

## CUSTODIAL CONTRACT

**THIS AGREEMENT** made the 14 day of March , 2022, between Brenda Snider ("Contractor"), and Meade School District ("Owner," which refers both to the singular and plural).

**WITNESSETH**, in consideration of the mutual covenants hereinafter set forth, Owner and Contractor agree as follows:

**1. Services to Be Performed.** Contractor shall furnish all labor and materials to perform cleaning services for Opal School.

**2. Contract Price.**

**a. Contract Price.** The Owner agrees to pay Contractor the contract price of \_\$22.50 per billed hour\_\_\_\_\_.

**b. Change Agreements.** In addition, the contract price shall be increased according to any additions or changes, made in accordance with mutually agreed upon written Change Agreements. To be valid, all Change Agreements must be signed by the Owner and Contractor, describe the nature of additions, deletions, or modifications to the services to be performed, and describe Corresponding adjustments in the Contract price and time for completion. No verbal Change Agreement shall be permitted. Any adjustment in the Contract price will be determined by mutual agreement and the prior approval of the Owner and Contractor before starting the work involved in the change.

**c. Terms of Payment.** Contractor shall be paid as follows: Submit bill monthly by the 3rd of month, payment will be issued the 2nd Monday of each month after the board meeting.

**3. Time of Completion.**

**a. Time of Completion.** The services to be performed under this Agreement shall commence on the 14 day of March , 2022 and be substantially completed on or before the 25 day of May , 2022.

**b. Extension of Time of Completion.** The completion date may be extended by the mutual written agreement of the parties, including change orders.

**4. Permits and Approvals.** Contractor shall be responsible for determining which state and local permits are necessary for performing the specified work and for obtaining and paying for the permits.

**5. Warranty.** Contractor warrants that all work shall be completed in a good workmanlike manner and in compliance with all building codes and other applicable laws.

**6. Site Maintenance.** Contractor agrees to be bound by the following conditions when performing the work under this Agreement: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

**7. Subcontractors.** Contractor may, at its discretion, engage subcontractors to perform services under this Agreement. Contractor shall, however, remain solely responsible for proper completion of this Agreement.

**8. Independent Contractor Status.** Owner and Contractor are not partners, joint-venturers or involved in any employment relationship whatsoever, and nothing in this Contract shall be deemed to create or imply any such relationship. Contractor is not Owner's employee, nor are Contractor's employees or subcontractors. Contractor and Owner agree to the following rights, consistent with an independent contractor relationship:

a. Contractor has the right to perform services for others during the term of this Agreement.

b. Contractor has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.

c. The Contractor or Contractor's employees or subcontractors shall perform the services required by this Agreement; Owner shall not hire, supervise, or pay any assistants to assist Contractor or otherwise attempt to complete the services to be performed.

d. Owner shall not require Contractor or Contractor's employees or subcontractors to devote full time to performing the services required by this Agreement.

e. Neither Contractor nor Contractor's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of Owner.

**9. Taxes.** Contractor shall be responsible for all excise taxes incurred by Contractor while Contractor performs services under this Agreement, and for any interest or penalties incurred due to late payment or nonpayment of any excise taxes. Contractor shall be responsible for all other taxes incurred by contractor.

**10. Insurance.**

a. **Contractor's Insurance.** The Contractor agrees to keep in force at Contractor's expense such liability insurance during this Contract term as will protect Contractor from

claims, under worker's compensation and other employee benefit laws, for bodily injury and death, and for property damage, that may arise out of the work, in a commercially reasonable amount determined by the Contractor in light of the Contract price and Contractor's obligations under this Contract and the related Warranty. Contractor agrees to provide proof of insurance to Owner upon request.

**b. Owner's Insurance.** The Owner agrees to keep at Owner's expense during this Contract term premises liability insurance coverage and property damage insurance on the Work at the site to its full insurable value, including the interests of Owner, Contractor, and subcontractors, against fire, vandalism, and other perils ordinarily included in extended coverage. Losses under such insurance will be adjusted with and made payable to the Contractor and Owner as their interests appear, subject to the requirements of a mortgagee's loss payable clause. Owner agrees to provide proof of premises liability and property damage insurance coverage to Contractor upon request.

**11. Terminating the Agreement.** Either Owner or Contractor may terminate this Agreement at any time by giving 14 days written notice of termination. Contractor shall be entitled to full payment for services performed prior to and including the date of termination.

**12. Default.** Time is of the essence of this Contract. In the event a breach is claimed by any party in the terms of the Contract Documents, except as waived by final payment, the aggrieved party will notify the other of such claimed breach and the party alleged to have breached this Contract will have 10 days from receipt of notice to correct the breach. All notices of breach will be by certified mail and will be deemed received on the earlier of actual receipt or three days after the date of mailing. If the alleged breach is not corrected within 10 days, then the non-defaulting party shall have all rights at law or equity. The laws of the State of South Dakota shall govern this contract.

**13. Notices.** All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

**a.** When delivered personally to the recipient's address as stated on this Agreement;

**b.** Three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement; or

**c.** When sent by fax or electronic mail, such notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.

**14. Liens or Encumbrances.** Contractor agrees Contractor will not permit the filing of any claims, liens, or encumbrances on the real property described herein at any time during the term of this Agreement. If any mechanic's or other liens or encumbrances are filed during the term of this agreement, Contractor agrees the same shall be removed within 30 days after Contractor has knowledge of said lien; provided, however, that Contractor shall not be required to so remove any lien which is filed as a result of a bona fide dispute, unless said disputed lien can be bonded. In that event, Contractor agrees to

provide a bond and secure the removal of said lien pending resolution of the dispute. In the event a lien cannot be bonded, Contractor agrees to use due diligence in removing such lien from the property by appropriate legal action or otherwise. The parties agree that the violation of the provisions of this paragraph shall constitute a default hereunder.

**15. Written Memorandum.** This Agreement constitutes a memorandum of the final meeting of the minds between the parties hereto of all prior negotiations had by the parties in reference to all matters covered herein; and, this agreement is to be binding upon the respective heirs, executors, administrators and assigns of the parties hereto. No modification or amendment of this Agreement shall be valid unless in writing and signed by all parties hereto.

**16. Acknowledgments.**

a. By signing this Contract, any legal entity executing this Contract warrants and represents that: (a) such entity is in good standing with the State of South Dakota; (b) all necessary actions have been taken to make this Contract (including the Contract Documents) lawfully binding upon the entity; and , (c) the individual signing this Contract is duly authorized and directed by the entity to execute the same in the name of the entity.

b. Contractor acknowledges this Contract was prepared by Owner's attorney and that Owner's attorney is not representing the Owner. Contractor has been advised Contractor has the right to have this Contract and all related documents reviewed by Contractor's separate legal counsel if Contractor so elects.

**17. Binding Effect and Modification.** This Contract will be binding upon the executors, administrators, heirs, assigns, legal representatives and successors of the parties. No modification, change, addition or revision of the Contract Documents will be effective unless in writing and signed by Contractor and Owner.

**IN WITNESS WHEREOF** the parties have executed this Contract effective the date above-written.

**CONTRACTOR:**

**OWNER:**

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

**CHANGE AGREEMENT FORM**

Nature of additions, deletions, or modifications to the services to be performed: \_\_\_\_\_

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Adjustments in the Contract price: \_\_\_\_\_

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Adjustments in time for completion: \_\_\_\_\_

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No verbal Change Agreement shall be permitted. Any adjustment in the Contract price will be determined by mutual agreement and the prior approval of the Owner and Contractor before starting the work involved in the change.

Dated the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR:**

**OWNER:**

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_