

## DRAFT

### ASSIGNMENT AND ASSUMPTION AGREEMENT (Malcolm X Project)

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and among the Milwaukee Board of School Directors ("MPS") and 2760 JP/DK, LLC, 2760 Holdings, LLC, James Phelps and Dennis Klein (collectively, "Developer").

#### WITNESSETH:

WHEREAS, MPS via Board Action adopted \_\_\_\_\_, 2013 approved a Term Sheet (the "Term Sheet") pursuant to which Developer was to purchase and redevelop certain real property located at 2760 North 1<sup>st</sup> Street in the City of Milwaukee, Milwaukee County, Wisconsin, which consists of approximately 24 acres and which is legally described on **EXHIBIT 1** (the "Property"); and

WHEREAS, MPS and Developer have worked cooperatively to identify sources of financing as well as to plan and design redevelopment of the Property as an International Baccalaureate Program school (the "Project"); and

WHEREAS, Developer has prepared and secured plans, specifications, surveys, reports and other work product necessary for implementation of the Project which are summarized on **EXHIBIT "A,"** (the "Deliverables"); and

WHEREAS, Developer has entered into various contracts in conjunction with the planning and implementation of the Project which are listed on **EXHIBIT "B,"** (the "Project Contracts"); and

WHEREAS, Pursuant to this Agreement Developer is to deliver the Deliverables to MPS and assign its rights and obligations under the Project Contracts to MPS in order to allow MPS to proceed independently with implementation of the Project; and

WHEREAS, Pursuant to this Agreement, MPS is to accept delivery of the Deliverables as well as assume the rights and obligations of Developer under the Project Contracts and in consideration therefor, reimburse Developer for certain expenses incurred for the Project which are summarized on **EXHIBIT "C";** and

WHEREAS, MPS, via Board Action adopted September 18, 2014, authorized its proper officers to execute this Agreement; and

WHEREAS, Developer has authorized execution of this Agreement.

NOW, THEREFORE, In consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Developer hereby grants, conveys, sells, assigns, and sets over unto MPS all of the right, title, and interest of Developer in, to, and under the Project Contracts, to have and to hold the same unto MPS from and after the date hereof.

2. Assumption. MPS hereby accepts the foregoing assignment of all of the right, title, and interest of Developer in, to, and under the Project Contracts.

3. Project Implementation. In conjunction with the execution of this Agreement, Developer has delivered the Deliverables to MPS and hereby authorizes MPS to use the Deliverables in the implementation of the Project.

4. In conjunction with the execution of this Agreement, MPS has paid Developer the amount set forth on **EXHIBIT "C"** to reimburse Developer for certain expenses incurred in furtherance of the Project.

5. Settlement. The parties expressly agree that their execution of this Agreement resolves all claims past, present and future by either party relative to the Term Sheet or the Project.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

[Signature Page Follows]

**DEVELOPER:**

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

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

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

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

1034-2013-1008:207654

**MILWAUKEE BOARD OF  
SCHOOL DIRECTORS:**

By: \_\_\_\_\_  
Michael Bonds, Phd.  
President

By: \_\_\_\_\_  
Darienne Driver, Ed.D.  
Acting Superintendent of Schools

## **EXHIBIT "A"**

### **Deliverables**

(Hard Copy and Electronic)

1. Korb Tredo - Construction Drawings.
2. Total Energy Systems - Full assessment of existing back-up generators.
3. Total Mechanical - Full assessment of the existing mechanical system.
4. EH Kanning - Full assessment of the current kitchen equipment.
5. KBS Construction - Coordination with the architect and consultants to create the construction documents and Guaranteed Maximum Price (GMP).
6. Deneine Powell - Full assessment of the community organizations and arts groups.
7. Smart Wave - Comprehensive business model on how the community asset spaces should be programmed.



## **EXHIBIT "B"**

### **Project Contracts**

1. Korb Tredo Architects
2. RCL Engineering
3. Total Energy Systems
4. total Mechanical
5. EH Kanning
6. KBS Construction
7. Endeavor
8. SmartWave and Deneine Powell

# Malcolm X

## Reimbursement of Expenditures

(REV 4) 9-18-14

			B	C	D	E
#	Line Item	Notes	Invoices Paid	Balance Remaining	Claim Amount (B+C)	Suggested Claim Amount
JCP						
1	Original Earnest Money (MPS)		\$10,000	\$0	\$10,000	\$10,000
2	JCP Employee Time	See Note #1		\$76,332	\$76,332	\$57,319
3	Developers Fee on Original Project	See Note #9		\$200,000	\$200,000	\$20,000
4	Lost Construction Profit	See Note #9		\$390,901	\$390,901	\$0
5	Von Breisen Legal			\$360	\$360	\$360
6	Reinhart Legal	See Note #2		\$5,901	\$5,901	\$4,489
7	Morgan Shelton	See Note #3	\$1,045	\$7,078	\$8,123	\$8,123
8	Smart Wave	See Note #3	\$2,210	\$2,210	\$4,420	\$4,420
9	Deneine Powell - Lilly Hampton	See Note #1	\$2,000		\$2,000	\$2,000
JCP Subtotal					\$698,037	\$106,711

<b>KBS</b>						
10	KBS Construction	See Note #4		\$30,367	\$30,367	\$30,367
11	Korb Tredo Architects	See Note #5		\$266,966	\$266,966	\$266,966
12	RCL Engineering	See Note #5		\$6,650	\$6,650	\$6,650
13	Total Energy Systems			\$841	\$841	\$841
14	Total Mechanical	See Note #5, #7		\$29,579	\$29,579	\$28,010
15	EH Kanning	See Note #5		\$2,516	\$2,516	\$2,516
16	AP Environmental Inc	See Note #5		\$8,270	\$8,270	\$8,270
17	Endeavor Invoice			\$20,000	\$0	\$20,000
18	Contractor Fee	See Note #9		\$27,795	\$27,795	\$0
19	General Liability Insurance			\$2,244	\$2,244	\$0
20	Additional invoices KBS			\$19,550	\$19,550	\$19,550
<b>KBS Subtotal</b>					<b>\$394,778</b>	<b>\$383,170</b>

Fee Summary and Totals				
		JCP/KBS Combined Subtotals	\$1,092,815	\$489,881
GRAND TOTAL			\$1,092,815	\$489,881

### Notes

- # 1 - no hours prior to 10/15/13 accepted
- #2 - mathematical error on initial amount claimed
- # 3 - prior to final approval and/or payment, MPS will need a copy of the agreement, documents produced, back up for hours listed, confirmation of payment via bank statement matching check numbers
- #4 - a separate invoice of \$1,840 from CAS Group is provided for same services - need further clarification
- #5 - provide copy of surveys/reports/work product generated
- #6 - credit card statement. Need to substantiate expense
- #7 - deleted sales tax
- #8 - Invoice submitted but amount not included in itemized request for reimbursement - further breakdown and understanding of services needed. What is specific request for reimbursement?
- #9 - Not a reimbursable item since no work product or service was produced and/or received

General Note: all payments made to be verified by bank statements matching check numbers