

**ISD 709 AMENDMENTS TO  
B132-2009 OWNER ARCHITECT AGREEMENT**

Dated:

In interpreting these Amendments, underlining is new language added to the preexisting language and strikeout is deletion of preexisting language.

**§ 1.1.10.5 Delete the existing language and substitute the following: § 1.1.10.5 Civil Engineer.** ~~Owner, Obernel Engineering Chip Jacobs~~ ICS will retain Obernel Engineering Chip Jacobs as its consultant and Obernel is not the Owner's consultant.

**§ 2.1 Delete the existing language and substitute the following: § 2.1** ICS shall provide the professional services as set forth in this Agreement ~~and in Exhibit A~~. The parties understand and agree that ICS and its subconsultants will provide architecture, design, engineering and construction management services for the project

**§ 2.3 Delete the existing language and substitute the following: § 2.3** ICS shall perform its services consistent with the professional skill and care ordinarily provided by architects and professional engineers practicing in the same or similar locality under the same or similar circumstances. ICS shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. ICS shall, by appropriate written agreement, require all of its sub consultants to assume towards ICS all of the obligations and responsibilities which ICS assumes towards the Owner under this Agreement with regard to the scope of the Services of the sub consultant.

**Add the Following: § 2.7** ICS shall provide its services in conjunction with the services of ICS as a Construction Manager as described in AIA Document C132Tm-2009, Standard Form of Agreement Between Owner and Construction Manager. ICS is responsible for its actions both as Architect and for actions taken by ICS as the Construction Manager.

**Add the Following: § 2.6.1** ICS shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will additionally show the Owner as an additional insured on the Comprehensive Bodily Liability, Comprehensive General Property Damage and any additional umbrella or excess policies.

**Add the Following: § 3.1.3.1** As soon as practicable after the date of this Agreement, the ICS shall submit to the Owner a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of ICS's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for ICS as the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

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**Add the Following: § 3.1.6** ICS shall, at appropriate times, in coordination with ICS as the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, ICS shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services

**Add the Following: § 3.1.8** ICS is serving as both the Architect and the Construction Manager and shall coordinate those responsibilities so as to fulfill both sets of responsibilities in an efficient and comprehensive manner, regardless of whether those responsibilities are set forth in B132 2009 as modified or in C132 2009 as modified.

**Add the Following: § 3.2.4.1** ICS shall evaluate environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible desired services under other provisions in this Agreement.

**Add the Following: § 3.2.4.2** ICS shall consider with the Owner the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

**Add the Following: § 3.2.6** ICS shall submit the Schematic Design Documents to the Owner. ICS shall meet with the Owner to review the Schematic Design Documents.

**Add the Following: § 3.2.7** Upon receipt of the Owner's review comments and cost estimate at the conclusion of the Schematic Design Phase, ICS shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, ICS shall incorporate the required revisions in the Design Development Phase.

**Add the Following: § 3.2.5** ICS shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. ICS shall reach an understanding with the Owner regarding the requirements of the Project.

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**Add the Following: § 3.2.5.1** ICS shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services.

**Add the Following: § 3.2.5.2** ICS shall consider with the Owner and ICS as the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

**Add the Following: § 3.2.6** ICS shall submit the Schematic Design Documents to the Owner. ICS shall meet with the Owner to review the Schematic Design Documents.

**Add the Following: § 3.2.7** Upon receipt of ICS as the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, ICS shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

**Add the Following: § 3.3.1.1** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner. The Architect shall meet with the Owner to review the Design Development Documents.

**Add the Following: § 3.3.1.2** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, ICS shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

**Add the Following at the end of 3.4.3: and (4)** compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms.

**§ 3.5.3.3 Delete the existing language and substitute the following: § 3.5.3.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, ICS shall, ~~as an~~

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~~Additional Service~~, consider requests for substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

**Delete 3.6.1.1 and substitute the following:** § 3.6.1.1 ICS shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201 2017 as amended by ISD 709, General Conditions of the Contract for Construction. If the Owner and Contractor further modify AIA Document A201 2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. All references in this Agreement to the General Conditions shall refer to A201 2017 as amended by ISD 709, General Conditions of the Contract for Construction, instead of any references which may remain to A132 2009

**Add the Following at the end of § 3.6.1.2;** However, if ICS knows or has been informed that the Contractor is not performing the Work in compliance with the Contract Documents then ICS shall notify the Owner and the Contractor of such noncompliance.

**Delete the existing language and substitute the following:** § 4.2.1.2. Services necessitated by the enactment or revision after the date of this Agreement of codes, laws or regulations, including changing or editing previously prepared Instruments of Service.

**Delete the existing language:** ~~§ 4.2.1.7 Preparation for, and attendance at, a public presentation, meeting or hearing.~~

**Delete the existing language:** ~~§ 4.2.5 If the services covered by this Agreement have not been completed by August 28, 2023, through no fault of ICS, extension of ICS's services beyond that time shall be compensated as Additional Services.~~

**Add the Following:** § 5.3 1 Dave Spooner is identified by the owner as an additional Owner's co-representative., with the same address as that provided above.

**Delete the existing language and substitute the following:** § 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by ICS and shall include the contractors' general conditions costs, overhead and profit. ~~The Cost of the Work also includes the reasonable value of the labor, materials and equipment, donated to, or otherwise furnished by, the Owner.~~ The Cost of the Work does not include the compensation of ICS, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, permits or fees or other costs that are the responsibility of the Owner.

**Delete the existing language and substitute the following:** § 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases ICS and ICS's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause

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**Delete the existing language and substitute the following: § 9.1** If the Owner fails to make payments to ICS in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If ICS elects to suspend services, ICS shall give ~~thirtyseven~~ thirtyseven days' written notice to the Owner before suspending services. In the event of a suspension of services, ICS shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, ICS shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. ICS's fees for the remaining services and the time schedules shall be equitably adjusted.

**Delete the existing language and substitute the following: § 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the ~~sole~~ fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**Delete the existing language and substitute the following: § 9.7.1** Termination Fee: ~~25%~~ 15% of total unbilled fees

**Delete the existing language and substitute the following: § 10.6** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. However, if ICS has knowledge of hazardous substances then ICS shall so inform the Owner.

**Add the Following: § 10.8.1.1** The notice required shall be written notice to the other party

**Delete the existing language and substitute the following: §11.1** The first paragraph of 11.1 is not modified. The following changes are made to the remainder of 11.1

ICS's fee percentage for all project-related services from development through post-construction is summarized below:

IPD Coordination and Representation – ~~1.5%~~ 1.3%  
Project Oversight and Management – ~~3.5%~~ 3.25%  
Project Design Services (A/E) – 8.25%  
MDS Required Project Commissioning – 0.8%  
Total 13.60%

These fees are calculated on the total cost as defined in § 6.1 hereof and are not calculated on the Owner's contributions of labor, equipment or materials or other contributions of Owner to the project.

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**Delete the existing language and substitute the following: §11.10.1** An initial payment of 10% of the fees will shall be made upon the receipt of the bond proceeds for the financing of this Work execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**Add the Following: § 13.1.4 AIA Document A201 2017 General Conditions as amended**

**Add the Following: § 13.3** It is understood by the parties that this contract is subject to the approval of the School Board of Independent School District 709 ("ISD 709"), the Owner, and this Agreement is not valid until both that approval has been obtained and this Agreement is signed by the authorized representative of ISD 709.

**ISD 709**

Dated: \_\_\_\_\_


\_\_\_\_\_  
Signature

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

Its: \_\_\_\_\_

**ICS**

Dated: December 15, 2020 \_\_\_\_\_

 \_\_\_\_\_  
Signature

By: Pat Overom, PE \_\_\_\_\_

Its: Principal \_\_\_\_\_

**ISD 709 AMENDMENTS TO  
C132-2009 OWNER-CONSTRUCTION MANAGER AGREEMENT**

Dated:

In interpreting these Amendments, underlining is new language added to the preexisting language and strikeout is deletion of preexisting language.

**Add the Following: § 1.1.8.1** Dave Spooner is identified by the owner as an additional Owner's co-representative., with the same address as that provided above.

**Add the Following: § 1.1.9.1** Dave Spooner is identified by the owner as an additional Owner's co-representative., with the same address as that provided above.

**§ 1.1.10.3 Delete the existing language and substitute the following: § 1.1.10.3** ~~Civil Engineer. Owner, Obernel Engineering Chip Jacobs~~ ICS will retain Obernel Engineering Chip Jacobs as its consultant and Obernel is not the Owner's consultant.

**§2.6 Delete the existing language and substitute the following: § 2.6** the Construction Manager shall maintain insurance as set forth in the Owner/ICS Agreement B132 2002 Owner Architect.

**§3.2.13 Delete the existing language and substitute the following: § 3.2.13** The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

**§3.2.15 Delete the existing language and substitute the following: § 3.2.15** The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions ~~designed to assist in impacting the~~ to minimize the adverse effects of labor shortages.

**§3.2.19 Delete the existing language and substitute the following: § 3.2.19** The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules ~~in accordance with the State of Minnesota Statutes.~~ The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda

**§3.3.3 Delete the existing language and substitute the following: § 3.3.3** The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document ~~A232M-2009~~ A201 2017, General Conditions of the Contract for Construction, ~~Construction Manager as Adviser Edition.~~ If the Owner and Contractor modify AIA Document ~~A2322009~~ A201 2017, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this

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Agreement. Any references in this Agreement to A232 2009 shall instead refer to A201 2017 general Conditions.

**§3.3.8 Delete the existing language and substitute the following: § 3.3.8** The Construction Manager shall ~~assist the Owner in scheduling~~ schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

**§3.3.13 Delete the existing language and substitute the following: § 3.3.13** The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. However, the Construction Manager shall inform the Owner, Architect and Contractor if the Construction Manager believes that the Contractor is not performing its safety programs in accordance with the contract documents.

**§3.3.15 Delete the existing language and substitute the following: § 3.3.15** The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work. However, the Construction Manager shall inform the Owner, Architect and Contractor if the Construction Manager believes that the Contractor is not performing its Work in accordance with the contract documents.

**§3.3.17 Delete the existing language and substitute the following: § 3.3.17** Request for changes in the Work shall be governed by Section 3.6.5 and Article 4 of the Owner/ICS Agreement B132 2009.

**§3.3.20 Delete the existing language and substitute the following: § 3.3.20** The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.



**§3.3.20 Delete the existing language and substitute the following: § 3.3.20.1.7 Project daily logs**

**§3.3.26 Delete the existing language and substitute the following: § 3.3.26** The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

**§4.1 Delete the existing language and substitute the following: § 4.1** Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.4 of the Owner/ICS Agreement, B132 2009. ICS will be compensated for commissioning in a lump sum as provided in Section 11.1 of the Owner/ICS Agreement, B132 2009, and not as an Additional Service.

**§4.3 Delete the existing language and substitute the following: § 4.3** Additional Services *may* be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section ~~11.3~~ 11.1, if any.

**§4.3.1.4 Delete the existing language. § 4.3.1.4** ~~Preparation for, and attendance at, a public presentation, meeting or hearing.~~

**4.3.3 Delete the existing language: § 4.3.3** ~~If the services covered by this Agreement have not been completed by August 28, 2023, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.~~

**§8.1.2 Delete the existing language and substitute the following: § 8.1.2** To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document ~~A232-2009~~, A201 2017 General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§8.1.4 Delete the existing language: § 8.1.4** ~~The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

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**§9.1 Delete the existing language and substitute the following: § 9.1** Termination or suspension by either party will be governed by the standard outline in Article 9 of the Owner/ICS Agreement, B132 2009.

**§10.2 Delete the existing language and substitute the following: § 10.2** Terms in this Agreement shall have the same meaning as those in AIA Document ~~A232-2009~~ A201 2017, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

**§10.6 Delete the existing language and substitute the following: § 10.6** Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. However, if Construction Manager becomes aware of such substances, then Construction Manager shall so inform the Owner and Architect.

**§10.7 Delete the existing language and substitute the following: § 10.7** The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4 of the Owner/ICS Agreement, B132 2009.

**§10.7 Delete the existing language and substitute the following: §10.8** If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 of the Owner/ICS Agreement, B132 2009. This section 10.8 shall survive the termination of this Agreement.

**Add the following language: §11.1.1** All references to "the Owner/ICS Agreement" refer to the Owner/ICS Agreement B132 2009.

**Add the Following: § 11.1.2** It is understood by the parties that this contract is subject to the approval of the School Board of Independent School District 709 ("ISD 709"), the Owner, and this Agreement is not valid until both that approval has been obtained and this Agreement is signed by the authorized representative of ISD 709.

**Add the Following: § 13.2.3** AIA Document A201 2017 General Conditions as amended

**ISD 709**

Dated: \_\_\_\_\_

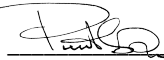
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Signature

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

Its: \_\_\_\_\_

**ICS**

Dated: December 15, 2020

  
\_\_\_\_\_

Signature

By: Pat Overom, PE

Its: Principal

## **ISD 709 Amendments to 2017 AIA documents**

Dated:

In interpreting these Amendments, underlining is new language added to the preexisting language and strikeout is deletion of preexisting language.

### **A201 – 2017 General Conditions**

**§ 3.7.3 Delete the existing language and substitute the following:** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, and shall promptly notify the Architect of such Work.

**§ 3.18.1 Delete the existing language and substitute the following:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. If the indemnified party is entitled to separate counsel under the governing law, then Contractor shall pay for those attorney's fees and other costs and disbursements, and the indemnified party may choose its own attorneys subject to the consent of the Contractor, which consent shall not be unreasonably withheld.

**§ 4.2.3 Delete the existing language and substitute the following:** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. However, if the Architect knows or has been informed that the Contractor is not performing the Work in compliance with the Contract Documents then the Architect shall notify the Owner and the Contractor of such noncompliance.

**§ 4.2.12 Delete the existing language and substitute the following:** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith. However, the Architect remains liable for its own proven negligence or breach of contract, if any.

**9.6.1 Delete the existing language and substitute the following:** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the

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Contract Documents, and shall so notify the Architect. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding having made payments pursuant to Certificates of Payment or having made payments not pursuant to Certificates of Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

**9.6.6 Delete the existing language and substitute the following:** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding having made payments pursuant to Certificates of Payment or having made payments not pursuant to Certificates of Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

**9.6.7 Delete the existing language and substitute the following:** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, ~~create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

**9.8.5 Delete the existing language and substitute the following:** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding a Certificate of Substantial Completion, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses, except for any statute of limitation or repose predicated on the date of Substantial Completion or Certificate of Substantial Completion.

**9.10.1 Delete the existing language and substitute the following:** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. To the extent permitted by law, the Owner retains all rights to claims and defenses notwithstanding a final Certificate for Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

**9.10.4 Delete the existing language and substitute the following:** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

The Owner retains any claims for delay and any other consequential damages, breach of warranty whether special or other warranty to which it is entitled under governing law, and any other damages otherwise permitted under the Contract Documents, notwithstanding the making of final payment.

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**§ 10.3.4 Delete the existing language and substitute the following:** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. The Owner also is not responsible for the acts of third parties relating to hazardous substances or materials over which it does not have the right of control, nor for such acts by third parties for which the Owner is not otherwise legally responsible.

**11.3.1 Delete the existing language and substitute the following:** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. However, this waiver is not effective if the insurance prohibits such waiver notwithstanding this provision. If such insurance prohibits such waiver, then the party insured, before it begins performing under this Agreement, shall obtain insurance coverage which does not prohibit such waiver if such insurance is available with the exercise of due diligence and reasonable effort and after notification to the other parties to the contract.

**11.4 Delete the existing language and substitute the following: Loss of Use, Business Interruption, and Delay in Completion Insurance.** The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards ~~however caused~~ unless caused by the proven negligence or breach of contract of the Contractor or Architect.

**12.2.2.3 Delete the existing language and substitute the following:** The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**12.2.5 Delete the existing language and substitute the following:** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. If the Contractor does not perform its work in compliance with all of its obligations, the Owner's remedies are not limited to the Contractor's obligation to correct the work

**13.1 Delete the existing language and substitute the following: Governing Law.** The Contract shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice of law rules.~~ If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern any arbitration claim ~~Section 15.5.~~

**13.4.3 Delete the existing language and substitute the following:** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including the costs of such testing, inspection or approval or those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**15.1.2 Time Limits on Claims. Delete the existing language and substitute the following:** The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work.~~ The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

**15.1.3.1 Delete the existing language and substitute the following:** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~7~~ 90 days after occurrence of the event giving rise to such Claim or within ~~21~~ 120 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**15.1.7 This provision is deleted. Waiver of Claims for Consequential Damages** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- ~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons;~~
- ~~and~~ MA
- ~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

**15.2.5 Delete the existing language and substitute the following:** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties unless one or more parties proceed to make the Claim ~~but~~ subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**15.2.6.1 Delete this provision:** ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the~~

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~~demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.3.3 Delete this provision: Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

**15.4.4.1 Delete the existing language and substitute the following:** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration ~~does not prohibit~~ permits consolidation ~~or the other party agrees to consolidation~~, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**15.4.4.2 Delete the existing language and substitute the following:** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the sought to be joined can be joined under governing law ~~or consents in writing to such joinder~~. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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## EXHIBIT B - COVID-19 Addendum

This COVID-19 Addendum ("Addendum") amends the October 26, 2020 Agreement ("Agreement") between Independent School District No. 709, Duluth Public Schools ("Owner") and ICS Consulting, Inc. ("ICS") for project(s) governed by the Agreement ("Project(s)"). The Agreement is entered at a time in which the State of Minnesota declared an emergency due to the novel coronavirus (COVID-19) pandemic ("COVID-19 Pandemic"). On March 25, 2020, the Governor of the State of Minnesota issued Emergency Executive Order 20-20 *Directing Minnesotans to Stay at Home* under which Construction is exempted as a Critical Sector, and engineering and architectural services are exempted "critical businesses." To assure that the Project(s) requirements and schedule are met, the following requirements will apply to the Project(s). These requirements supplement any requirements in the Contract Documents and, where in conflict, supersede them.

- 1.) Representations of Consultant. ICS represents that it is aware of the existence of the COVID-19 Pandemic and the various federal, state, and local orders that have been issued that may affect the Project(s) and prosecution of work required by the Contract Documents, and has taken them into account in entering the Agreement. ICS further represents that it has verified the availability of all personnel, materials, supplies, and equipment it will be utilizing for the Project(s), and reasonably believes that it has the ability to perform its services as required by the Agreement on the schedule contemplated by the Agreement
- 2.) Communications. If ICS obtains information that there may be a delay in the provision of any material, equipment, supply, or labor needed for the Project(s) due to COVID-19 Pandemic, ICS must take reasonable steps to promptly communicate the information it obtained with the Owner. ICS must also undertake all reasonable efforts to minimize the potential for delay.
- 3.) Substitutions. Upon determining the existence of a possible delay involving a contractor obtaining any material required for the Project(s) involving the COVID-19 Pandemic, ICS shall work with the contractor to identify and develop substitution information for that material. The substitution materials shall be provided to the Owner for the Owner's review and approval.
- 4.) Schedule Impacts. If an event(s) occurring during the course of the Project(s) involving the COVID-19 Pandemic are determined by ICS to have a potential effect on completion of the Project(s) by the date specified in the Contract Documents, ICS must take reasonable steps to promptly notify the Owner in writing. ICS and the Owner will then engage in an interactive consideration of alternatives available in responding to the identified event(s). The interactive discussion must include discussion of alternatives that will allow the timely completion of the Project(s).
- 5.) Contract Time and Sum Adjustments. If ICS believes the COVID-19 Pandemic has impacted its services under the Agreement, ICS may submit a claim to the Owner to extend the period for the performance of its services. The claim shall be accompanied by all material that supports the claim and any adverse impact on ICS services. If ICS demonstrates to the Owner's satisfaction that the COVID-19 Pandemic has adversely impacted ICS, to the extent permitted by law, the Owner shall not be responsible for any claim by ICS for any costs for additional services incurred by ICS because of the COVID-19 Pandemic, but the Owner shall extend the period for the performance of ICS's services to a date mutually agreed upon

between the Owner and ICS. If a date cannot be mutually agreed upon the claim shall be determined by the claim resolution protocol under the Agreement.

- 6.) Minnesota Statute § 15.411 (Public Works Contracts; No Damages for Delay Clauses). This Addendum shall not be negate or alter the application of Minnesota Statute § 15.411 to the Agreement, this COVID-19 Addendum and the Project(s).

- End of Document -

<b>EXH "C" - Preliminary Project Budget</b>			
<b>Project:</b>	<b>Duluth Public Schools - Option "A"</b>		
	<b>HOCHS Replacement</b>		
<b>Prep by:</b>	<b>ISD 709</b>		
<b>12/2/2020</b>			<b>E=Estimated</b>
			<b>C=Calculated</b>
<b>1. Construction Costs per B132 2009 §6.1</b>			<b>From Estimated</b>
District Administration			
Construct new space			
20,400 sf office space	\$	5,242,800	E
4,000 sf storage space	\$	860,000	E
6,500 sf print shop space	\$	1,470,000	E
Facilities Department			
Renovation/Remodel Space			
16,000 sf facilities department space	\$	2,560,000	E
District Transportation			
Construct new space			
8,000 sf transportation service/repair space	\$	1,968,000	E
36,000 sf of cold bus storage	\$	4,680,000	E
Other project related costs			
Furniture fixtures and equipment			
Administration	\$	320,000	E
Facilities	\$	300,000	E
Transportation	\$	270,000	E
Technology/Communications/Data			
Administration	\$	250,000	E
Facilities	\$	140,000	E
Transportation	\$	140,000	E
Site Development	\$	1,150,000	E
Off-Site Improvements	\$	2,700,000	E
Demolition of Existing Facilities	\$	2,000,000	E
<b>Total Constr Costs</b>	\$	<b>24,050,800</b>	<b>C</b>
<b>2. Soft Costs/ICS - % of above Total Constr Costs B132 11.1</b>			
Design/Management			
IPD Coord & Rep	1.30%	\$ 312,660	C
Proj Over/Mgt	3.25%	\$ 781,651	C
Proj Design (A/E)	8.25%	\$ 1,984,191	C
MDE Proj Commissioning, full commissioning services	0.80%	\$ 192,406	C
<b>Total</b>	<b>13.60%</b>	<b>\$ 3,270,909</b>	<b>C</b>
<b>3. Owner's Costs</b>			
Bldg Permit		\$ 100,000	E
Other Permits/Fees 1.6% of Constr Cost	1.6%	\$ 384,813	C
Property Acquisition			
Moving		\$ 90,000	E
Other Owner's Costs		\$ 2,100,000	
<b>Total Owner Costs</b>		<b>\$ 2,674,813</b>	<b>C</b>
<b>Total Constr/Soft/Owner's Costs</b>		<b>\$ 29,996,522</b>	<b>C</b>
<b>4. Contingency on total costs</b>	<b>5%</b>	<b>\$ 1,499,826</b>	<b>C</b>
<b>5.Total Project Cost</b>		<b>\$ 31,496,348</b>	<b>C</b>

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