

INDEPENDENT SCHOOL DISTRICT 271
Bloomington, Minnesota

REQUEST FOR SCHOOL BOARD ACTION

DATE OF BOARD MEETING: October 22, 2018

SUBJECT: Facilities Use Agreement Between the Board of Trustees of the Minnesota State Colleges and Universities on Behalf of Hennepin Technical College and Independent School District 271

ORIGINATING DEPARTMENT: Community Education

APPROVAL OF ADMINISTRATIVE CABINET MEMBER: Tamra Sieve
Executive Director of Community Education

RESOLUTION FOR BOARD TO ADOPT:

RESOLVED, that the School Board of Independent School District 271 approves the Facilities Use Agreement between the Board of Trustees of the Minnesota State Colleges and Universities on behalf of Hennepin Technical College and Independent School District 271. The Facilities Use Agreement is in effect from August 13, 2018 through December 20, 2018.

RECOMMENDATION OF SUPERINTENDENT:

Approve.

DETAILED BACKGROUND:

The Facilities Use Agreement allows Metro South to lease two classrooms on Monday, Tuesday, Wednesday and Thursday from 9:00 am to 12:30 pm; 1 classroom on Monday, Tuesday, Wednesday and Thursday from 9:00 am to 1:30 pm; 5 classrooms on Monday and Wednesday from 6:00 pm to 9:00 pm; one classroom on Monday from 5:00 pm to 9:00 pm, and one classroom on Thursday from 9:00 am to 1:00 pm. Metro South agrees to pay a total cost of \$33,137.50. The delay in bringing the Agreement to the School Board is due to the need for rooms to be assigned for HTC classes before rooms are leased for Metro South ABE classes. HTC had a delay in that process.

The District's legal counsel and insurance agent have reviewed the attached agreement.

F.Y.	Cost Center	Obj. Code	Amount	Vendor #	P.O. #
2019	710301	9394			



MINNESOTA STATE

FACILITIES USE AGREEMENT

ON-CAMPUS ONLY

THIS FACILITIES USE AGREEMENT is between the State of Minnesota, by and through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of Hennepin Technical College Brooklyn Park Campus, 13100 College View Drive, Eden Prairie, MN 55347 ("Minnesota State") and Independent School District #271, 1350 W 106th St, Bloomington, MN 55431 ("Licensee").

1. **FACILITIES.** For purposes of this Agreement, "Facilities" shall mean: G201, G209, G219, G227, H213, H217, H233.

Parking will be available to Licensee at the following location: Parking is permissible in any space or lot not marked Staff or Visitor.

2. **GRANT OF LICENSE.** Minnesota State grants to Licensee a license to use the Facilities solely for the following purpose(s):

Adult Basic Education Courses

The estimated number of people expected to participate or attend is: 60.

Licensee acknowledges and agrees that Minnesota State, its agents, employees, invitees, licensees and students may use any portion of the Facilities for any purpose whatsoever and at any time during the term of the Agreement, provided that such use shall not unreasonably disturb Licensee's use of the Facilities as provided in this Agreement. Licensee shall use the Facilities in accordance with the terms and conditions of this Agreement, all Minnesota State policies and procedures including all federal, State and local laws, ordinances, rules and regulations.

The parties agree that this agreement does not create a landlord-tenant relationship between them. Minnesota State is permitting Licensee to use the Facilities according to the terms of this Agreement. It is specifically understood that the permission to use the Facilities and the period of use are not exclusive to Licensee, and Minnesota State shall have the right to enter and use the Facilities at all reasonable times for purposes of inspecting the same or for such other purposes as may be required by Minnesota State.

3. **TERM AND TIME OF USE.** Licensee may use the Facilities during the following dates and times:

Mondays August 13, 2018 – December 17, 2018 5:00 p.m. – 9:00 p.m. (H217)

Thursdays August 23, 2018 – December 20, 2018 9:00 a.m. – 1:00 p.m. (G219)

Mondays and Wednesdays August 27, 2018 – December 19, 2018 6:00 p.m. – 9:00 p.m. (G201, G209, G227, H213, H233)

Mondays-Thursdays August 27, 2018 – December 20, 2018 9:00 a.m. – 12:30 p.m. (G227, H233)

Monday-Thursday, August 27, 2018 – Thursday, August 30, 2018 9:00 a.m. – 12:30 p.m. (G201)

Mondays-Thursdays September 4, 2018 – December 20, 2018 9:00 a.m. – 1:30 p.m. (G201)

4. **FEE.** For its use of the Facilities, Licensee agrees to pay to Minnesota State a fee of Thirty-Three Thousand One Hundred Thirty-Seven and 50/100 Dollars (\$33,137.50), which amount shall be payable upon invoicing after the event has taken place.

5. **NOTICE AND CONTRACT ADMINISTRATION.**

All notices, requests, and other communications between Licensee and Minnesota State that are required or that Licensee and Minnesota State elect to deliver shall be deemed sufficiently given or rendered if in writing and delivered to either party personally, by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, (return receipt required) addressed as follows:

COLLEGE/UNIVERSITY: Hennepin Technical College
Contact Name and Title: Julie Kaiser, Purchasing and Officer Services Supervisor
Address: 13100 College View Drive, Eden Prairie, MN 55347

Licensee: Independent School District #271
Contact Name and Title: Judy Bergstreser, Metro South Adult Basic Education
Address: 2575 W 88th Street Suite 340, Bloomington, MN 55431

6. **MAINTENANCE OF FACILITIES.** Licensee agrees to maintain the Facilities in a clean and sanitary condition. After Licensee finishes using the Facilities, Minnesota State will inspect the Facilities and make any repairs or replace any missing or destroyed property caused by Licensee, as it deems appropriate. Minnesota State will then submit an invoice to Licensee for the repairs or replacement of missing items, which Licensee agrees to pay within thirty (30) days. However, if the cost of repairs or replacement is estimated to exceed \$500,

Minnesota State shall be entitled to obtain payment of such amount from Licensee in advance. This provision will survive the termination of this Facilities Use Agreement.

7. **RULES AND REGULATIONS.** Licensee agrees to honor and abide by all rules and regulations set forth by Minnesota State during its occupancy of the Facilities.

8. **LICENSEE'S INSURANCE.**

- a. Licensee shall not occupy the Space under this Agreement until Licensee has obtained, at its sole expense, general liability and property damage insurance requirements as described below and naming both Minnesota State Colleges and Universities and Hennepin Technical College, 13100 College View Drive, Eden Prairie, MN 55347, as additional insured, and has provided a certificate of insurance to Minnesota State and said insurance has been approved by Minnesota State/State of Minnesota. All policies shall remain in force and effect throughout the term of this Agreement. If this Agreement is signed by Licensee less than thirty (30) days prior to the event, Licensee shall submit such evidence of insurance upon the signing of this Agreement. **No occupancy or use by Licensee may take place until satisfactory evidence of insurance coverage is provided to Minnesota State.**

GENERAL INSURANCE REQUIREMENTS

POLICY REQUIREMENTS

1. **Workers' Compensation Insurance**

- A. Statutory Compensation Coverage
B. Coverage B – Employers Liability with limits of not less than:
 \$100,000 Bodily Injury by Disease per Employee
 \$500,000 Bodily Injury by Disease Aggregate
 \$100,000 Bodily Injury by Accident

2. **General Liability Insurance**

- A. Minimum Limits of Liability:
 \$2,000,000 – Per Occurrence
 \$2,000,000 – Annual Aggregate
 \$2,000,000 – Annual Aggregate applying to Products/Completed Operations
B. Coverages:
 Premises and Operations Bodily Injury and Property Damage
 Personal & Advertising Injury
 Blanket Contractual
 Products and Completed Operations
 Other; if applicable, please list _____
 State of Minnesota or Minnesota State Colleges and Universities named as Additional Insured

Additional Insurance Conditions

- Licensee's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of the Licensee's performance under this Agreement.
- Licensee agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Licensee's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota
- Licensee is responsible for payment of Agreement related insurance premiums and deductibles.
- If Licensee is self-insured, a Certification of Self-Insurance must be attached.
- Licensee's policy(ies) shall include legal defense fees in addition to the liability policy limits.
- Licensee shall obtain insurance policy(ies) from insurance company(ies) having an "AM Best" rating of A- (minus), Financial Size Category of VII or better, and authorized to do business in the State of Minnesota.
- An Umbrella or Excess Liability insurance policy may be used to supplement the Licensee's policy limits to satisfy the full policy limits required by the Agreement.

b. Minnesota State's liability insurance coverage is governed by the Minnesota Tort Claims Act, Minn. Stat. 3.736. Minnesota State is self-insured for Worker's Compensation.

9. **LIABILITY**. Each Party shall be responsible for its own acts and behavior and the results thereof. Minnesota State's liability is governed by the Minnesota Tort Claims Act, Minn. Stat. 3.736.

10. **MINNESOTA DATA PRACTICES ACT**. Licensee agrees to comply with the terms of the Minnesota Data Practices Act, Minnesota Statutes, Chapter 13, in handling all data related to this Agreement.

11. **AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE**. Licensee agrees that in occupying the Facilities, it is responsible for complying with the Americans with Disabilities Act, 42 U. S. C. section 12101, et seq., and any regulations promulgated pursuant to the Act. Minnesota State IS NOT responsible for issues or challenges related to compliance with the ADA beyond its own routine use of facilities, services, or other areas covered by the ADA.

12. **AUDIT**. The books, records, documents, and accounting practices and procedures of Licensee relevant to this agreement shall be subject to examination by Minnesota State, and either the Minnesota Legislative Auditor or Minnesota State Auditor for a period of six (6) years following the termination of this Agreement.

13. **NO ASSIGNMENT; AMENDMENTS**. Licensee shall neither assign nor transfer any rights or obligations under this agreement without the prior written consent of Minnesota State. All

amendments to this agreement shall be in writing and executed by a duly authorized representative of each party.

14. **CANCELLATION.** This agreement may be canceled by either party at any time, for any reason, upon ten (10) days written notice to the other party.
15. **NON-WAIVER.** No waiver by any party of a default or non-performance by the other party shall be deemed a waiver of any subsequent default or non-performance.
16. **SECURITY.** Licensee hereby assumes all responsibility for security throughout its use of the Facilities.
17. **DEFAULT.** In the event of any default by Licensee under the terms of this Agreement, Minnesota State may immediately terminate this Agreement and retain the license fee, in addition to any other remedies at law or in equity to which the Minnesota State may be entitled. The parties agree that the amount of damages in the event of a breach are uncertain, and the license fee is a reasonable estimate of such damages.
18. **GOVERNING LAW and VENUE.** This Agreement, including all exhibits, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.
19. **ENTIRE AGREEMENT.** This Agreement is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.
20. **OTHER PROVISIONS** (Attach additional pages as necessary): Please see Addendum to the Facilities Use Agreement attached and incorporated into this agreement. Insurance Addendum.

SIGNATURE BLOCK IS ON NEXT PAGE

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed intending to be bound thereby.

APPROVED:

1. LICENSEE: Independent School District #271

Licensee certifies that the appropriate person(s) have executed the Agreement on behalf of Licensee as required by applicable articles, bylaws, resolutions, or ordinances.

By (authorized signature)
Title
Date

2. MINNESOTA STATE: STATE OF MINNESOTA, BY AND THROUGH THE BOARD OF TRUSTEES OF MINNESOTA STATE COLLEGES AND UNIVERSITIES ON BEHALF OF HENNEPIN TECHNICAL COLLEGE

By (authorized signature)
Title
Date

3. VERIFIED AS TO ENCUMBRANCE (if applicable)

By (authorized signature)
NA
Title
Date

4. AS TO FORM AND EXECUTION

By (authorized signature)
Title
Date

ADDENDUM

1. The limits of insurance in section 8 can be satisfied through a combination of primary and excess liability programs, which is allowable by the language in section 8.
2. Section 8 in all contracts requires Additional Insured status on a primary basis. LICENSEE can provide Additional Insured status, but primary status is not available for Minnesota State.

APPROVED:

1. LICENSEE: Independent School District #271

Licensee certifies that the appropriate person(s) have executed the Agreement on behalf of Licensee as required by applicable articles, bylaws, resolutions, or ordinances.

By (authorized signature)
Title
Date

2. MINNESOTA STATE: STATE OF MINNESOTA, BY AND THROUGH THE BOARD OF TRUSTEES OF MINNESOTA STATE COLLEGES AND UNIVERSITIES ON BEHALF OF HENNEPIN TECHNICAL COLLEGE

By (authorized signature)
Title
Date