EXCHANGE AGREEMENT
(Direct Exchange)

THIS EXCHANGE AGREEMENT (the "Agreement") is made this 20th day of October 2020, by and between Independent School District No. 535, a public school district located in Rochester, Minnesota ("RPS"), and the City of Rochester, a Minnesota municipality (the "City").

WHEREAS, RPS is the owner of real estate located at 1615 Marion Road SE, Rochester, Olmsted County, Minnesota, which such property is legally described on Exhibit A attached hereto (the "Longfellow Site"); and

WHEREAS, the City is the owner of real estate located at 1745 Marion Road SE, Rochester, Olmsted County, Minnesota, which such property is legally described on Exhibit B attached hereto (the "McQuillan Soccer Site" and together with the Longfellow Site, collectively, the "Properties"); and

WHEREAS, upon the terms and conditions set forth herein, RPS and the City desire to enter into an exchange of the Longfellow Site for the McQuillan Soccer Site in a tax-free exchange under 26 U.S.C. 1031.

NOW, THEREFORE, in consideration of the terms and mutual covenants contained herein, the parties agree as follows:

1. **Conveyance of Longfellow Site**. Not less than 14 months following execution of this agreement and in any case on or before December 31, 2022 (or a later date as negotiated between the parties to allow completion of the new building and demolition of the current school site), and in any case subsequent to the satisfactory completion of all obligations of each party provided herein, RPS shall convey the Longfellow Site to the City, together with all easements and rights-of-way appurtenant thereto, and all improvements thereon, via Warranty Deed. The Longfellow Site will be conveyed subject to the following encumbrances, which the City shall assume and agree to pay:

None.

2. **Conveyance of McQuillan Soccer Site**. On or before November 30, 2020 and subject to the City's satisfactory completion of its obligations stated herein, the City shall convey the McQuillan Soccer Site to RPS, subject to easements for access and utilities (sanitary sewer, watermain, gas, electrical, fiber, cable, etc.) together with all easements and rights-of-way appurtenant thereto, and all improvements thereon, via Warranty Deed. The McQuillan Soccer Site will be conveyed subject to the following encumbrances, which RPS shall assume and agree to pay:

None.

3. **Value of Properties**. RPS and the City agree the Longfellow Site has a value of $5.50 per square foot, or one million three hundred seventy-five thousand and no/100 dollars

($1,375,000) (based on 250,000 square feet), and the McQuillan Soccer Site has a value of $3.50 per square foot, or one million one hundred thirty-seven thousand five hundred and no/100 dollars ($1,137,500) (based on 325,000 square feet). The difference between the values of the respective Properties, after having considered and deducted the above-described encumbrances, if any, and based upon the difference in square footage (325,000 ft^2 - 250,000 ft^2 x $3.50/$ft^2$) shall be deemed for the purpose of this Agreement to be two hundred sixty-two thousand five hundred and no/100 dollars ($262,500), which amount shall be paid by RPS to the City in cash at closing and upon conveyance of the McQuillan Soccer Site to RPS.

4. **Title**. Title to the Properties shall be merchantable in the respective parties. Each party agrees, at its option and expense, to furnish the other party, on or before November 30, 2020, an Abstract of Title to that party's property, certified to date, or a current commitment for a title insurance policy. If either party elects to furnish said title insurance commitment, such party shall deliver the title insurance policy to the other party after closing and the other party shall pay the premium thereon. Each party shall have ten (10) days from the date of delivery of such evidence of title to examine title and report in writing to the other party the defects, if any, found therein. Either party, whose title by such examination and report is found to be defective, shall within one hundred twenty (120) days from the date of such written notice, correct and remove such defects; unless such defects cannot be corrected within said time (and if no extension of time is given), this Agreement shall be null and void at the option of the party giving notice and each party shall be released from all obligations hereunder and any payments made herewith shall be returned forthwith to the party who made such payments upon return of any Abstract furnished to that party; provided, however, that in lieu of correcting such defects, the party whose title is defective may, within thirty (30) days, obtain a commitment for owner's title insurance for an owner's title insurance policy in the amount of the purchase price, showing the title to be free from such defects and said party shall pay the full premium for such title insurance policy.

5. **Taxes and Assessments**. Real estate taxes and installments of special assessments payable therewith due and payable in 2020, if any, shall be prorated between the parties as of the date of closing.

6. **Delivery of Deeds**. The City agrees to execute and deliver its deed for the McQuillan Soccer Site to RPS on or before November 30, 2020, or by mutual agreement at an earlier date, conveying such property free and clear of all taxes (including special assessments or improvements now installed) whether assessed or not unless specifically hereinafter excepted, except real estate taxes for the year of closing, which the other party agrees to pay, subject to adjustment as herein provided.

RPS agrees to execute and deliver its deed for the Longfellow Site to the City on or before December 31, 2022, or by mutual agreement at an earlier date as provided herein, conveying such property free and clear of all taxes (including special assessments or improvements now installed) whether assessed or not unless specifically hereinafter excepted, except real estate taxes for the year of closing, which the other party agrees to pay, subject to adjustment as herein provided.

The property of each party shall be subject to building and zoning regulations pertaining thereto and shall be subject to any tenancies hereinafter set forth and shall be free and clear of all liens and encumbrances, except those hereinabove described.

7. **Closing**. RPS and the City shall mutually agree to a date and place of closing.

8. **Delivery of Possession**. Possession of the Properties shall be delivered by each of RPS and the City as follows:

a. The deed for the McQuillan Soccer Site shall be delivered to RPS on or before November 30, 2020, but the City shall retain the right of use of that property conveyed to RPS until such time as construction on the site commences.

b. RPS shall retain possession and control of the Longfellow Site until such time as it satisfies all obligations herein related to demolition of the existing school and restoration of the premises, after which the deed shall be delivered to the City and possession of that Longfellow Site shall immediately then transfer to the City.

c. To the extent necessary and required for RPS' construction of a new school on the McQuillan Soccer site, the City shall allow the use of its open property immediately west of the McQuillan Soccer Site for temporary construction staging by RPS. Limits to that use and designated area shall be approved by the City Parks Division prior to use of that City property for construction staging purposes. See Exhibit B.

d. Neither the Longfellow Site nor the McQuillan Soccer Site shall be subject to any leases and tenancies at any time during prior to or pending conveyance of the deeds contemplated herein.

9. **As-Is Condition**. The City and RPS have examined the Properties and accept the same in their present conditions. Neither party is relying on representations of the other party or a real estate broker or agent as to zoning, other than as specifically set forth herein.

10. **Obligations of RPS and the City**. Each of RPS and the City represents and warrants it will perform the following obligations in connection with the exchange contemplated in this Agreement:

(a) RPS Obligations. RPS agrees to undertake the following:

(i) Upon completion of construction of the new elementary school on the McQuillan Soccer Site and upon promptly removing all RPS property and equipment from the Longfellow Elementary School (the "School") located on the Longfellow Site, RPS shall demolish the School, which demolition cost is estimated at $500,000, and deliver possession of the vacant land to the City. In conjunction with that demolition effort, the City may request RPS ensure that the existing parking lot area, and service lines for sewer and water remain.

(ii) RPS shall pay the costs associated with subdividing the McQuillan Soccer Site into two lots.

(iii) RPS shall pay the costs, estimated at $400,000, related to the City improvements necessary for the new school to be located on the McQuillan Soccer Site, including roads, sidewalks, water line extensions, and sanitary sewer extension.

(iv) RPS agrees to pay any additional City fees required at the McQuillan Soccer Site related to SAC and WAC charges incurred in the development of that site.

(v) RPS will pay the costs related to additional storm water storage or treatment areas needed to accommodate the new impervious surfaces.

(vi) RPS will repair any adjacent City soccer fields damaged during construction of the new school.

(vii) RPS will construct shared parking for the new elementary school and soccer fields at its cost, estimated at $100,000.

(viii) In the event the City requires additional trees to be removed to accommodate six soccer fields on the remaining City property, RPS will pay those costs.

(ix) If necessary, RPS may provide additional grading or additional fill, at its option and if the City accepts the grading/fill.

(x) RPS, will restore all disturbed areas on the City property impacted by its construction.

(b) City Obligations. The City will pay the costs related to resurfacing the soccer fields in conjunction with installing irrigation systems.

(c) Joint Obligations.

a. RPS and the City will jointly agree to a storm water treatment and storage locations for the shared site; provided, however, RPS will pay the costs related to storm water treatment and storage.

b. RPS and the City will jointly develop an operations agreement for the shared use of spaces prior to opening of the School.

11. **Time of Essence**. Time is of the essence hereof, and if any payment or other condition hereto is not made, tendered or performed by either of the parties hereto as provided herein, then this Agreement, at the option of the other party, may be terminated. In the case of such termination, any deposit made by the defaulting party shall be retained by the non-defaulting

party. In the event of any such termination, any payments made by the non-defaulting party shall be returned to said party, and the non-defaulting party may recover such additional damages as may be proper. In the event that the non-defaulting party elects to treat this Agreement as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance and damages, as the case may be.

12. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs and assigns.

13. **Counterparts**. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one (1) agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, RPS and The City have executed this Agreement as of the day and year first written above.

RPS:

INDEPENDENT SCHOOL DISTRICT NO. 535

By: _____
Name: Deborah Seelinger
Title: School Board Chair

INDEPENDENT SCHOOL DISTRICT NO. 535

By: _____
Name: Cathy Nathan
Title: School Board Clerk

THE CITY:

CITY OF ROCHESTER

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

The Longfellow Site

EXHIBIT B

The McQuillan Soccer Site