

PROFESSIONAL SERVICES AGREEMENT HAYES FLOORING PROJECT

THIS AGREEMENT is made on the latest date of execution ("Effective Date") by and between inBYLT, LLC, a Minnesota Corporation located at 3495 Northdale Blvd. NW, Suite 230, Coon Rapids, Minnesota 55448 ("Consultant"), and ISD 14 Fridley Public School District (Client), located at 6000 Moore Lake Drive NE, Fridley, Minnesota 55432.

RECITALS

- A. Consultant is engaged in the business of providing planning services and construction management services.
- B. The Client desires to have facility improvements to the district facilities, as outlined in the Scope of Work section in Exhibit A
- C. Consultant represents that it has professional expertise and capabilities to provide the Client with the requested professional services.
- D. The client desires to engage Consultant to provide the services described in this Agreement and Consultant is willing to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms and conditions expressed herein, the Client and Consultant agree as follows:

AGREEMENT

1. **Services to be Provided.** Consultant agrees to provide Client with project coordination services as set forth in Consultant's Scope of Services attached hereto as Exhibit A or any supplemental letter agreements, or both, entered into between the Client and Consultant (the "Services"). The Services referenced in the attached Exhibit A or any supplemental letter agreements shall be incorporated into this Agreement by reference. All Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professionals currently providing similar services.
2. **Consideration.** The consideration, which the Client shall pay to Consultant and be as follows:
 - A. Fee for Pre-Construction Services and Construction Management services as outlined in Exhibit A shall be \$55,282.00
 - B. If additional services are required, for additional Services, which have been approved in writing in advance by Client, the Client shall compensate the Consultant as follows:

i.	Managing Principal	\$210.00 per hour
ii.	Senior Design Engineer	\$215.00 per hour
iii.	Design Engineer	\$190.00 per hour

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iv.	Drafter	\$150.00 per hour
v.	Construction Project Manager	\$155.00 per hour
vi.	Project Engineer	\$135.00 per hour
vii.	Quality Control	\$130.00 per hour
viii.	Commissioning Agen	\$150.00 per hour
ix.	Administration/Accounting	\$70.00 per hour

Reimbursable Expenses. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager directly related to the Project. For Reimbursable Expenses, the compensation shall be the expenses incurred by the Construction Manager plus five percent (5%) markup of the expenses incurred.

Payment Schedule. Invoices will be billed monthly on a work completed basis.

3. **Approvals.** The Consultant will secure the Client's written approval before making any expenditures, purchases, or commitments on the Client's behalf beyond those listed in the Services. The Client's approval may be provided via electronic mail.
4. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:
 - a. Consultant may terminate this Agreement in the event of a breach of the Agreement by the Client upon providing thirty (30) days' written notice to the Client.
 - b. Client may terminate this Agreement immediately upon Consultant's failure to have in force any insurance required by this Agreement.

In the event of a termination, Client shall pay Consultant for Services performed to the date of termination and for all costs or other expenses incurred prior to the date of termination.

5. **Amendments.** No amendments may be made to this Agreement except in writing signed by both parties.
6. **Remedies.** In the event of a termination of this Agreement by Client because of a breach by Consultant, Client may complete the Services either by itself or by contract with other persons or entities, or any combination thereof. The foregoing remedies provided to Client for breach of this Agreement by Consultant shall not be exclusive. Client shall be entitled to exercise any one or more other legal or equitable remedies available because of Consultant's breach.
7. **Records of Inspection.** Pursuant to Minnesota Statutes § 16C.05, Subdivision 5, the Consultant agrees that the books, records, documents, and accounting procedures and practices of the

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Consultant, that are relevant to the contract or transaction, are subject to examination by the Client and the state auditor or legislative auditor for a minimum of six years. The Consultant shall maintain such records for a minimum of six years after final payment. The parties agree that this obligation will survive the completion or termination of this Agreement.

8. **Indemnification.** To the fullest extent permitted by law, the Consultant, and the Consultant's successors or assigns, agree to protect, defend, indemnify, save, and hold harmless the Client, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character, damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorneys' fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Consultant's (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the Client is entitled. The parties agree that these indemnification obligations will survive the completion or termination of this Agreement.
9. **Insurance.** Consultant shall maintain reasonable insurance coverage throughout this Agreement. Consultant agrees that before any work related to the approved Project can be performed, Consultant shall maintain at a minimum: Worker's Compensation Insurance as required by Minnesota Statutes, Section 176.181; Professional Liability in an amount not less than \$1,000,000.00 per occurrence; and Commercial General Liability in an amount of not less than \$1,500,000.00 per occurrence for bodily injury or death arising out of each occurrence, and \$1,500,000.00 per occurrence for property damage. To meet the Commercial General Liability requirements, the Consultant may use a combination of Excess and Umbrella coverage. The Consultant shall provide the Client with a current certificate of insurance including the following language: "Client is named as an additional insured with respect to the commercial general liability, and umbrella or excess liability, as required by the contract. The umbrella or excess liability policy follows form on all underlying coverages." Such certificate of liability insurance shall list the Client as an additional insured and contain a statement that such policies of insurance shall not be canceled or amended unless thirty (30) days' written notice is provided to the Client, or ten (10) days' written notice in the case of non-payment.
10. **Subcontracting.** Neither the Client nor the Consultant shall assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in the Agreement without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent consultants,

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associates, and subcontractors, as it may deem appropriate to assist it in the performance of services hereunder. Any instrument in violation of this provision is null and void.

11. **Assignment.** Neither Client nor Consultant shall assign this Agreement or any rights under or interest in this Agreement, in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision is null and void.
12. **Independent Contractor.** Consultant shall be deemed an independent contractor. Consultant's duties will be performed with the understanding that Consultant has special expertise as to the services which Consultant is to perform and is customarily engaged in the independent performance of the same or similar services for others. All required equipment and personnel shall be provided or contracted for by Consultant. The manner in which the services are performed shall be controlled by Consultant; however, the nature of the services and the results to be achieved shall be specified by Client. The parties agree that this is not a joint venture, and the parties are not co-partnering. Consultant is not to be deemed an employee or agent of Client and has no authority to make any binding commitments or obligations on behalf of Client except to the extent expressly provided herein. All services provided by the Consultant pursuant to this Agreement shall be provided by the Consultant as an independent contractor and not as an employee of the Client for any purpose, including but not limited to: income tax Withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.
13. **Compliance with Laws.** Consultant shall exercise due professional care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Consultant agrees to provide the applicable services detailed in Exhibit A or any supplemental letter agreement. Consultant's guests, invitees, members, officers, officials, agents, employees, volunteers, representatives, and subcontractors shall abide by the Client's policies prohibiting sexual harassment, firearms, and smoking, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on Client property, at all times while performing duties pursuant to this Agreement. Consultant agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by the Client.
14. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the Client and the Consultant and supersedes any other written or oral agreements between the Client and the Consultant. This Agreement can only be modified in writing signed by the Client and the Consultant. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

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15. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
16. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.
17. **Conflict of Interest.** The Consultant shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of the Client. In the event of a conflict of interest, Consultant shall advise the Client and either secure a waiver of the conflict or advise the Client that it will be unable to provide the requested services.
18. **Worth Products and Ownership of Documents.** All records, information, materials and other work products, including, but not limited to the completed reports, drawings, plans, and specifications prepared and developed in connection with the provision of services pursuant to this Agreement shall become the property of the Client, but reproductions of such records, information, materials and other work products in whole or in part may be retained by the Consultant. Regardless of when such information was provided, the Consultant agrees that it will not disclose for any purpose any information the Consultant has obtained arising out of or related to this Agreement, except as authorized by the Client or as required by law. These obligations survive the termination of this Agreement.
19. **Agreement Not Exclusive.** The Client retains the right to hire other professional engineering service providers for other matters, in the Client's sole discretion.
20. **Data Practices Act Compliance.** Any and all data provided to the Consultant, received from the Consultant, created, collected, received, stored, used, maintained, or disseminated by the Consultant pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Consultant agrees to notify the Client within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of the Consultant to provide access to public data to the public if the public data are available from the Client, except as required by the terms of this Agreement. These obligations survive the termination of this Agreement.
21. **No Discrimination.** Consultant agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Consultant agrees to

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comply with Americans with Disabilities Act as amended, Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Consultant agrees to hold harmless and indemnify the Client from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by the Consultant or its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and subcontractors. Upon request, the Consultant shall provide accommodation to allow individuals with disabilities to participate in all services under this Agreement. Consultant agrees to utilize their own text telephone or the Minnesota Relay Service in order to comply with accessibility requirements.

22. **Authorized Agents.** The Client's authorized agent for the purposes of administration of this contract is Brenda Lewis, District Superintendent, or their designee. The Consultant's authorized agent for purposes of administration of this contract is Mark Rasmussen, and all Services shall be performed by or under his supervision.
23. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:

Consultant:

inBYLT, LLC (Consultant), located at 3495 Northdale Blvd. NW, Suite 230, Coon Rapids, MN 55448; Attn: Mark Rasmussen, PE; markr@inbylt.com; 612-581-0219;

Client:

ISD 14 Fridley Public School District (Client), located at 6000 Moore Lake Drive NE, Fridley, Minnesota 55432, Attn: Brenda Lewis, Brenda.Lewis@Fridley.k12.mn.us, 763-502-5002.

or such other contact information as either party may provide to the other by notice given in accordance with this provision.

24. **Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.
25. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.
26. **Mediation.** Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation at the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. In the

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event mediation is unsuccessful, either party may exercise its legal or equitable rights.

27. **Payment of Subcontractors.** Consultant agrees that it must pay any subcontractor within ten (10) days of the prime contractor's receipt of payment from the Client for undisputed services provided by the subcontractor. Consultant agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.
28. **Publicity.** Client and Consultant shall develop language to use when discussing the Services. Consultant agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language. Consultant must not use the Client's logo or state that the Client endorses its services without the Client's advanced written approval.
29. **Severability.** In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.
30. **Signatory.** Each person executing this Agreement ("Signatory") represents and warrants that he or she is duly authorized. In the event the Consultant did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of the Consultant, as set forth herein, personally. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.
31. **Recitals.** Client and the Consultant agree that the foregoing Recitals are true and correct and are fully incorporated into this Agreement.

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IN WITNESS WHEREOF, the Client and the Consultant have caused this Professional Services Agreement to be executed by their duly authorized representatives in duplicate on the respective dates indicated below.

CLIENT

DATED: _____

BY: _____

ITS: SUPERINTENDENT

CONSULTANT

INBYLT, LLC

DATED: _____

BY: _____

ITS: CHIEF OPERATING OFFICER

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Exhibit A - Scope of Services

Fridley Public Schools is planning a flooring abatement project at Hayes Elementary School. The following elements are included in this plan:

Project Objectives:

- Clearly state the primary goals and objectives of the project, which may include:
 - Removal of existing flooring materials.
 - Ensuring a safe and compliant work environment.
 - Minimizing disruption to the occupants of the building.
 - Disposal of hazardous materials (if applicable).

Project Deliverables:

- Specify the tangible results or outcomes that the project will produce, such as:
 - Removal of old flooring materials.
 - Clean and safe subfloor preparation.
 - Proper disposal of removed materials.
 - Documentation of the abatement process.

PRE-CONSTRUCTION SERVICES:

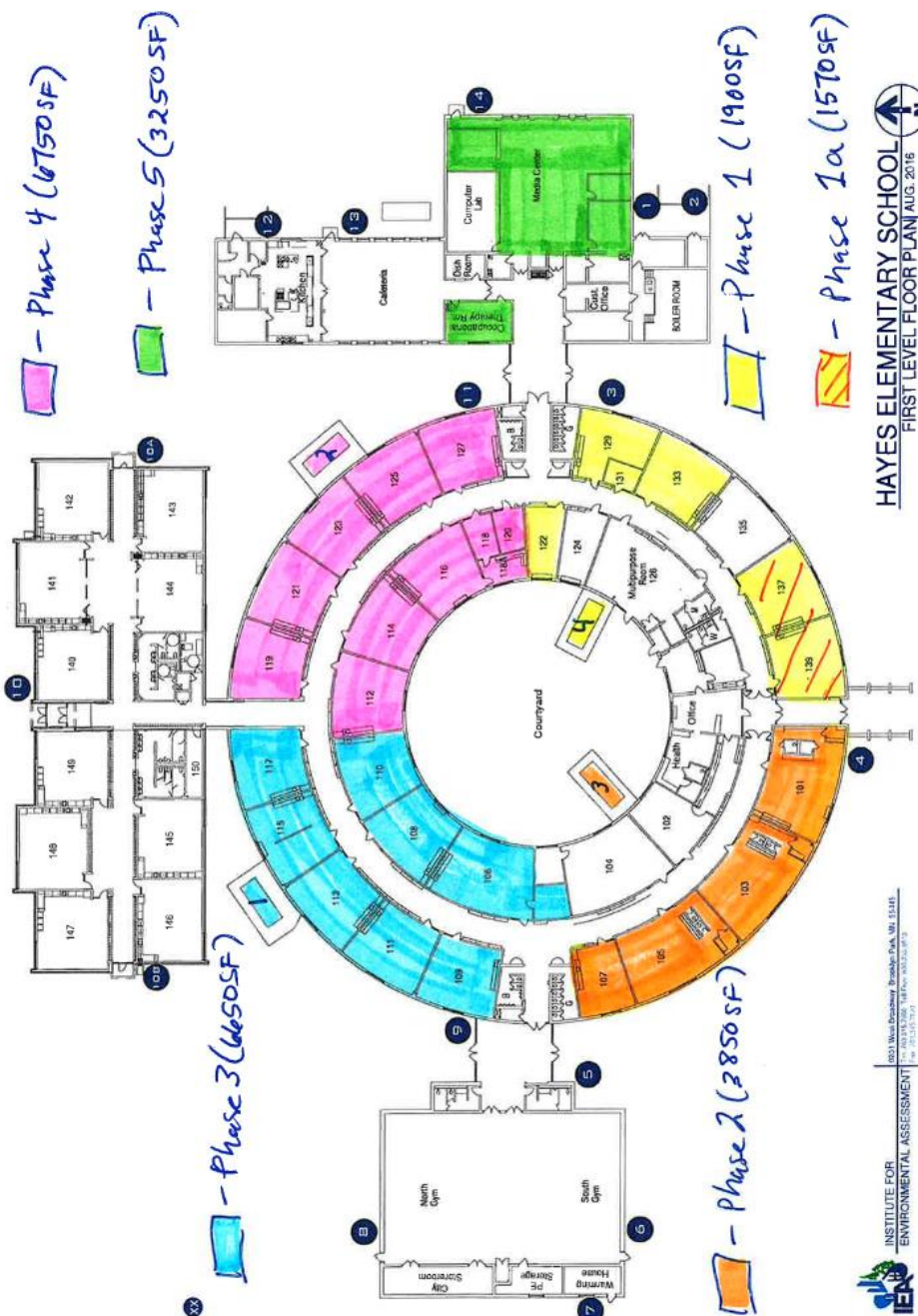
- Coordinating flooring and moving contractors.
- Develop a schedule with a map of the areas that will be addressed and when.
- Coordinating proper staging areas for each area of the building.

PROJECT SCOPE:

- Flooring abatement
 - All asbestos containing flooring in the building will be removed by trained professionals. All industry standard practices will be followed to keep any asbestos fibers from becoming airborne. This may include using water and or plastic as well as other potential methods. Spaces will be closed off from the public and ventilation equipment will be turned off to help keep any fibers from becoming airborne.
 - If abatement needs to take place in any IT rooms, we will work with the IT department to minimize any disturbances or downtimes of IT equipment.
 - Coordination of any building activities and occupants will be important to keep people and workers from getting in each other's ways.
- Flooring installation
 - All areas that have been cleaned of any asbestos containing material will be refloored with vinyl plank, carpet, tile or other products.
- Staging of desks, chairs, shelves, books will take place in corridors, gymnasium, and potentially other classrooms.

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Abatement Phasing:



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Flooring Type:

