



AIA® Document G802® – 2017

Amendment to the Professional Services Agreement

PROJECT: *(name and address)*
Duluth Public Schools
Duluth News and Tribune Building
Renovation Project
424 West First Street
Duluth, MN 55802

AGREEMENT INFORMATION:
Date: October 13, 2023

AMENDMENT INFORMATION:
Amendment Number: 001
Date: May 6, 2025

OWNER: *(name and address)*
Duluth Public Schools, ISD #709
713 Portia Johnson Drive
Duluth, MN 55811

ARCHITECT: *(name and address)*
ICS Consulting, LLC (ICS)
1331 Tyler Street NE, Suite 101
Minneapolis, MN 55413

The Owner and Architect amend the Agreement as follows:

This Amendment supplements the C132-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser, dated October 13, 2023 between Duluth Public Schools and ICS for the project known as Duluth News and Tribune Building Renovations Project.

Scope of Work:

1. Fee adjustment to align the cost of the project to the fee percentage agreed to in AIA C132-2019 dated October 13, 2023. The initial RFP as provided by the School, identified a project value of \$6,000,000. Through the design process, the estimated value of the project has increased to \$13,159,072.00. Agreement to increase the compensation (fee) from \$117,000.00 to \$256,600.00 to align with the new construction valuation.
2. Additional work scope added to the project, Commissioning Services, as identified within the attached ICS proposal dated April 1, 2025, are to be completed alongside the construction services, with a value of \$50,250.00.

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment:

\$139,600.00 Construction Management Fee
\$50,250.00 Commissioning Services

Schedule Adjustment:
N/A

SIGNATURES:

ICS Consulting, LLC (ICS)
ARCHITECT *(Firm name)*

Duluth Public Schools
OWNER *(Firm name)*

SIGNATURE

Andy Faulkner, President
PRINTED NAME AND TITLE

SIGNATURE

Simone Zunich, Board Chair
PRINTED NAME AND TITLE

DATE

DATE

4/1/2025

Mr. Bryan Brown
Facilities Manager
Duluth Public Schools, ISD #709
709 Portia Johnson Drive
Duluth, MN 55811



104 Park Avenue North
Suite 104 | Park Rapids, Minnesota 56470
www.ics-builds.com
(763) 354-2670

Re: Commissioning Services/Systems Inspector for the Duluth Public Schools ISD 709 Education Center Project

Dear Mr. Brown:

ICS is pleased to provide our proposal for Independent Commissioning Services for the ISD #709 Education Center Improvement Project.

This submission is based on providing commissioning services to support the delivery of a project that meets all your goals in conformance with the contract documents and 2024 Minnesota Energy Code requirements.

ICS proposes to provide design document review, meetings, start-up observations, functional performance testing, inspections, and construction observation during the commissioning of this project. The attached proposal outlines the full scope of the proposed activities.

If the descriptions of the scope of services and fees in this proposal are agreeable, we will commence Commissioning activities related to this scope upon receipt of signed agreement. All services will be performed in accordance with the terms and conditions of the agreement. Should you desire to discuss this proposal, please contact me at your earliest convenience.

As ICS's representative for this project, you have my personal commitment to achieve the goals you have for the success of the project.

We appreciate your consideration of our firm's qualifications and experience and this opportunity to submit our proposal.

Sincerely,

A handwritten signature in blue ink that reads 'Dana C. Fontaine'.

Dana Fontaine, CPMP, BCxP, CCP, CxA, LEED®AP BD+C
Director of Technical Services
ICS

**BUILDING STRONG
CONNECTIONS**





Independent School District 709

Duluth Public Schools

709 Portia Johnson Drive, Duluth, MN 55811



Commissioning & Technical Services

For the ISD 709 Education Center Improvement Project

April 1, 2025

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Commissioning & Technical Services

Duluth Public Schools, ISD 709 Education Center Improvement Project Commissioning and Technical Services

Introduction

ICS Consulting, LLC. (ICS) is pleased to present this proposal agreement to provide Independent Commissioning and Technical Services for the Duluth Public Schools, ISD 709 Education Center Improvement Project. Our services include providing the level of effort and expertise needed to deliver a Scope of Services to meet the needs of ISD 709 and meet the requirements of the 2024 Minnesota Energy Code, and as outlined in ASHRAE 0-2019 and "Commissioning Process for Buildings and Systems" and as outlined in ASHRAE/ANSI/IES Standard 202-2024.

ICS proposes to provide design and document review, meetings, start-up observations, functional performance testing, inspections, and construction observation during the commissioning of this project. This proposal outlines the full approach and scope of the proposed activities.

ICS's understanding is that commissioning activities will commence immediately. It is anticipated that construction will be completed by September 2025.

Commissioning Services to be provided by ICS on your behalf for the following systems and associated controls:

- New Air Handling Units (Qty. 3)
- New Packages Rooftop Air Handling Unit (Qty. 1)
- New Air-Cooled Condensing Units (Qty. 3)
- New Unit Heaters (All)
- New Variable Air Volume Units (Qty. 49)
- New Finned Tube Radiation (All)
- New Fan Coil Unit (Qty. 1)
- New Heat Exchangers (Qty. 2)
- New Pumps (All)
- New Exhaust Fans (Qty. 7)
- New Mini-Split Indoor & Outdoor Units (Qty. 1)
- Lighting Controls
- Test, Adjust, and Balance Review and Sampling
- Building Automation System Graphics and Controls
- Site Observations and Installation Reviews
- System Flushing and Filling, chemical treatment reviews

I. Design Phase

- Review Owner's Project Requirements (OPR) for clarity and completeness (OPR developed by others)

- Review Design Intent Document (DID) for conformance with the OPR (DID developed by others)
- Attend one (1) design team meeting
- Perform two thorough reviews of the Design and Construction Documents at 50% and 90% and provide written comments per MN Energy Code
- Develop the MN Energy Code Required Commissioning Plan and Schedule
- Attend select design team meetings as deemed appropriate by the Owner
- Develop Commissioning Specifications (if requested)
- Attend a project kick-off meeting
- Lead a controls coordination/integration meeting

II. Construction Phase

- Attend a project kick-off meeting
- Review submittals of the commissioned equipment
- Coordinate and lead a temperature controls submittal review meeting
- Develop pre-functional/startup checklists for the commissioned equipment
- Perform site observations with the objective of validating commissioning-related construction issues
- Attend select construction meetings to stay ahead of construction progress/issues
- Develop functional performance tests for the commissioned equipment
- Witness and document piping system flush and fill
- Witness and document duct pressure testing
- Coordinate, attend and lead Test and Balance kick-off meeting

III. Building Acceptance Phase

- HVAC system functional testing utilizing two (2) commissioning agents
 - 100% point to point verification of HVAC component operations
 - 100% verification of system sequences of control
 - 100% testing of air terminal units

- 100% alarm verification
- 100% graphic representation accuracy
- Document initial functional testing results for inclusion in the final report
- Issue Corrective Action Requests identifying non-conforming performance and perform contractor correction verification
- Perform seasonal HVAC system functional testing through all four seasons
- Test and Balance report review and comment; perform field sampling
- Schedule and manage progress meetings to verify work is being completed in a timely manner

IV. Building Turnover/ Occupancy Phase

- Verify Training Plan development by the contractors, schedule and agenda for the Owner and the Owner's staff
- Facilitate the Training Sessions
- Review O&M documentation for major equipment/systems
- Review product warranty documentation for major equipment/systems
- Develop a Commissioning Report documenting the entire commissioning process
- Provide an operations manual/systems manual with procedures for operating and maintaining the facility.
- Perform at 11-month, pre-warranty expiration walkthrough of the facility
- Conduct a lessons-learned meeting for all project stakeholders
- Perform seasonal and deferred performance testing
- Issue an acceptance letter and final commissioning report to the Code Official

V. Basis of Compensation

ICS' Compensation for commissioning services as described and summarized above are proposed as a lump sum fixed fee of **\$50,250** for services provided for the project.

The actual amount billed for ICS' services on a monthly basis will be based on ICS' estimate of the proportion of total services actually completed during the billing period.

Reimbursable expenses will be billed for such items as mileage, lodging, reproduction, and specialized equipment.

For project work beyond the services outlined in the proposal and/or any changes to the agreed upon scope of services or project duration, services will be billed on a time-and-materials basis in addition to the above-mentioned fees. However, additional work will not be conducted without approval by the Owner.

- Proposal for all phases is based on 6 site visits and on 15 days of performance testing utilizing two (2) Commissioning Agents.
- Proposal does not include the following:
 - Commissioning of existing systems or any new controls on existing systems.
 - Re-testing or re-verifying. Additional tests or re-verification will be outside the scope of this proposal and will only be completed as approved at an additional cost utilizing our current rates.
 - ICS will review ANSI/NETA, ASME, etc., testing performed by the contractors. If applicable, ICS will not perform the tests.
 - Regularly planned overtime.
 - ICS is not responsible for design, design concept, design criteria, compliance with codes, design or general construction scheduling, cost estimating, or construction management. We may assist with problem solving or resolving non-conformance or deficiencies, but ultimately that responsibility resides with the General Contractor and the A/E.
 - Review of the protective coordination, arc flash, or any other study of A/E or General Contractor.
 - Procurement or Construction Administration services or Controls Management (cost control and schedule).
 - Performance testing 1 year after substantial completion. ICS can provide these services as a separate performance-testing project for an additional fee.
 - Factory witness testing as we have assumed this is the Procurement responsibility; however, these services can be provided as a Scope addition to the Agreement.
 - Materials, consumables, fees, etc. required for startup or checkout for systems or equipment provided by others.
 - Any type of building enclosure/envelope commissioning or air-barrier testing.
 - Monitoring Based Commissioning. *
 - Electrical distribution. *

*Although items are excluded from this proposal, ICS is open to discussing the most comprehensive approach as the project becomes further defined.

Appendix A

General Conditions

General Conditions

The word "Consultant" refers to ICS Consulting, LLC, the company with which Owner is contracting. "Owner" is our client. The Agreement with you, the client, is comprised of this Agreement and accompanying written proposal.

1. **Scope of Work and Duration of Services**

Consultant will furnish and perform the services specified in Consultant's proposal (the "Proposal"). If any portion of the proposal is inconsistent with this Agreement, this Agreement shall control.

The commencement date for basic services shall be the date of approval of this proposal agreement.

Consultant's obligation to perform the Services shall terminate upon completion of the 1-year statutory warranty period for the project or upon completion of all specified services described in this proposal.

2. **General Provisions**

In addition to the Proposal, Consultant and Owner agree as follows:

A. **Right of Access**

Unless otherwise agreed in writing, Owner will furnish Consultant with right-of-access to the Site and accurate information necessary to conduct the Services, as requested by consultant.

B. **Confidential & Proprietary Information**

The Consultant and Owner agree not to disclose to others or use any confidential or proprietary information or trade secrets of the other, which may become known to each prior to, during or after the performance of this Agreement without the prior written consent of the other. "Confidential or propriety information" and "trade secrets" shall mean any information about the other which is neither publicly known nor legally accessible to the other parties from third parties. Prior to the disclosure of any such confidential or proprietary information or trade secrets, each shall obtain the written approval of the other. Neither Owner nor Consultant shall use the specification or other materials produced under this Agreement for any purpose beyond the scope of this project, without prior written agreement of the other.

C. **Quality**

Consultant warrants that the Services it performs under this Agreement will be performed with the care and skill ordinarily exercised by reputable members of its profession practicing under similar conditions during the period of this Agreement and in the same or similar locality.

2. **Payment for Services**

A. Invoices will be submitted monthly for services performed during the previous month.

B. Payments will be considered due and payable 30 days from the date of the associated invoice. If payments are not received upon becoming due and payable, interest may be assessed on the outstanding balance at a rate of the US Bank Reference Rate plus 5%, with interest accruing beginning 30 days from the original date of the invoice.

3. Indemnity & Insurance

A. Indemnity

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless Owner, its agents, and employees, from all claims, losses, costs, and damages arising in any way out of Consultant's performance of work under this agreement, but only to the extent caused in whole or in part by negligent acts or omissions or intentional fault on the part of the consultant, regardless of whether such claim, loss, cost, or damage is caused in part by the Owner.

Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its agents, and employees, from all claims, losses, costs, and damages arising in any way out of Owner's performance of work under this agreement, but only to the extent caused in whole or in part by negligent acts or omissions or intentional fault on the part of the Owner, regardless of whether such claim, loss, cost, or damage is caused in part by the Consultant.

B. 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: All Owned vehicles used in connection with the services of this Agreement.

4. Limitations on Liability

- A.** The obligations of the Owner under this Agreement do not constitute personal obligations of Owner or its directors, officers or agents. Consultant will look solely to Owner's assets for satisfaction of any liability in respect of this Agreement and will not seek recourse against the directors, officers or agents of Owner or any of their personal assets for such satisfaction, unless there is a written agreement which makes an individual personally liable, executed by that individual. The provisions of this Paragraph 4 are not intended to relieve Owner from the performance of its obligations under this Agreement, but only to limit personal liability in the case of recovery of judgment. They do not limit Consultant's rights to obtain injunctive relief and specific performance or to maintain any other action not involving the personal liability of Owner or its directors, officers or agents.
- B.** ICS shall not be responsible for the acts or omissions of any consultant, contractor or any subcontractor, supplier or other individuals or entities performing design and/or furnishing any portions of the work. ICS shall not be responsible for the failure of any Contractor to perform or furnish the work in accordance with the Contract Documents.

5. Assignment

This Agreement shall not be assigned by consultant without prior written consent of the Owner.

6. Authorities for Action

Owner designates a responsible employee for administration and coordination of the work. Consultant designates a responsible employee to act on its behalf in any matter under this Agreement. Either party may designate in writing one or more persons to act on its behalf in any manner under this Agreement, provided notice is given according to the provisions set forth in Paragraph 8 below.

7. Independent Contractor

It is specifically understood and agreed that at all times pertinent to this Agreement, Consultant shall be an independent Contractor and shall not be considered an employee of the Owner.

8. Notices

Any notice under this Agreement shall be in writing and shall be deemed to be properly given when delivered to an officer of Owner or Consultant or upon receipt by the other party, when mailed by registered or certified mail, postage prepaid, return receipt requested.

Either party shall have the right to designate by notice, in the manner set forth above, a different address to which notices are to be mailed.

9. Applicable Law

This Agreement shall be governed by and construed under the laws of the State of Minnesota.

10. Extent of Agreement

This Agreement represents the entire Agreement between Owner and Consultant, and supersedes all prior obligations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument, dated and executed by both Owner and Consultant.

11. Termination

This Agreement may be terminated for proper cause by either party for any reason upon thirty (30) days written notice to the other party. Upon termination, Consultant will deliver to Owner or its designee all records, documents or materials in its possession or control of consultant which relate to the Project and for which payment has been received. If Services have been prepared for, or performed, for which payment has not been received as of the date of termination, Owner shall be entitled to purchase the products of those Services, such as records, materials and documents, for the consideration due therefore under this Agreement. If Owner does not purchase the products of these Services, Owner remains liable to consultant for any incurred but unpaid charges for Services performed.

12. Hazardous Materials

It is acknowledged by both parties that ICS Consulting, LLC's 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.

Appendix B

Signature Page

Signature Page

Duluth Public Schools, ISD 709 Education Center Improvement Project
Commissioning and Technical Services
04/01/2025

Proposal Terms

Terms on payment of services are delineated in the proposal dated 04/01/2025.

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

Authorization to Proceed

We appreciate the opportunity to present this proposal for Commissioning and Technical 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.

* * *

Please proceed according to the above stated terms, attached general conditions and the proposal.

Independent School District 709

Date

Printed Name

Authorized Signature

ICS Consulting, LLC

Date

Printed Name

Authorized Signature