



**Duluth Public Schools, ISD #709
Lowell Elementary Building Envelope and Cafeteria
Expansion Project**

**Comprehensive Project Design & Management
Services**

January 26, 2024

Table of Contents

- Introduction..... 1
- I. Development, Design, and Pre-Construction Phase..... 3
- II. Construction and Post-Construction Phase 4
- III. Additional Services 4
- IV. Basis of Compensation..... 4

Appendices

- A General Conditions
- B Services Scope Summary
- C Preliminary Overall Budget Summary

Comprehensive Design and Management Services

Lowell Elementary Building Envelope and Cafeteria Expansion Project

Introduction

ICS is pleased to present this proposal to provide Comprehensive Project Management and design services on behalf of the District for the upcoming project as defined below.

Over the course of the past several months the District has been working in conjunction with ICS and their team to evaluate appropriate solutions to address building envelope issues and the need to expand the existing cafeteria capacity at Lowell Elementary School. The team has arrived at a solution that aims to address the current issues and improve reliability for years to come. The anticipated budget for these improvements will be finalized in the near future, and is currently estimated to be in the range of \$2.5 to \$3.0 million. ICS proposes to provide integrated project design and oversight services to assist the District with implementation of these projects.

It is anticipated that all phases of design for the improvements will be completed in early 2024. Due to market conditions and extended lead times on windows and other materials, procurement activities would take place immediately following design completion in spring of 2024 if possible to allow for materials to be received prior to construction commencing. It is anticipated that all work associated with the improvements will be completed no later than fall of 2024 if lead times allow. The services to be provided by ICS are stated in the summary below:

I. Development, Design, and Pre-Construction Phase

- On-going interaction and coordination with District staff.
- Develop the overall Project schedules and phasing.
- Cost estimating and overall budget development for all Project phases including updates at each phase of the design processes.
- Design services associated with the improvements including mechanical, electrical, structural, and any necessary architectural design work to accomplish the work.
- Development of comprehensive Division 00 and 01 front-end specifications for specifications as applicable.
- Review of schematic design and design development documents for coordination and scope issues.
- Review the 95% Construction Documents for coordination and constructability issues.
- Facilitation of pre-bid walk-throughs as applicable for the project.
- Coordination of public bid and award processes and necessary procurement for all scopes of work including post-bid analysis and contract award process.

II. Construction & Post-Construction Phase

- Assist in development and administration of Owner-contractor contract(s) for the Project.
- Coordination and oversight of Project contractor work and related Project matters and coordination.
- Processing, logging, and tracking of Project communications including but not limited to SI's, RFI's, Submittals, CO's etc.
- Interface with Project contractors and Consultants for resolution of construction-related issues as they arise.
- Assist Owner with conflict resolution and review of on-going Project issues and associated change order review.
- On-going Project budget tracking and accounting on behalf of the District including on-going reconciliation of all Project expenditures.
- Coordination of final punch-lists and final closeouts completion by contractors for the Project.
- Coordination and delivery to Owner of all close-out documentation including but not limited to As-Builts, manufacturer warranties and O&M Manuals.
- Facilitation of an 11-month walk-through after substantial completion for applicable contractors.

III. Basis of Compensation

Basic Services: ICS's Compensation for all Project Design and Representation services as described and summarized above are proposed as outlined below, and will be finalized based on the final overall project budget:

Project Design Services (architectural, structural, mechanical, and electrical):	8.0%
Pre-Construction & Construction Phase Services:	3.0%

The actual amount billed for ICS's services on a monthly basis will be based on ICS's estimate of the proportion of total services actually completed during the billing period. Payment for services provided prior to the referendum vote will be billed on a monthly basis and factored into our final fee for the project. Upon execution of this agreement, an initial invoice equal to 10% of our proposed fee will be submitted.

Reimbursable expenses will be billed on a direct cost x 1.1 and include such items as travel, reproduction of reports, drawings, specifications, bidding documents and similar Project-related items, technology usage/specialized equipment. Any general conditions items that are coordinated and/or provided by ICS at the direction of Owner such as temporary enclosures, etc. will also be billed as a reimbursable expense. Construction phase site services and personnel will be treated as a reimbursable expense.

For Project work beyond services outlined in this Proposal and/or any changes to the agreed upon scope of services the base fee will be adjusted

accordingly, or if the project duration extends beyond fall of 2025, services will be billed on a time-and-materials basis in addition to the above noted fees. However, additional work will not be conducted without prior approval by the District.

Appendix A

General Conditions

GENERAL TERMS & CONDITIONS

- 1. Agreement.** This is an agreement (“Agreement”) between ISD 709 (“Client”), and ICS, collectively, the “Parties.” This Agreement includes (1) these General Terms and Conditions, Exhibit A; (2) the Project Proposal (“Proposal”) attached; (3) Signature Page attached as Exhibit B; (4) Overall Budget Summary, Exhibit C; and (5) Fee Schedule attached as Exhibit D. This Agreement represents the entire and integrated agreement between the Parties and is exclusive of and supersedes all other agreements between the Parties, either oral or in writing. If any term or provision of this Agreement is found to be invalid under applicable law, that provision shall be deemed omitted from the Agreement and the remainder of the Agreement shall remain in full force and effect.
- 2. Professional Services.** The Client engages ICS to provide professional project services (“Professional Services”) in connection with the project at the Client’s location (“Project”) described in the Proposal’s Scope of Services. Other services mutually agreed upon by the Parties (“Other Services”) not specifically described in the Proposal shall be (1) governed by this Agreement, (2) identified in an amended Scope of Services, and (3) the Client agrees to pay ICS for such Other Services as additional compensation in accordance with ICS ’s Fee Schedule attached as Exhibit D.
- 3. Work Product.** Professional Services under this Agreement, including, but not limited to, all drawings, reports, information, recommendations, opinions or other work product prepared or issued by ICS, are for the exclusive use and benefit of the Client in connection with the Project. The work product is not intended to inform, guide, or otherwise influence any other entities or persons, and should not be relied upon by any entities or persons other than the Client and its agents for any purpose other than for the Project. The Client will not distribute, convey or disclose ICS ’s work product to any other persons or entities without ICS ’s prior written consent. Written consent shall include an express release of ICS from all liability to the third party receiving the work product from Client, and the Client’s indemnification of ICS for any claims or demands asserted against ICS by such third party. All documents produced by ICS under this Agreement shall remain the property of ICS and may not be used by the Client for any other project or purpose without the prior written consent of ICS.
- 4. Payment.** The Client shall pay ICS ’s invoices within thirty (30) days of the date of the invoice. Invoices shall be considered past due if not paid within 30 days after the invoice date. If the Client does not tender payment within 30 days of the invoice date, ICS may, without waiving any claim or right against the Client, and without liability to the Client, terminate this Agreement in accordance with Section 10(a) of this Agreement. Retainers shall be credited on the final invoice. ICS, at its sole discretion, may charge interest at 1.5% (or the applicable legal rate) per month on the unpaid balance. In the event any portion of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney’s fees.
- 5. Standard of Care.** ICS will strive to perform the Professional Services in a manner consistent with that level of care and skill ordinarily exercised by members of ICS ’s profession practicing in the same locality under similar circumstances at the time the Professional Services are performed. This Agreement creates no other representation, warranty, or guarantee, expressed or implied. ICS hereby excludes and disclaims any and all implied warranties including, but not limited to, any implied warranty of fitness for a particular purpose and any implied warranty of merchantability.
- 6. Limitation of Liability.** To the fullest extent permitted by law, the total liability of ICS for any damages, costs, fees, expenses, or other losses or demands for payment or performance

with regard to any claim or cause of action related in any way to this Agreement, the Project or the Professional Services, shall be limited to fifty-thousand dollars (\$50,000). The Client hereby releases ICS for any and all liability above such amount. This Limitation of Liability applies to any and all claims, no matter how stated, asserted, alleged or pleaded, including but not limited to, claims for errors and omissions, breach of contract, tort/negligence, quantum merit/unjust enrichment, or breach of fiduciary duty, and applies to all phases of Professional Services performed under this Agreement. The Client agrees ICS 's services will not involve the design of any equipment or the implementation of equipment. The Client agrees ICS will not be liable for any claims, damages, demands, costs, or expenses for personal injury or any other injuries or damages alleged by the Client or any third party relating to the design or implementation of equipment, and the Client agrees to indemnify and hold ICS harmless for any liability for such claims.

7. **Insurance.** Insurance Provided by Consultant. Before the start of its work, the Consultant shall procure and maintain in force coverage and limits of insurance for its own negligence as follows:
 - (a) Employers' Liability: \$1,000,000.00.
 - (b) General Liability: \$2,000,000.00 Occurrence, \$4,000,000.00 Aggregate
 - (c) Automobile Insurance: \$1,000,000.00 Liability.
 - (d) Umbrella Liability: \$1,000,000.00 Occurrence, \$1,000,000.00 Aggregate
 - (e) Professional Liability: \$2,000,000.00 Each Claim, \$2,000,000.00 Annual Aggregate
8. **Client Responsibilities.** The Client shall bear sole responsibility for (a) notifying third parties, including any governmental agency or prospective purchaser, of the existence of any hazardous materials located in or around the Project site; and (b) cooperation with all requests by ICS, including obtaining permission for access to the Project site. The Client releases and discharges ICS from all liability for any incorrect advice, judgment, or decision based on inaccurate information furnished by the Client or others. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the Project site, ICS shall immediately stop work in the affected area and promptly report the condition to the Client.
9. **Hazardous Materials.** It is acknowledged by both parties that ICS scope of services does not include any services related to asbestos, hazardous, or toxic materials that may be encountered or found to be present at or in areas adjacent to the site. Any such materials that are encountered shall be immediately brought to the attention of the owner, who will be solely responsible for any required abatement and/or removal of the materials in full compliance with applicable laws and regulations.
10. **Construction Observation.** If included in the Professional Services, ICS 's construction observation service shall be limited to general observation of construction operations. ICS shall not be responsible for inspection of the work, the means and methods of construction, or the safety procedures employed by any contractor. Performance of construction observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the contractor's work may occur. The Client shall hold its contractor and/or any sub-contractor solely responsible for the methods and means of construction, the quality of the Work, and performance of the Work. The Client, or its designees, shall notify ICS at least twenty-four (24) hours in advance of any observations required by the construction documents.
11. **Dispute Resolution.** Any claim or dispute between them arising out of or related to this Agreement shall first be informally negotiated in good faith between the Parties. If the claim or dispute cannot be amicably resolved within thirty (30) days by good faith negotiation, the Parties shall jointly submit the claim or dispute to mediation. Mediation shall be through a

mediator agreed upon by the Parties, or if ICS cannot be agreed upon within 15 days after the party seeking mediation provides written notice upon the other party to the Agreement demanding mediation, a mediator shall be appointed by the district court in the jurisdiction in which the Project is located. Demand for mediation shall be provided in writing to the other party to the Agreement within a reasonable time after the claim or dispute has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitation or repose. If the claim or dispute cannot be amicably resolved by good faith negotiation or mediation, then either party may exercise its rights under law. In no event shall a claim or dispute be made or sustained if it would be barred by the applicable statute of limitations or repose.

12. **Termination.**

- a. This Agreement may be terminated upon than seven (7) business days' prior written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Upon termination, ICS will deliver to the Client or its designee all records, documents or materials in its possession or control of ICS which relate to the Project and for which payment has been received. If ICS has prepared for or performed Professional Services for which payment has not been received as of the date of termination, the Client shall be entitled to purchase the products of those Professional Services, such as records, materials and documents, from ICS provided the Client and ICS agree to a purchase price and terms of sale. If the Client does not purchase the products of these Professional Services, the Client remains liable to ICS for any amounts incurred by unpaid charges for Professional Services performed. If this Agreement is terminated through no fault of ICS, the Client shall compensate ICS for all Professional Services performed prior to termination, all expenses incurred, all costs attributable to termination, including the costs attributable to ICS 's termination of consultant agreements, plus a termination expense of 25% of all unbilled fees.
- b. If after Design Development is accepted by the Client, redesign or analysis of alternates is required to accommodate value engineering items due to lack of funding, or if there are contractor requests requiring a re-negotiated engineering services contract, this Agreement shall be deemed terminated, and within 14 days of the date of termination, Client shall pay ICS for all Professional Services completed through the date of termination.
- c. If the Project is suspended, placed on hold or temporarily terminated for more than 15 calendar days, this Agreement will be deemed to be terminated on the 16th calendar day and the Parties shall negotiate a new agreement prior to restart of the Project to re-establish a new schedule and adjusted compensation and any other necessary revisions. Within 14 days of the date of termination, the Client agrees to pay ICS for all Professional Services completed through the date of termination plus all expenses incurred, all costs attributable to the termination, including the costs attributable to ICS 's termination of consultant agreements.

13. **Other Provisions.**

- a. The Parties each acknowledge that they will act in good faith in carrying out their duties and obligations under this Agreement.
- b. The Parties each acknowledge that they have reviewed and familiarized themselves with this Agreement, including its attachments, and agree to be bound by the terms and conditions contained therein.

- c. The Client shall designate a responsible employee as its contact for administration and coordination of the Work. The Client's contact shall have the authority to approve changes in the scope of the Project and shall be available during working hours as necessary to examine information submitted by ICS, to render or convey decisions, and to furnish information in a timely manner.
- d. It is specifically understood and agreed that at all times pertinent to this Agreement that ICS shall be an independent contractor and shall not be considered an employee of the Client.
- e. The Client shall provide prompt written notice to ICS if the Client becomes aware of any errors, omissions or inconsistencies in ICS 's Professional Services or information furnished by Client or Client's agents.
- f. The Client shall ensure that Project team leaders directly contracted to the Client have budgeted and thoroughly discussed and accepted all Project costs and values with the Client.
- g. The Parties understand and agree this Agreement may be changed or modified only through written agreement signed and dated by the Client and ICS. No act, omission or course of dealing by the Parties shall alter the requirement that modifications or changes to this Agreement can be accomplished only by mutual written agreement signed and dated by the Parties.
- h. This Agreement shall not be assigned by the Client or ICS without prior written consent of the other party to this Agreement.
- i. This Agreement shall be governed by and construed under the laws of the state where the Project is located.
- j. Unless otherwise provided, all notices and notifications shall be in writing and considered duly given if sent by U.S. Mail, postage prepaid, or by facsimiles to the business address of the parties set forth in this Agreement. Such notice(s) shall be deemed given as of the second business day following the date of posting by U.S. Mail or the next business day following the date of sending in the case of a facsimile or telecopy.

Appendix B

Signature Page

Signature Page

ISD 709 Lowell Elementary Building Envelope and Cafeteria Expansion Project
Comprehensive Project Design and Management Services
1-26-24

Proposal Terms

Terms on payment of services are delineated in the proposal dated 1-26-24.

Signature includes acceptance of attached proposal, fee schedule, and general conditions.

Authorization to Proceed

We appreciate the opportunity to present this proposal for Comprehensive Project Design and Representation Services. Please sign and return both copies of this document to our office. Upon receipt of both signed copies, a fully executed original copy will be forwarded back to you for your records. We will begin the project at the time of signature acceptance of this proposal.

Acceptance of only one portion of the proposed scope of services at this time assumes that the ICS team will be utilized for the remaining portion of the proposed scope of services as the project progresses.

Approved by ISD 709:

Date

Printed Name

Authorized Signature

Approved by ICS:

Date

Printed Name

Authorized Signature

Appendix C

Preliminary Budget Summary

OWNER: Duluth Public Schools
 PROJECT: Lowell Envelop Improvements & Cafeteria Expansion
 LOCATION: Duluth, MN
 PREP BY: ICS
 DATE: 1/24/2024



ITEM / ITEM DESCRIPTION	Base Scope - Courtyard Elevations & Cafeteria Expansion	Alternate #1: Remaining Horseshoe Elevations	Alternate #2: Music and Gym Elevations	Alternate #3: Create Playground Vestibule	Quantity /		Unit Cost / SF Cost	Notes:
					Program SF	Unit		
ENVELOPE IMPROVEMENTS & CAFETERIA EXPANSION								
Cafeteria Expansion								
expand into existing art room	\$440,000				2,000	SF	\$220	
allowance to relocate art somewhere - TBD	\$75,000				1	Allow	\$75,000	Location to be determined by district
Courtyard Elevations								
courtyard east	\$206,800				1	LS	\$206,800	
courtyard northeast	\$136,400				1	LS	\$136,400	
courtyard northeast	\$183,700				1	LS	\$183,700	
Remaining Building Elevations								
west facing elevation		\$279,400			1	LS	\$279,400	
front south facing elevation		\$283,250			1	LS	\$283,250	
Music and Gym Building Elevations								
gym elevations - replace calwall only			\$57,600		1	LS	\$57,600	
music wing elevations			\$417,010		1	LS	\$417,010	
Additional Improvements								
landscape restoration	\$15,000				1	LS	\$15,000	
create playground vestibule				\$72,500	1	LS	\$72,500	
CONSTRUCTION SUBTOTAL	\$1,056,900	\$562,650	\$474,610	\$72,500				
SOFT COSTS								
Fees/Permitting/Testing								
Project Management / CM	\$36,992	\$19,693	\$16,611	\$2,538				ICS
Design - Arch, Struct, Mech, Elec	\$89,837	\$47,825	\$40,342	\$6,163				DSGW Team
Reimbursables / Construction Phase Site Services	\$26,423	\$14,066	\$11,865	\$1,813				allowance
General Conditions	\$26,423	\$14,066	\$11,865	\$1,813				
Builder's Risk Policy	\$15,854	\$8,440	\$7,119	\$1,088				
Plan Review Fees	\$26,423	\$14,066	\$11,865	\$1,813				
Building Permit Fees	\$15,854	\$8,440	\$7,119	\$1,088				
Geotechnical / Special Testing / survey								
Property Acquisition	\$0	\$0	\$0	\$0				
Bond Costs	\$0	\$0	\$0	\$0				TBD - By District if Required
SUBTOTAL	\$237,803	\$126,596	\$106,787	\$16,313				
	0.225	0.225	0.225	0.225				
CONTINGENCY	\$84,552	\$45,012	\$37,969	\$5,800				8% of Construction Cost
SUBTOTAL	\$84,552	\$45,012	\$37,969	\$5,800				
TOTAL	\$1,379,255	\$734,258	\$619,366	\$94,613				