating thereto. Notwithstanding any obligation of City to provide copies to Seller of any Reports, or any permission received from Seller to take any action, City is not entitled to any compensation or reimbursement of any kind or nature from Seller for actions taken or to be taken or any expenses or payments made or to be made or any obligations entered into or incurred or to be entered into or incurred by or on behalf of or at the direction or request of City relating to this Agreement or City's acquisition of the Property or City's use, possible use or intended use of the Property. This includes, without limitation, compensation for any services relating to any Approval, Plans, or Reports, any compensation for any improvement of or to the Property, and any increase in value of the Property or any other property of Seller arising out of any improvement or Approval, Plans or Reports on any basis whatsoever including, without limitation, on the basis of any claim based upon agency, partnership, joint venture or enterprise, unjust enrichment, quantum meruit or other quasi-contract theory, whether or not a Closing occurs or this Agreement is terminated or cancelled. This Agreement does not provide for and this transaction does not contemplate that any services will be rendered by City, or by City's agents, contractors or employees to or for the benefit of Seller. **City shall indemnify, defend (with counsel reasonably satisfactory to Seller), and hold Seller and the Seller-Related Parties harmless for, from and against any claims, damages, costs, liabilities, losses, mechanic's, materialmen's or other liens, arising out of or in any way related to any claim by any third party for compensation for services relating to this Agreement or City's use, possible use or intended use of the Property, including, without limitation, claims for compensation for any services relating to any Approval, Plans, or Reports, any compensation for any improvement of or to the Property, and any increase in value in the Property or any other property of Seller arising out of any improvement or Approval, Plans or Reports, on any basis whatsoever including, without limitation, on the basis of any claim based upon agency, partnership, joint venture or enterprise, unjust enrichment, quantum meruit or other quasi-contract theory, except to the extent, if at all, that such services or improvements are expressly contracted for by Seller in writing and for Seller's sole benefit.**

- 7.6 Survival. Sections 7.0 and 7.6 shall survive the Closing and any termination of this Agreement forever.

8.0 Real Estate Taxes and Special Assessments. Seller and City shall pay the real estate taxes and special assessments as follows:

- (a) At or before Closing, Seller shall pay all real estate taxes and special assessments payable therewith and any penalties and interest thereon due and payable with respect to the Property in all years prior to the year of Closing, including all deferred taxes attributable to years prior to the year of Closing.
- (b) City and Seller shall prorate the real estate taxes and special assessments payable therewith due and payable in the year of Closing, on a per diem basis using a calendar year, to the date of the Closing.
- (c) City shall pay all real estate taxes and special assessments payable therewith due and payable in the years following the year of Closing.
- (d) Except as provided in Section 8.0 (a)-(c), City will assume and pay all sewer, water or other access charges, park fees, school fees and all other assessments, charges, fees or impositions of every kind and nature imposed or required by agreement or otherwise by any government subdivision, master association or similar entity.

9.0 Closing Documents. At or prior to Closing, the parties shall execute and deliver the following:

- (a) A quitclaim deed (the “**Deed**”) in substantially the form of the Minnesota Uniform Conveyancing Blank, subject to the Permitted Exceptions. The Deed shall include the following language:

*Grantee, its successors and assigns, may not use the property as a school for the purpose of conducting programs for children between the ages of 5 and 18. However, this restriction shall not prevent the use of the property for (i) pre-Kindergarten programming (regardless of age), and (ii) environmental and outdoors education programming (regardless of age), including but not limited to the following types of activities: field trips, youth camps and special events.*

*Grantee agrees that Grantor shall sustain irreparable harm and damages if this restriction is violated and therefore Grantor shall have the right to a temporary restraining order, a temporary injunction and a permanent injunction in order to enforce this restriction. This restriction may be amended or modified by the express written consent of Grantor and the then-owner of the property. This restriction shall run with and burden the property and shall be deemed a covenant that touches and concerns the property and benefits Grantor.*

- (b) Resolution by Seller, in form acceptable to Title, authorizing the conveyance of the Property to City;
- (c) Resolution by City, in form acceptable to Title, authorizing the acquisition of the Property by City;
- (d) Any documents reasonably required by Title and not inconsistent with the AS IS and other provisions of this Agreement limiting Seller's liabilities and obligations;
- (e) A certificate (or statutory statement on the Deed) signed by Seller warranting that there are no "Wells" on the Property within the meaning of Minn. Stat. Section 103I, or if there are "Wells", a Well Certificate in the form required by law;
- (f) If the Property contains or contained a storage tank, an affidavit with respect thereto, if required by Minn. Stat. Sec. 116.48; and
- (g) All other documents required by this Agreement to effectuate the provisions of this Agreement.

10.0 Closing Costs. The following costs and expenses shall be paid in connection with the Closing:

- (a) Seller shall pay the cost of:
  - (i) All fees associated with the issuance of the Title Commitment, including state and federal tax lien, judgment and bankruptcy searches;
  - (ii) All state deed taxes and/or transfer taxes on deeds;
  - (iii) Recording fees for Seller's resolution authorizing the sale of the Property to City and all releases and satisfactions of existing mortgages or liens;
  - (iv) All expenses, including recording fees, to correct any Objections that Seller elects to undertake pursuant to Section 5.0 above;
  - (v) One-half of Title's closing fee;
  - (vi) Proration as of the Closing Date of all utilities and operating expenses and rents, if any;
  - (vii) Proration as of the Closing Date of real property taxes and installments of special assessments, as specified in Section 8.0 above; and
  - (viii) All attorneys' fees and expenses incurred by Seller.
- (b) City shall pay the cost of:

- (i) The premium for any Title Policy it chooses to purchase;
- (ii) Any reports or inspection reports obtained by City;
- (iii) Recording fees for recording the Deed in favor of City and City's resolution authorization acquisition of the Property;
- (iv) One-half of Title's closing fee;
- (v) Proration as of the Closing Date of real property taxes and installments of special assessments as provided in Section 8.0 above;
- (vi) Proration as of the Closing Date of all utilities and operating expenses and rents, if any;
- (vii) Any other item allocated to or assumed by City in this Agreement; and
- (viii) All attorneys' fees and expenses incurred by City.

11.0 Title To Be Delivered. Seller agrees to convey fee simple title in the Property to City at Closing subject only to:

- (a) Reservations of minerals or mineral rights by the State of Minnesota, if any;
- (b) Building, zoning and subdivision laws, ordinances and State and Federal regulations which do not interfere with present improvements; and,
- (c) Any Permitted Exceptions, as defined in Section 5.0 above.

12.0 Commission. Seller and City represent and warrant to each other that they have not engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement. Seller and City shall each indemnify and hold the other harmless of any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party.

13.0 Risk of Loss. If there is any loss or damage to the Property between the date of this Agreement and the date of Closing, the risk of loss shall be on Seller. If the Property is destroyed or damaged prior to the Closing, City may cancel this Agreement upon written notice to Seller and in such event, the parties shall have no further obligations to one another pursuant to this Agreement except as expressly set forth in this Agreement.

14.0 Condemnation. If, prior to the Closing Date, a public or private entity with the power of eminent domain commences condemnation proceedings against all or any part of the Property, Seller will promptly notify City, and City may, at City's sole option, terminate this Agreement. Notwithstanding the foregoing, City will have no right to terminate this Agreement if the condemnation is for a right-of-way or utility easement and such condemnation does not materially and adversely affect City's intended use of the Property.

City will have until the earlier of (a) the Closing Date; or (b) the date twenty (20) days from City's receipt of Seller's notice to City to exercise City's termination right. If City does not terminate this Agreement pursuant to this Section 14.0, the parties will fully perform their obligations under this Agreement, with no reduction in the Purchase Price, and Seller will assign to City, on the Closing Date, all of Seller's right, title and interest in any award made or to be made in the condemnation proceedings. Seller will not designate counsel, appear or otherwise act with respect to any such condemnation proceedings without City's prior written consent unless City fails to respond within seven (7) days to a request for such written consent.

15.0 Operation Prior to Closing. Between the Effective Date and Closing Date, Seller shall operate and maintain the Property in the same manner as it is being operated on the date hereof. Seller shall execute no contracts, leases, or other agreements regarding the Property which extend beyond the Closing Date without the prior written consent of City, which consent may be withheld by City at its sole discretion. Seller shall not pledge or transfer any interest in or encumber or permit the encumbrance of the Property with any lien, easement, interest or agreement from and after the Effective Date without the prior written consent of City, which may be withheld in City's sole and absolute discretion.

16.0 Default.

- (a) If City defaults in the performance of City's obligations under this Agreement due to no fault of Seller, then Seller may, as its sole and exclusive remedy, terminate this Agreement in accordance with Minnesota Statutes Section 559.21.
- (b) If Seller defaults in the performance of Seller's obligations under this Agreement due to no fault of City, then City may, after at least thirty (30) days prior written notice to Seller and Seller's failure to cure the default within said notice period, either (i) declare this Agreement terminated, or (ii) City may elect to seek specific performance of this Agreement. Termination and specific performance pursuant to this Section are the sole and exclusive remedies afforded to City and in no event shall Seller be liable for any actual, general, specific, punitive, incidental, speculative, consequential or other damages of any kind or nature.
- (c) Notwithstanding anything in this Section 16 to the contrary, any action by City for specific performance must be commenced no later than 180 days after the date City discovers or becomes aware of Seller's default.
- (d) The limitation set forth in the preceding sentence shall not apply to claims for indemnification or contribution specifically provided for in this Agreement.

17.0 Assignment. Neither Seller or City may assign its interest in this Agreement.

18.0 Intentionally Omitted.

19.0 Miscellaneous.



- (g) Invalidity. If for any reason any portion or paragraph of this Agreement shall be declared void or unenforceable by any court of law at equity, it shall only affect such particular portion or paragraph of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.
- (h) Counterparts/Facsimile/E-Mail Signatures. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement. Facsimile and E-mail signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.
- (i) Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated above.

**INDEPENDENT SCHOOL  
DISTRICT NO. 709**

By David J. Kirby  
Name: David J. Kirby  
Title: School Board Chair

**CITY OF DULUTH**

By \_\_\_\_\_  
Its Mayor

Attest: \_\_\_\_\_  
Its City Clerk

Date Attested: \_\_\_\_\_, 2018

Countersigned:  
By: \_\_\_\_\_  
Its Auditor

Approved as to form:

By: \_\_\_\_\_  
Its City Attorney

**EXHIBIT A**  
**Legal Description**

Lots One (1) through Ten (10), both inclusive, Block Four (4);  
Lots One (1) through Six (6), both inclusive, Block Five (5);  
All of Block Six (6);  
Lots Thirteen (13) through Twenty-one (21), both inclusive, Block Seven (7);  
Lots One (1) through Eight (8), both inclusive, Block Eight (8);  
All of Block Nine (9);  
together with all vacated streets and avenues appurtenant thereto, all in HARTLEY HILLS  
FOURTH ADDITION, St. Louis County, Minnesota.

EXCEPT all minerals.