

DESIGN AND CONSTRUCTION AGREEMENT

THIS DESIGN AND CONSTRUCTION AGREEMENT (the “Agreement”), is made and entered into this ___ day of _____, 2017, between **Central Cass Public School District No. 17**, Cass County North Dakota (the “School District”) and the **Casselton Park District**, a park district under Chapter 40-49 NDCC, (the “Park District”).

Preliminary Statement

The School District is the owner of property identified as parcel number 1 on the attached **Exhibit A** (the “Property”).

The Parties desire to construct a Wellness Center on the Property that will be owned by the Park District. The School District and the Park District entered into a Ground Lease, dated as of _____, whereby the School District leased the Property to the Park District for the purposes of constructing the Wellness Center.

The Parties desire to bid the Wellness Center project as part of a 54,500 square foot remodel and addition to the School District as shown on the attached **Exhibit B** (hereinafter “Southeast Addition”) because the Parties find this to be the most efficient way to construct the Wellness Center.

FOR VALUABLE CONSIDERATION, the Parties agrees as follows:

1. **Purpose.** The purpose of this Agreement is to provide for the design and construction of a Wellness Center to be owned by the Park District.
2. **Effective Date and Term.** This Agreement shall become effective on the date signed by the last party to sign the Agreement and will terminate upon a certificate of occupancy being issued for the Wellness Center or as otherwise provided by this Agreement.
3. **Property.** The Park District shall construct the Wellness Center on the Property as shown on Exhibit A.
4. **Design of Wellness Center.** The School District shall employ an architect licensed in the State of North Dakota to design the Southeast Addition, including the Wellness Center. The Park District shall review and approve the design of the Wellness Center prior to bids being solicited for the Southeast Addition and Wellness Center.
4. **Title to Wellness Center.** During the term of this Agreement, and thereafter pursuant to the terms of the Ground Lease, title to the Wellness Center, with any improvements,

shall be held by the Park District.

5. **Bidding.** The Parties agree to bid the Wellness Center project as an alternate bid under the School District's Southeast Addition project because the Parties find this to be the most efficient way to construct the Wellness Center. The School District will bid the Southeast Addition and the Wellness Center in accordance with North Dakota law. Upon receipt of the bids, the School District and the Park District will collectively agree on whether to move forward with design and construction of the Wellness Center. If the alternate bid for the Wellness Center is not accepted, the School District shall be responsible for all architect and related fees incurred for the Wellness Center. The School District will enter into the construction contract for the construction of the Southeast Addition and the Wellness Center.

6. **Construction.** The School District shall oversee construction of the Southeast Addition and the Wellness Center. The School District is responsible for performing all preliminary geotechnical and environmental testing on the Property and for securing any and all governmental approvals necessary for the Wellness Center. The Park District will reasonably assist the School District in securing any and all governmental approvals for the Wellness Center if necessary. The School District shall assume all risk related to the construction until completion of the Wellness Center. The School District shall keep the Park District informed of the status of the Wellness Center as construction progresses. If any change orders are submitted during construction of the Wellness Center, approval from both the School District and the Park District must be secured.

7. **Financing.** As contained in the Ground Lease, the overall estimated cost for design, construction, furnishing, and fit up of the Wellness Center is approximately \$4 Million. Of this amount, the Park District shall be responsible for payment of up to a maximum amount of \$2.5 Million. The Park District and the School District will, in good faith, investigate and follow up on opportunities for grants and other funding to meet the difference between the cost of the Wellness Center and the \$2.5 Million. Financing to design, construct, furnish, and fit up the Wellness Center must be secured prior to the commencement of construction of the Wellness Center.

8. **Inspection.** During construction, the Park District, or its duly authorized agent, shall have the right at all reasonable times and upon reasonable notice to examine and inspect the Wellness Center and shall have such rights of access thereto as may reasonably be necessary in confirming the obligations of this Agreement are being met.

9. **Substantial Completion.** In addition to the School District's right under the construction contract to sign off on substantial completion of the Wellness Center, the Park District also has the right to inspect and sign off on substantial completion of the Wellness Center.

11. **Liability and Insurance.** Each party is responsible for its own acts and agrees to assume its own liability for those acts and consequences. The liability of the School District and Park District are governed by North Dakota Century Code Chapter 32-12.1. Insurance shall be obtained as provided in the Ground Lease between the School District and Park District.

12. **Events of Default.** The occurrence of any one or more of the following events during the term of this Agreement will constitute a default;

A. Failure by the School District to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Lease for a period of ninety (90) calendar days after notice of such failure requesting such failure to be remedied, given to the School District by the Park District, unless the Park District shall agree in writing to an extension of such time prior to its expiration; provided, however, that if and so long as the School District is proceeding with due diligence to cure the default, such 90-day period shall be extended to such period as is required to permit the School District proceeding with due diligence to cure such default; and

B. Failure by the Park District to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Lease for a period of ninety (90) calendar days after notice of such failure requesting such failure to be remedied, given to the Park District by the School District, unless the School District shall agree in writing to an extension of such time prior to its expiration; provided, however, that if and so long as the Park District is proceeding with due diligence to cure the default, such 90-day period shall be extended to such period as is required to permit the Park District proceeding with due diligence to cure such default.

13. **Remedies.** Whenever any event of default shall have happened and be subsisting, the non-default party may take at its option any one or more of the following steps:

A. Terminate this Agreement; or

B. Take any such action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

14. **Manner of Exercise.** No remedy herein conferred upon or reserved to the Park District is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power shall be exercised from time to time and as often as may be deemed expedient.

15. **Agreement.** This Agreement is personal to the parties and neither the rights nor the obligations of either party may be assigned without the written consent of the other. It contains the entire agreement between the parties and may not be varied except by an instrument in writing signed by the parties. It shall be governed and construed under the laws of the State of North

Dakota.

16. **Rules of Construction.** The Parties acknowledge that they have had the opportunity to review this Agreement, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any Party to this Agreement.

17. **Dispute Resolution.** In the event there is a dispute that cannot be resolved informally, the Parties shall select a mediator to mediate the dispute, all Parties equally sharing the cost. If the dispute is not resolved by mediation, the Parties may pursue any legal remedy.

18. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

19. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CENTRAL CASS PUBLIC SCHOOL
DISTRICT NO. 17

President of the School Board

ATTEST:

Business Manager

STATE OF NORTH DAKOTA

COUNTY OF CASS

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Jack Haines, the President, and by Pamela Utt, the Business Manager, of the Central Cass Public School District No. 17, on its behalf.

Notary Public

THE PARK DISTRICT OF THE
CITY OF CASSELTON

President of the Park Board of
Commissioners

ATTEST:

Clerk

STATE OF NORTH DAKOTA

COUNTY OF CASS

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, by Jonathan Warrey, President of the Board of Park Commissioners and by _____
_____, Clerk.

Notary Public

**EXHIBIT A –
THE PROPERTY**

[See the following pages.]

DRAFT

**EXHIBIT B –
SOUTHEAST ADDITION**

[See the following pages.]

DRAFT