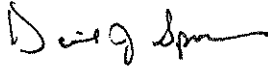


Memorandum

To: Bill Hanson
School Board Members

From: Dave Spooner 

Date: August 24, 2016

Re: Re-commissioning and Technical Services for Ordean East Middle School

Minnesota Power has offered to reimburse with Conservation Improvement Funds to the School District, the complete cost for all fee's related to re-commissioning of Ordean East Middle School, services provided by Hallberg Engineering, Inc.

Minnesota Power is reviewing our deliverables from the four previous re-commissioning projects recently completed by ICS Consulting, Inc., and Foster, Jacobs & Johnson, Inc. Minnesota Power intends to use the Hallberg Engineering deliverable, to compare to our current re-commissioning deliverables, and develop criteria for how they utilize Conservation Improvement Funds in the future to fund this type of work. The District would be responsible to fund the \$40,000.00 cost up front, but would then be reimbursed once the project is complete early spring 2017.

Recommendation:

It is recommended that the Duluth School Board approve the contract with Hallberg Engineering Inc., to provide re-commissioning and technical services at Ordean East Middle School for a total not to exceed cost of \$40,000.00.

Attachment

AGREEMENT

THIS AGREEMENT, made and entered into 25th day of August, 2016, by and between Independent School District No. 709, a public corporation, hereinafter called ISD 709, and Hallberg Engineering, Inc., an independent consultant, hereinafter called Consultant.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Consultant will provide programs or services for ISD 709 at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of August 25, 2016, and shall remain in effect until project is complete, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.
2. **Performance.** To provide re-commissioning and technical services at Ordean East Middle School, per Hallberg Engineering, Inc. Proposal dated June 10, 2016. This contract award amount is a not-to-exceed \$40,000.00. Total contract award amount to be determined through execution of this contract based upon rates as defined in the consultant's quote proposal.
3. **Contract Documents.** It is understood that this Contract consists of the following:
 1. Printed Memoranda of Agreement and Title Sheet;
 2. Advertisement for Bids, Quotes, RFP's, Consultant's response, and Tabulation;
 3. Consultant Insurance Policy;
 4. Supplementary Conditions and Insurance Requirements; and
 5. Any other documents identified by ISD 709.
4. **Background Check .** *N/A*

Consultant must provide an executed criminal history consent form and a money order or check payable to ISD 709 in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Consultant is precluded from performance of contract until the results of the criminal background check(s) are on file.

5. **Reimbursement.** In consideration of the performance of Consultant of its obligations pursuant to this Agreement, ISD 709 hereby agrees to reimburse Consultant for its services and expenses in performing said obligations up to a sum not to exceed \$40,000.00. Consultants are required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless the TIN is provided.

6. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by ISD 709 within 30 days of submission of a proper invoice by the Consultant;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

7. **Propriety of Expenses.** The fact that ISD 709 has reimbursed Consultant for any expense claimed by Consultant shall not preclude ISD 709 from questioning the propriety of any such item. ISD 709 reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Consultant. This clause shall not be construed to bar any other legal remedies ISD 709 may have to recover funds expended by Consultant for disallowed costs, or to seek other damages.

8. **Ownership of Materials.** ISD 709 reserves the rights to reproduce the documents that are the subject of the Contract, in any form, in any fashion, or appropriate the contents of the documents, or any portion thereof, to its own use for any and all programs, forms and other materials that Consultant has provided, prepared, or utilized in performance of the terms of this Agreement.

9. **Independent Consultant.** Both ISD 709 and Consultant agree that the Consultant will act as an independent consultant in the performance of its duties under this Agreement and is not an employee of ISD 709. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent consultants with respect to all actions performed pursuant to this Agreement.

Accordingly, Consultant shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Consultant's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, workers compensations, and any other taxes or business license fees as required.

10. **Indemnity and defense of ISD 709.** Consultant shall indemnify, hold harmless and defend ISD709, its employees, agents, successors and assigns, and their respective shareholders, directors, officers, employees and agents against and in respect to any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities, general losses, costs and reasonable attorneys' fees, court costs and litigation expenses (collectively "Liabilities") which may arise out of, relate to or result from any act or omission of the Consultant.

In the event that Consultant breaches its obligation to defend, indemnify and hold ISD 709 harmless, then in addition to its other damages ISD 709 shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

11. **Notices.** All notices to be given by Consultant to ISD 709 shall be deemed to have been given by depositing the same in writing in the United States Mail care of David J Spooner, ISD 709, Duluth Public Schools, 215 North 1st Avenue East, Duluth, MN 55802. All notices to be given by ISD 709 to Consultant shall be deemed to have been given by depositing the same in writing in the United States Mail to: Hallberg Engineering, Inc., 1750 Commerce Court, White Bear Lake, MN 55110.

12. **Assignment.** Consultant shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of ISD 709.

13. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

14. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota without regard to conflict of laws considerations.

15. **Compliance with Laws.** The Consultant shall comply with all governing laws, rules and regulations, whether federal, state, local or those of ISD 709. Those governing laws include but are not limited to Minnesota Statute 16C.05 (5) (formerly 1998 Minnesota Laws Ch. 386, Art. 1 Section 6) which Statute presently provides that the books, records, documents and accounting procedures and practices of the vendor or other party, that are relevant to the Consultant transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. The other provisions of the Statute also apply.

The Consultant recognizes that, to the extent that competitive bidding requirements apply to this Contract that those requirements apply to the award and performance of this Contract.

The Regulations of ISD 709 are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

16. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.

17. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon 30 days written notice to the other party as provided for in this Agreement.

18. **Data Practices.** Consultant further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to "data on individuals"; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

19. **Insurance.** Consultant shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Consultant shall maintain such insurance in force and effect throughout the term of the contract.

Consultant is required to maintain and furnish satisfactory evidence of the following insurance policies:

20. **Workers' Compensation Insurance:** Consultant must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Consultant will require the subcontractor to provide Workers' Compensation insurance in

accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

21. **Commercial General Liability:** Consultant is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the consultant or subcontractor or by anyone directly or indirectly employed under the contract. ISD 709 shall be named an additional insured under said policy and proof of this insurance shall be provided to ISD 709. This insurance shall be in at least the amount of \$1,500,000.

22. **Representatives of ISD 709.** The Consultant shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

<u>ISD 709 Employee</u>	<u>Position</u>
William Hanson	Director of Business Services

The Consultant shall report to the following persons regarding its work pursuant to this Agreement, or the designees:

<u>ISD 709 Employee</u>	<u>Position</u>
David J. Spooner	Supervisor of Maintenance and Construction

23. **Protection of ISD 709.** To the extent that work by the Consultant or others on behalf of ISD 709 is to be planned, conducted, supervised or reviewed by the Consultant, the Consultant shall advise ISD 709 if such work:

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;
- c. should be performed in a different manner and whether other work should be performed;
- d. requires ISD 709 to be advised of any other facts or opinions regarding that work.

In all respects, the Consultant shall represent the interests of ISD 709 and act to protect those interests and endeavor to guard ISD 709 against defects, deficiencies and omissions in the performance of the work.

24. **Negotiation, Mediation and Arbitration.** Any disputes between the parties shall first be negotiated. If the parties are not successful in negotiation, they then shall subject the dispute to mediation. If mediation is not successful, then any disputes between ISD 709 and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of ISD 709, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Consultant and any architects, contractors, subcontractors, material men and other consultants as may be involved in the dispute.

Consultant shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

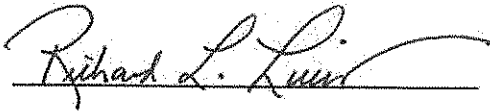
Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedures for ISD 709 courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

INDEPENDENT SCHOOL DISTRICT NO. 709

HALLBERG ENGINEERING, INC.

Chair, Board of Education



By RICHARD LEE LUCIO

CEO

Title

41-1507881

Taxpayer Identification Number