

 **AIA[®] Document B132[™] – 2009****Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition**

AGREEMENT made as of the Twenty-Sixth day of October in the year Two-Thousand Twenty
(In words, indicate day, month and year.)

BETWEEN ICS's client identified as the Owner:
(Name, legal status, address and other information)

Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

and ICS:
(Name, legal status, address and other information)

ICS Consulting Inc.
1331 Tyler Street N.E., Suite 101
Minneapolis, MN 55413

for the following Project:
(Name, location and detailed description)

Over the course of the past several months, the District, ICS, and other project team members have been working to develop scopes and gain funding approval of a project designed to relocate existing District programs and services from the existing HOCHS facility. The current intent is for the bulk of these programs to be relocated to a new facility located on the District-owned Central High School site up on the hill. The ability for the District to fund this project has recently been approved as part of the State of Minnesota Bonding Bill.

Based on the overall scopes of work of the Project, it is critical to be strategic in the development, design, procurement, and implementation of the projects to optimize use of available funding, minimizing disruption to on-going operations, and to ensure that overall quality control and coordination are maintained. In order to accomplish these critical goals, the District has deemed it prudent to structure the process as an Integrated Project Delivery (IPD). ICS will serve as the lead consultant for this IPD effort. A preliminary outline of the proposed project has been included in Exhibit C.

The Construction Manager:
(Name, legal status, address and other information)

ICS Consulting Inc.
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

The Owner and ICS agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132[™]–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132[™]–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232[™]–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is entered into between Owner and ICS, a professional Owner's Representative and Construction Management firm, and is based on the Initial Information set forth in this Section 1.1, entitled, Initial Information, and Exhibit A to this Agreement, entitled AIA Document C132™ - 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser whereby ICS will provide Construction Manager services as an advisor to Owner. Exhibit A is expressly incorporated into this Agreement as if fully set forth herein.

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

Preliminary project proposal Exhibit C

(Paragraphs deleted)

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

N/A

§ 1.1.3 The Owner's Total Project Budget:
(Provide total and, if known, a line item breakdown.)

Total Project Budget = \$31,500,000.00

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§ 1.1.4 The Owner's anticipated design and construction schedule:

Conceptual Phasing Overview:

- .1 Design Phase: Spring /Summer 2021
- .2 Bidding: TBD
(Paragraphs deleted)
- .3 Construction Phase: Fall 2021 – Summer 2022
(Paragraph deleted)
- .4 Occupancy: TBD

§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:

(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)

- One Contractor
- Multiple Prime Contractors
- Unknown at time of execution

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

N/A

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address and other information.)

Cathy Erickson, CFO/Executive Director
Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review ICS's submittals to the Owner are as follows:

(List name, address and other information.)

Cathy Erickson, CFO/Executive Director

§ 1.1.10 The Owner will retain the following consultants:

(List name, legal status, address and other information.)

- .1 Construction Manager: The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:

ICS has been retained as Construction Manager pursuant to this Agreement.

- .2 Cost Consultant (if in addition to the Construction Manager):

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(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)

TBD

.3 Land Surveyor:

TBD

.4 Geotechnical Engineer:

Braun Intertec Mark Flynn
1826 Buerkle Road
St. Paul, MN 55110

.5 Civil Engineer:

Obernel Engineering Chip Jacobs
525 Lake Avenue South, Suite 222
Duluth, MN 55802

.6 Other consultants:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

§ 1.1.11 ICS identifies the following representative in accordance with Section 2.4:
(List name, address and other information.)

Pat Overom, Principal In Charge
ICS
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

(Paragraphs deleted)

§ 1.1.12 ICS will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Northland Consulting Engineers
102 South 21st Avenue West
Duluth, MN 55806

.2 Mechanical Engineer:

Obernel Engineering
525 Lake Avenue South, Suite 222
Duluth, MN 55802

.3 Electrical Engineer:

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Obernel Engineering
525 Lake Avenue South, Suite 222
Duluth, MN 55802

.4 Construction Management Services:

ICS
1331 Tyler St. N.E., Suite 101
Minneapolis, MN 55413

.5 Architect:

DSGW Architects John Erickson
2 West First Street, Suite 201
Duluth, MN 55802

.6 Civil Engineer:

TBD

§ 1.1.12.2 Consultants retained under Additional Services:

TBD

§ 1.1.13 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and ICS may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change, and, in that event, the Owner and ICS shall, by appropriate written agreement, appropriately adjust ICS's services, schedule for ICS's services, and ICS's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

(Paragraph deleted)

§ 1.2.1 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party against either the Owner or ICS.

§ 1.2.2 ICS and Owner understand and agree that AIA documents shall be used for Owner's contracts with its contractors. ICS shall prepare the construction agreement forms for all appropriate contractors, and the Owner shall execute and procure construction agreements with all appropriate contractors.

§ 1.2.3 The parties understand and agree that ICS does not represent or warrant the quality or acceptability of any previous work performed at the Project site and that ICS shall be entitled to additional compensation arising from unforeseen and/or concealed conditions arising from the previous work.

ARTICLE 2 ICS'S RESPONSIBILITIES

§ 2.1 ICS shall provide professional services as set forth in this Agreement and in Exhibit A. The parties understand and agree that ICS and its sub consultants will provide design, engineering and construction management services for the Project.

§ 2.2 The parties understand and agree that the architect and engineers of record for the Project are sub consultants to ICS and that ICS shall not perform architectural or engineering services for which it is not appropriately licensed.

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§ 2.3 ICS shall perform its services consistent with the professional skill and care ordinarily provided by 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 the obligations and responsibilities which ICS assumes towards Owner under this Agreement with regard to the scope of the Services of the sub consultant.

§ 2.4 ICS shall identify a representative authorized to act on behalf of ICS with respect to the Project.

§ 2.5 Except with the Owner’s knowledge and consent, ICS shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise ICS’s professional judgment with respect to this Project.

§ 2.6 ICS shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits ICS normally maintains, the Owner shall reimburse ICS for any additional cost. Prior to commencing the work under this Agreement, ICS shall provide a certificate of insurance to the Owner showing its insurance coverages, and ICS’s certificates for comprehensive general liability coverage and comprehensive automobile coverage will name the Owner as an additional insured.

COVERAGES	LIMITS OF LIABILITY
Workers’ Compensation, including Employer’s Liability Insurance	Statutory
Comprehensive General Bodily Injury Liability Insurance, including Contractual	\$1,000,000
Comprehensive General Property Damage Liability Insurance, including Contractual	\$1,000,000 Per Claim \$2,000,000 Aggregate
Comprehensive Automobile Injury Liability Insurance	\$500,000 Per Claim \$500,000 Aggregate
Comprehensive Automobile Property Damage Liability Insurance	\$500,000
Professional Liability Insurance	\$5,000,000 Per Claim \$5,000,000 Aggregate

(Paragraphs deleted)

ARTICLE 3 SCOPE OF ICS’S BASIC SERVICES

§ 3.1 ICS’s Basic Services consist of those described in Article 3 or expressly identified elsewhere in this Agreement as being part of ICS’s Basic Services. Services not expressly identified as part of ICS’s Basic Services are Additional Services. ICS shall provide architectural and engineering services through licensed sub consultants, including usual and customary architectural, structural, mechanical, civil and electrical engineering services, food service consulting, and any other services necessary to produce a complete set of Construction Documents. The parties agree and understand that architectural and engineering services shall be provided by the architect or engineers of record as sub consultants to ICS. It is understood by the Owner and ICS that contracts for such professional sub consulting services are not subject to competitive bidding requirements. All professionals providing such services whether directly by ICS or under a sub consultant contract with ICS shall be qualified, and where required, properly licensed and/or certified to perform these services. Upon the Owner’s request, ICS shall furnish copies of the scope of sub consulting services in the contract between ICS and ICS’s sub consultants.

§ 3.1.1 ICS shall manage ICS’s professional services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 ICS shall coordinate its services with those services provided by the Owner and the Owner’s other consultants. ICS shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner’s other consultants. ICS shall provide prompt written notice to the Owner if ICS becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, ICS shall submit for the Owner’s approval a schedule for the performance of ICS’s services. The schedule initially shall include anticipated dates for the commencement of

construction and for Owner's occupancy as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project.

Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by ICS or Owner. With the Owner's approval, ICS shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 ICS shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without ICS's written approval.

(Paragraphs deleted)

§ 3.1.5 ICS shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 ICS shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to ICS's services.

§ 3.2.2 ICS shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. ICS shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 Based on the Project requirements, ICS through its sub consultants shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.4 Based on the Owner's approval of the preliminary design, ICS through its sub consultants shall prepare Schematic Design Documents for the Owner's approval consisting of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

(Paragraphs deleted)

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, ICS shall prepare Design Development Documents for the Owner's approval illustrating and describing the development of the approved Schematic Design Documents and consisting of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 ICS shall update the estimate of the Cost of the Work and advise the Owner of any adjustments to the estimate of the Cost of the Work.

(Paragraph deleted)

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, ICS shall prepare Construction Documents for the Owner's approval. The Construction Documents shall set forth in detail the materials, systems and other requirements for the construction of the Work. The Owner and ICS acknowledge that, in order to properly construct the Work the contractors performing the Work shall provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals pursuant to their AIA construction agreements with the Owner.

§ 3.4.2 ICS shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, ICS and the architect or engineer of record shall, after consultation with the Owner, be primarily responsible for the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions).

§ 3.4.4 ICS shall update the estimate for the Cost of the Work and advise the Owner of any adjustments to the estimate for the Cost of the Work.

§ 3.4.5 ICS shall submit the Construction Documents to the Owner for the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

ICS, after consultation with the Owner, shall develop bidders' interest and assist the Owner in establishing a list of prospective bidders or contractors in addition to performing the services provided under this Agreement. Following the Owner's approval of the Construction Documents, ICS shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 ICS shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, ICS shall consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 ICS shall, if requested by the Owner, assist the Owner in obtaining proposals, where permitted by applicable law, by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, ICS shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 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 A232™–2009, General Conditions of the Contract for Construction, as amended for the Project. ICS shall revise and issue the General Conditions of the Contract for Construction (AIA Document A232™–2009) for the Project in accordance with this Agreement and consistent with ICS's duties as set forth in this Agreement and in the AIA Document A232™–2009 as amended for the Project.

§ 3.6.1.2 ICS shall advise and consult with the Owner during the Construction Phase Services. ICS shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. ICS 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, nor shall ICS be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ICS shall be responsible for ICS'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 of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, ICS's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date ICS issues the final Certificate for Payment.

§ 3.6.2 Observations of the Work

§ 3.6.2.1 ICS or its sub consultants shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in this Agreement, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, ICS shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, ICS shall 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.

§ 3.6.2.2 ICS has the authority to reject Work that does not conform to the Contract Documents. Whenever ICS considers it necessary or advisable, ICS shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of ICS nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of ICS to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 ICS shall interpret and decide matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. ICS's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of ICS shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, ICS shall endeavor to secure faithful performance by both Owner and Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232™–2009, as amended for the Project. ICS shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect

(Paragraphs deleted)

of record, as a sub consultant to ICS, shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. Certifications for payment shall constitute a representation to the Owner, based on observation of the Work as provided in this Agreement and on the data comprising the Contractor's Application for

Payment, that, to the best of the Architect of Record's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an observation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect of Record.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect of Record has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 ICS shall maintain a record of the Applications and Certificates for Payment.

(Paragraph deleted)

§ 3.6.4 Submittals

§ 3.6.4.1 ICS shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. ICS's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in ICS's professional judgment, to permit adequate review.

§ 3.6.4.2 ICS shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. ICS's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. ICS's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(Paragraph deleted)

§ 3.6.4.4 Subject to Section 4.2, ICS shall review and respond to requests for information about the Contract Documents and shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. ICS's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, ICS shall prepare, or cause to be prepared by ICS's sub consultants, and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 ICS shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 ICS shall review and prepare, or take other appropriate action, on Change Orders and Construction Change Directives for Owner's approval and execution in accordance with this Section 3.6.5 and the Contract Documents, and shall maintain records relative to changes in the Work.

§ 3.6.5.2 ICS shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit ICS to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If ICS determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, ICS may issue an order for a minor change in the Work or recommend to the Owner that the change be denied.

§ 3.6.5.3 If ICS determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, ICS shall make a recommendation to the

Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, ICS shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of ICS. With the Owner's approval, ICS shall incorporate those estimates into a Change Order, Construction Change Directive or other appropriate documentation for the Owner's execution or negotiation with the Contractor. ICS shall be compensated as an Additional Service for preparing change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect of Record, as a sub consultant to ICS shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect of Record's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect of Record's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, ICS shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 ICS shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, ICS shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services

§ 4.1 The Additional Services listed in the table below are included in ICS's Basic Services if identified as ICS's responsibility. Other additional services may be required for the Project that are not being provided as part of ICS's Basic Services. ICS shall provide the other listed Additional Services (listed as Not Provided) in the table below as ICS's responsibility, if mutually agreed upon in writing, and the Owner shall compensate ICS for such Additional Services as provided in this Agreement. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor ICS is designated, the parties agree that the listed Additional Service is not being provided for the Project.

(Paragraph deleted)

Additional Services	Responsibility <i>(ICS, Owner, or not provided)</i>
§ 4.1.1.1 Programming	ICS
§ 4.1.1.2 Multiple preliminary designs (up to 3)	ICS
§ 4.1.1.3 Measured drawings	ICS
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	ICS
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided

Additional Services	Responsibility <i>(ICS, Owner, or not provided)</i>
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	ICS
§ 4.1.1.9 Landscape design	ICS
§ 4.1.1.10 Interior design	ICS
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	ICS
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	ICS
§ 4.1.1.16 As-constructed record drawings	Contractor
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	ICS
§ 4.1.1.21 Telecommunications/data design	ICS
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	ICS
§ 4.1.1.24 Sustainable Project Services pursuant to Section	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	ICS
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	ICS
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.2 Additional Services may be provided after execution of this Agreement, if mutually agreed upon in writing, without invalidating the Agreement. ICS shall notify the Owner in writing of the need for the Additional Services prior to providing such services, or as otherwise set forth in subsections 4.2.1 and 4.2.2. If the Owner deems that all or a part of such Additional Services are not required, the Owner shall give prompt written notice to ICS, and ICS shall have no obligation to provide those services. Except for services required due to the sole fault of ICS, any Additional Services provided in accordance with this Section 4.2 shall entitle ICS to compensation pursuant to this Agreement and an appropriate adjustment in the Architect's schedule. If ICS fails to obtain prior written approval for Additional Services (except as set forth in subsection 4.2.2), it is not entitled to compensation for said services.

(Paragraphs deleted)

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, ICS shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. ICS shall not proceed to provide the following Additional Services until ICS receives the Owner's written authorization, and shall not be entitled to compensation for said services if prior written authorization is not received:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

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- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where ICS is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than ICS.

§ 4.2.2 To avoid delay in the Construction Phase, ICS shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of ICS's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to ICS of the Owner's determination. The Owner shall compensate ICS for the services provided prior to ICS's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by ICS;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 ICS shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, ICS shall notify the Owner:

- .1 Thirty (30) visits to the site by the design team over the duration of the Project during construction
- .2 Two (2) observations for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .3 Two (2) observations for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent ICS incurs additional cost in providing those Construction Phase Services.

§ 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.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify ICS. The Owner and ICS shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project:

Cathy Erickson, CFO/Executive Director
Duluth Public Schools
Independent School District #709
215 North 1st Avenue East
Duluth, MN 55802

The Owner shall render decisions and approve ICS's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of ICS's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

(Paragraph deleted)

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by ICS. Upon ICS's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of ICS in this Agreement, or authorize ICS to furnish them as an Additional Service, when ICS requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner's obligation to furnish legal services does not require the Owner to defend or indemnify ICS from ICS's alleged negligent or wrongful acts.

§ 5.9 The Owner shall provide prompt written notice to ICS if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in ICS's Instruments of Service or any information provided by the Owner. However, failure to provide such notice does not relieve ICS from its obligations under this Agreement.

§ 5.10 The Owner shall include ICS in all communications with the Contractor that relate to or affect ICS's services or professional responsibilities. The Owner shall promptly notify ICS of the substance of any direct communications

between the Owner and the Contractor otherwise relating to the Project. Communications by and with ICS's sub consultants shall be through ICS.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate ICS's duties and responsibilities set forth in the Contract for Construction with ICS's services set forth in this Agreement. The Owner shall provide ICS a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction and all supplementary general conditions and amendments applicable to the Project.

§ 5.12 The Owner shall provide ICS with right-of-access to the Project site prior to commencement of the Work and accurate information necessary to perform its services under this Agreement, and shall obligate the Contractor to provide ICS access to the Work wherever it is in preparation or progress.

§ 5.13 Within 15 days after receipt of a written request from ICS, the Owner shall furnish the requested information as necessary and relevant for ICS to evaluate, give notice of, or enforce lien rights.

§ 5.14 The Owner warrants that it is financially solvent and possesses sufficient working capital to perform its obligations under this Agreement and under the Contract Documents. ICS may reasonably demand assurance in writing of the Owner's ability to satisfy its obligations under this Agreement, and the Owner's failure to provide such reasonable assurances shall be grounds for termination of this Agreement by ICS.

ARTICLE 6 COST OF THE WORK

§ 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 contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of 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, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and shall be adjusted throughout the Project as required by this Agreement. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by ICS, represent ICS's judgment as a professional engineer. It is recognized, however, that neither ICS nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, ICS cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by ICS.

§ 6.3 In preparing estimates of the Cost of Work, ICS shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. ICS's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, ICS shall provide and be compensated for such an estimate as an Additional Service under this Agreement.

(Paragraph deleted)

§ 6.4 If, through no fault of ICS, the Procurement Phase has not commenced within 90 days after ICS submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time ICS's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, ICS shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the

(Paragraphs deleted)

Work, and the Owner shall cooperate with ICS in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with this Agreement;
- .4 in consultation with ICS, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.5.4, and if the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services was exceeded by the lowest bona fide bid or negotiated proposal by two percent (2%) or more, then ICS, without additional compensation, shall incorporate the required modifications in the Construction Documents. ICS's modification of the Construction Documents, pursuant to this Section 6.7, shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 ICS and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 ICS and ICS's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of ICS and ICS's consultants.

§ 7.3 ICS grants to the Owner a nonexclusive license to use ICS's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. ICS shall obtain similar nonexclusive licenses from ICS's sub consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If ICS rightfully terminates this Agreement for cause as provided in this Agreement, the license granted in this Section 7.3 shall terminate.

§ 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 sub 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 ICS and its sub 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.

§ 7.4 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

To the extent permitted by law, ICS shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgements arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of ICS, its employees and its consultants in the performance of professional services under this Agreement.

To the extent permitted by law, Owner shall indemnify and hold ICS and the ICS's officers and employees harmless from and against damages, losses and judgements arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or

omissions of Owner, or its employees, representatives or consultants, in the performance of its obligations under this Agreement.

§ 8.1.1 The Owner and ICS shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law. The Owner and ICS waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent that insurance is not compromised, and to the extent damages are covered by property insurance, the Owner and ICS 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, General Conditions of the Contract for Construction as amended for the Project. The Owner or ICS, 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.

(Paragraphs deleted)

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of ICS's services, ICS may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and ICS shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise in writing, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Paragraphs deleted)

Litigation in a court of competent jurisdiction in the state of Minnesota. ICS shall also designate litigation in the state of Minnesota as the dispute resolution mechanism for all contracts with subconsultants and no contracts with subconsultants shall contain restrictions on joinder.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 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 ICS's option, cause for suspension of performance of services under this Agreement. If ICS elects to suspend services, ICS shall give seven 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, the Owner shall pay ICS all sums due prior to suspension and any expenses incurred in the interruption and resumption of ICS's services. ICS's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, ICS shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, ICS shall be compensated for expenses incurred in the interruption and resumption of ICS's services. ICS's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the sole fault of ICS, ICS may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' 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.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to ICS for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or terminates this Agreement through no fault of ICS, or if ICS terminates this Agreement pursuant to Section 9.1, 9.3 or 9.4, the Owner shall compensate ICS for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to ICS's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement pursuant to Section 9.4 or 9.5, or ICS terminates this Agreement pursuant to Section 9.1, 9.3 or 9.4, the Owner shall pay to ICS the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

- .1 Termination Fee: 25% of total unbilled fees

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the state of Minnesota.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232™–2009, General Conditions of the Contract for Construction as amended for the Project.

§ 10.3 The Owner and ICS, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor ICS shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to ICS by the Owner prior to the assignment.

§ 10.4 If the Owner requests ICS to execute certificates, the proposed language of such certificates shall be submitted to ICS for review at least 14 days prior to the requested dates of execution. If the Owner requests ICS to execute consents reasonably required to facilitate assignment to a lender, ICS shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to ICS for review at least 14 days prior to execution. ICS shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or ICS.

§ 10.6 Unless otherwise required in this Agreement, ICS 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.

§ 10.7 ICS shall have the right to include photographic or artistic representations of the design of the Project among ICS's promotional and professional materials. ICS shall be given reasonable access to the completed Project to make such representations. However, ICS's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised ICS in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for ICS 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.

§ 10.8 To the extent permitted by law, if ICS or Owner receives information specifically designated 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. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 ICS and the Owner each acknowledge that they have reviewed and familiarized themselves with this Agreement, including Exhibit A and all attachments, and agree to be bound by the terms and conditions contained therein.

§ 10.11 ICS and the Owner specifically understand and agree that at all times pertinent to this Agreement ICS and ICS's sub consultants shall be independent professionals and shall not be considered employees of the Owner.

§ 10.12 Where ICS is prevented from completing any part of its services under this Agreement due to delay beyond the control of ICS, the time to allow ICS to perform its services will be extended in an amount equal to the time lost due to such delay. Delays beyond the control of ICS shall include, but are not limited to, acts or neglect by the Contractor, subcontractors, the Owner, utility owners or other contractors performing other work on the Project, strikes, labor disputes, fires, unavoidable delay in deliveries, unavoidable casualties, floods, epidemics, pandemics, disease, abnormal weather conditions, acts of God, or other causes beyond the control of ICS. ICS's fees for the affected services and the time schedules impacted by the delay shall be equitably adjusted.

ARTICLE 11 COMPENSATION

§ 11.1 The Owner shall compensate ICS on a percentage basis for all design services included in ICS's Basic Services (Architectural, Mechanical/Electrical/Plumbing/Civil/Structural Engineering and Food Service Consultant) and Construction Management Services (including Commissioning per Exhibit A) in relation to the execution of the HOCHS.

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

IPD Coordination and Representation – 1.5%
Project Oversight and Management – 3.5%
Project Design Services (A/E) – 8.25%
MDE Required Project Commissioning – 0.8%

§ 11.2 Reimbursable Expenses are in addition to the compensation for ICS professional services under Article 3 and Section 11.1 and include expenses incurred by ICS and ICS's sub consultants directly related to the Project, as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

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- .3 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .4 ICS Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by ICS consultants;
- .5 All taxes levied on professional services and on reimbursable expenses;
- .6 Professional services of consultants other than architecture, mechanical/electrical/plumbing/civil and structural engineering and food service consulting;
- .7 All site related services including site superintendent, general superintendent, trailer, office supplies and equipment, phones, internet, technology; superintendent truck, lodging and meals (only if out of town), safety and equipment, etc.
- .8 Transportation and authorized out-of-town travel and subsistence;
- .9 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .10 Printing, reproductions, plots, standard form documents;
- .11 Postage, handling and delivery;

The detailed Reimbursable Budget will be finalized after Schematic Design is completed.

§ 11.2.1 For Reimbursable Expenses, the compensation shall be the out of pocket expenses incurred by ICS and ICS's consultants plus an administrative fee of five percent (5%) of the expenses incurred.

§ 11.3 General Conditions are in addition to the compensation for ICS professional services under Article 3 and Section 11.1 and include expenses incurred by ICS and ICS's sub consultants and service providers directly related to the Project, as follows:

- .1 All site related contracted services including temporary sanitation, temporary utilities, construction cleaning/waste management, testing, fencing/security, temporary enclosures, snow plowing, temporary roads, winter conditions.

§ 11.3.1 For General Conditions, the compensation shall be out of pocket expenses incurred by ICS and ICS's consultants plus an administrative fee of five percent (5%) of the expenses incurred.

§ 11.4 For Additional Services that may arise during the Course of the Project, including those under Section 4.2, the Owner shall compensate ICS at the rates set forth in Section 11.7. Compensation for Additional Services of ICS's sub consultants when not included in Section 11.2 shall be the amount invoiced to ICS.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Contract Execution	Ten	percent (10	%)
Schematic Design and Design Development Phase	Twenty	percent (25	%)
Construction Documents Phase	Forty	percent (35	%)
Bidding/Procurement Phase	Five	percent (5	%)
Construction Phase	Twenty-Five	percent (25	%)
Total Basic Compensation	One Hundred	percent (100	%)

(Paragraph deleted)

§ 11.6 ICS shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.6.1 Intentionally Omitted.

§ 11.7 The hourly fixed billing rates for services of ICS and ICS’s consultants are set forth below. The rates shall be adjusted in accordance with ICS and ICS’s consultants’ normal review practices.

Personnel Description	Rate/Hour
Construction Executive	\$260.00
Project Director	\$180.00
Project Manager (PM1,2,3 – Blended Rate)	\$150.00
General Superintendent	\$150.00
Site Superintendent	\$130.00
Project Engineer	\$90.00
Clerical/Accounting	\$85.00
Design Team – Architects, engineers, consultants	Based on firm’s current rate structure

Flat Rates for Reimbursable Items	Rate/Monthly or Weekly
Site Trailer	\$600.00 per month
Office Supplies & Equipment	\$300.00 per month
Phones/Internet/Technology	\$550.00 per month
Superintendent Truck	\$500.00 per week
Superintendent Lodging/Meals	Expenses actually incurred in an amount not to exceed \$1000.00 per week

If the Site Superintendent is local, the lodging/meals will not be billed.

(Paragraphs deleted)

§ 11.9 **ICS’s Insurance.** If the types and limits of coverage required in Section 2.6 are in addition to the types and limits ICS normally maintains, the Owner shall pay ICS for the additional costs incurred by ICS for the additional coverages as set forth below:

(Insert the additional coverages ICS is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse ICS.)

NA

§ 11.10 **Payments to ICS**

§ 11.10.1 **Initial Payments** An initial payment of 10% of the fees will be made upon 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.

Init.

§ 11.10.2

(Paragraphs deleted)

Progress Payments

(Paragraphs deleted)

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of ICS’s invoice. Amounts unpaid 30 (thirty) days after the invoice date shall bear interest at the legal rate prevailing from time to time in the State of Minnesota.

§ 11.10.2.2 The Owner shall not withhold amounts from ICS’s compensation to impose a penalty or liquidated damages on ICS, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless ICS agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to General Conditions and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. Reimbursable Expenses and General Conditions expenses will be estimated during schematic design, design development and construction document phase.

ARTICLE 13 SCOPE OF THE AGREEMENT


§ 13.1 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B132™–2009, Standard Form Agreement Between Owner and ICS including Exhibit A, AIA Document C132™-2009, Standard Form of Agreement Between Owner and ICS where ICS Provides Construction Manager Services as an Adviser to the Owner.
- .2 Exhibit B – COVID-19 Addendum.
- .3 Exhibit C – Preliminary Project Proposal

§ 13.2 This Agreement represents the entire and integrated agreement between the Owner and ICS and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and ICS.

OWNER *(Signature)*
 Jill Lofald, School Board Chair

(Printed name and title)



ICS *(Signature)*
 Mr. Pat Overom, Principal In Charge

(Printed name and title)

(Table deleted)(Paragraphs deleted)