

# PROFESSIONAL SERVICES AGREEMENT



Parties: ***Independent School District #2687***  
8700 County Road 6 SW  
Howard Lake, MN 55349

And,

***inBYLT***  
5436 Douglas Dr N  
Minneapolis, MN 55429

## 1.0 Overview

***Independent School District #2687*** (“Client”) and ***inBYLT*** (collectively, “Parties”) enter into this Professional Services Agreement (“Agreement”) under which Consultant shall perform professional services for the Client pursuant to the terms and conditions of the Agreement, including Attachments A and B. A two- phase approach will be used to develop and implement the agreement in a timely and logical manner. Phase I is for the assessment and development of a Facility Plan (“Plan”), and Phase II is for implementation of the Plan. This Agreement defines the obligations of both parties during each phase and constitutes a binding contract for Phase I and Phase II professional services to be provided by Consultant to the Client as set forth herein.

## 2.0 Scope of Professional Services.

The scope of professional services (“Services”) for Phases I and II are defined in Attachments A and B to this Agreement. Phase I Services Include consultant assisting the Client in the development and adoption of the Plan. Phase II Services includes Consultant implementation of the improvements portion of the Plan upon approval of the Plan by the Board of Education (“Board”). The parties anticipate the Services shall include but are not limited to the following project types: new construction, additions, remodeling, renovation, repair, energy conservation measures, and other facility improvements. It is expressly agreed and understood that the Client has contracted with Consultant for the provision of services described in Attachments A and B to this Agreement.

For Phase II Services, Consultant shall provide the Client with a Project Specific Agreement (“PSA”) utilizing AIA contract forms modified to define the particular scope of work and other needs for each specific project. The PSA shall supersede this Agreement with respect to the particular project defined under the PSA.

Consultant shall perform its Services under this Agreement consistent with the skill and care ordinarily provided by professional service providers in the same or similar locality under the same or similar circumstances and consistent with the orderly progress of the Agreement. Estimates of the cost of construction shall be only estimates and shall not constitute a representation or warranty regarding the actual cost of the construction. The cost of construction of any potential project will be determined based upon competitive bids received from construction contractors for the work at issue according to the laws in the state where the specific project is located.

The Client retains the right to proceed with all, some or none of the recommended Phase II work, in its sole discretion. If the Client does not proceed with Phase II Work, then the Client is not obligated to execute any additional contract documents with Consultant for Phase II Work. However, to ensure the

benefits associated with Consultant recommendations are realized by the Client, the Client agrees that it shall not proceed with Phase II Work with any company other than consultant. In the event of an emergency whereby a critical system needs immediate replacement, the aforementioned restriction on Phase II Work shall not apply.

The T&C will be attached and serve as a change order to this Agreement. Under no circumstances shall the T&C contain language allowing the Client to terminate this Agreement or subsequent Phase II contracts for convenience. Termination shall only be allowed if the party in default fails to cure after being given notice of the default and an opportunity to cure.

The Client expressly waives its right to terminate this Agreement or subsequent Phase II contracts for convenience or without cause. However, this Agreement may be terminated by either Party upon not less than 14 days written notice should the other party fail to substantially perform in accordance with the terms of the Agreement through no fault of the Party initiating the termination. Furthermore, the terms and conditions attached to this document are incorporated into this proposal by reference.

### 3.0 Fees and Payments

**Phase I Services.** The Client shall pay the consultant a fee of \$10,250.00 for Phase I Services under the Agreement. Client will have no obligation for compensation to Consultant at the time of execution of this agreement. If the Client proceeds with Phase II work, the fee for Phase I services shall be included in the invoicing for Phase II services. If the Client does not proceed with Phase II Work, payment shall be made within 30 days of the Client receiving Consultant's Invoice. The Client acknowledges that compensation to Consultant shall be based upon the completion of Phase I work set forth in Attachment A.

**Phase II Services.** The Client agrees to utilize the consultant for Phase II Services upon the Board's approval of the Plan. The Client and the consultant shall negotiate and agree upon a reasonable fee for Phase II Services within 30 days of the Board's approval of the Plan utilizing the fee schedule in Attachment B. Payments shall be made within 30 days of the Client receiving consultant's invoice.

**Change Orders.** The Parties may request additions, deletions, or other revisions to the Services performed under this Agreement ("Change Order"). The price and payment terms and time for performance shall be equitably adjusted by mutual written agreement of the parties in accordance with the Change Order. Consultant may reasonably delay performance of the Services until adjustments arising out of the Change Order are clarified and agreed upon. If concealed or unknown conditions are encountered which affect the performance of the Services under this Agreement that differ from the conditions represented by the Client, the price and payment terms and time for performance shall be equitably adjusted. Claims for equitable adjustments may be asserted in writing within a reasonable time from the date the Consultant becomes aware of a change to the Services. Failure to promptly assert a request for equitable adjustment shall not constitute a waiver of any rights to seek any equitable adjustment with respect to such change.

**Reimbursables.** Reimbursables shall be allowed only for subcontracted design or specialty work required for development of the project such as geotechnical engineering, testing, or other architectural or engineering services subcontract out by CONTRACTOR. OWNER shall provide written approval of any potential reimbursable expenses prior to any potential reimbursable work done under this Agreement.

Reimbursable expenses, if any, shall be billed based on the percentage of work complete on a monthly basis as the work is completed.

#### 4.0 Work Product

The Client and the consultant agree that the Work Product Consultant creates during performance of Phase I Services is proprietary information and may be copyrighted by Consultant. The Client shall not sell, share, or distribute Consultant's work product to any party, individual or entity. The Client has no right or title to the work product and shall not use the work product for any purpose other than those purposes directly benefitting the project described in this Agreement. Consultant has the right to use, reproduce, and to make derivative works from documents and other data generated or collected during Phase I Services. If the consultant seeks to use information collected during its performance of this Agreement that is specific to the Client or deemed private or confidential information, the consent of the Client shall be required to use such information, and the Client may elect not to provide consent to the consultant. The Client's consent shall not be unreasonably withheld.

The Client is entitled to keep electronic and hard copies of the consultants' Work Product, including plans, specifications, and construction documents, created pursuant to Project Specific Agreements. The Client may, after receiving consultants' written approval, provide such documents to other professional service providers the Client may retain after consultant's Services, under the Agreement, are completed to assist with the construction, repair, maintenance, and preservation of its properties. Consultant's approval shall not be unreasonably withheld.

#### 5.0 Insurance

Upon the request of the Client, Consultant shall provide a certificate of insurance to the Client identifying Consultant's insurance coverage. Consultant shall maintain the following insurance in full force and effect until the Services are completed:

- a. Commercial General Liability shall list Client as an additional insured with the following insurance limits:

	<u>Limits</u>
General Aggregate	\$3,000,000
Products-Completed	
Operatoins Aggregate	\$3,000,000
Personal and Advertising Injury	\$1,500,000
Each Occurance:	
Combined Bodily injury and Property Damage	\$1,500,000

- b. Automobile Liability – Combined single limit each occurrence for bodily injury and property damage convering owned, non-owned and hired automobiles Limits  
\$1,500,000
- c. Works' Compensation and Employer's Liability: Statutory Limits

*If the Contractor is based outside the State of Minnesota, coverage must apply to Minesota laws*

	<u>Limits</u>
d. Employer's Liability	
Bodily injury by:	
Accident – Each Accident	\$500,000
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$500,000

The above limits may be procured through primary and excess policies. At the Client's request, Consultant shall include the Client as an additional insured on its general liability and automobile liability insurance policies applicable to the Services and required by this Agreement.

## 6.0 Termination

Either party may terminate this Agreement upon not less than thirty (30) 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.

Termination for Cause. If the Client fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Consultant's option, cause for suspension of its Services under this Agreement. If the Consultant elects to suspend Services; Consultant shall give fourteen (14) days' written notice to the Client before suspending Services. In the event of a suspension of services, the Consultant shall have no liability to the Client for delay or damage caused the Client because of such suspension of Services. Before resuming Services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant Services. The Consultant's fees for the remaining Services and the time schedules shall be equitably adjusted.

If the Consultant defaults by failing to substantially perform, in accordance with the terms of this Agreement, the Client may give written notice to the consultant (i) terminating this Agreement effective thirty (30) days from the date of written notice, or (ii) setting forth the nature of the default and requesting that the Consultant's cure the default within thirty (30) days from the date of written notice. If the consultant fails to cure the default within 30 days of written notice the Client may give notice to the Consultant of immediate termination. In such event, Consultant shall be entitled to receive payment for Services properly performed prior to termination, then due through the date of termination.

## 7.0 Hazardous Materials.

Asbestos-Containing Materials. Neither party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal, or disposal of asbestos-containing materials ("ACM"). Consistent with applicable laws, the Client shall supply the Consultant with any information in its possession relating to the presence of ACM in areas where Consultant undertakes any Services that may result in the disturbance of ATM. It is the Consultant's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and the Client shall provide such certification for buildings it owns or aid Consultant in receiving such certification from facility owners in the case of buildings that it does not own. If either the Client or the Consultant becomes aware of or suspects the presence of ACM that may be disturbed by Consultant's Services, it shall Immediately stop the Services

in the affected area and notify the other party. The Client shall be responsible at its sole expense for addressing the potential for, or the presence of, ACM in conformance with all applicable laws and addressing the impact of its disturbance before Consultant continues with its Services, unless the Consultant had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (i) Consultant shall be responsible for remediating areas impacted by the disturbance of the ACM, and (ii) Client shall resume its responsibilities for the ACM after Consultant's remediation has been completed.

Other Hazardous Materials. Consultant shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to Other Hazardous Materials ("OHM") in any form except Consultant shall be responsible for the removal and disposal of any OHM that Consultant uses in providing its Services under this Agreement.

The Client shall supply the Consultant with any information in its possession relating to the presence of OHM if their presence may affect the Consultant's performance of the Services. If either the Client or the Consultant becomes aware of or suspects the presence of OHM may interfere with Consultant's Services, it shall immediately stop the Services in the affected area and notify the other party. The Client shall be responsible at its sole expense for removing and disposing of OHM from its facilities and the remediation of any areas impacted by the release of OHM, unless the Consultant had actual knowledge that OHM were present and acted in disregard of that knowledge, in which case (i) the Consultant shall be responsible for the remediation of any areas impacted by its release of such OHM, and (ii) the Client shall remain responsible at its sole expense for the removal of any hazardous materials that have not been released and for releases not resulting from Consultant's performance of the Services.

## 8.0 Disputes

Consultant and the Client will attempt to settle any "Dispute" (including any claim, controversy, difference of opinion or matter in question between the Parties concerning the performance, enforcement, or interpretation of this Agreement), through direct informal discussions in good faith. If informal discussions are unsuccessful, the Parties shall submit the Dispute to non-binding mediation with a mediator agreed upon by the Parties, or if one cannot be agreed upon within 15 days after the party seeking mediation provides written notice to the other party demanding mediation, a mediator shall be appointed by the Client court in the jurisdiction in which the Client is located. Demand for mediation shall be provided in writing to the other party within a reasonable time after the Dispute has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitation or repose.

## 9.0 Ownership of Documents

The plans, reports, documents, and other work products prepared by Consultant ("Work Product") during Phase I are Consultant instruments of service and shall remain the sole and exclusive property of the Consultant's. Consultant shall retain all common law, statutory and other reserved rights, including copyright. Consultant specifically retains all right to use, reproduce, and make derivative works from the Work Product and the Client shall not copy, share, sell or distribute the Work Product to any third party without Consultant's consent.

## 10.0 Other Provisions

- A. This Agreement shall be governed by the laws of the state where the Client is located. This Agreement specifically includes Attachments A and B.
- B. The Client shall provide Consultant access to all applicable locations and facilities in order to assist Consultant's performance of the Services under the Agreement. All Consultant employees and agents must comply with Client policies while on Client grounds.
- C. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid that provision shall be deemed stricken from this Agreement, and all other provisions of the Agreement shall remain in full force and effect.
- D. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. The Parties bind themselves, their agents, successors, assigns and legal representatives to this Agreement. This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement may be amended only by written Instrument signed by the Parties. The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.
- E. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against Consultant. The Services under this Agreement are being performed solely for the benefit of the Client, and no other entity or individual shall have any claim against Consultant because of this Agreement or the performance or non-performance of the Services in the Agreement.
- F. The Client shall make decisions and carry out its other responsibilities in a timely manner so as not to delay Consultant's performance of its Services. The Client shall be responsible for, and the Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the Client to Consultant pursuant to this Agreement. Consultant may use such requirements, programs, instructions, reports, data, and Information in performing or furnishing Services under this Agreement.
- G. The Parties shall act in good faith in carrying out their respective duties and obligations under this Agreement. Any failure of either party to require strict performance by the other party, or any waiver by one party of any requirement under this Agreement shall not be deemed to be a consent to or a waiver of any continuing or subsequent failure or breach.
- H. The Parties agree that neither shall, directly or indirectly, make, publish, or communicate to any person or entity any defamatory, derogatory, or disparaging remarks, comments, or statements concerning the project, other Party, its affiliates, officers, directors, employees, agents, products, or services. This obligation extends to both written and oral communications, including but not limited to digital, social media, and online platforms. Nothing in this provision prohibits either Party from making truthful statements as required by law, regulation, or legal

process, or from communicating in confidence with professional advisors for the purpose of obtaining legal, tax, or financial advice.

## Acceptance

To Parties hereby accept this agreement in its entirety, including Attachments A and B.

ACCEPTED FOR  
***Independent School District #2687***

ACCEPTED FOR  
***inBYLT***

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
TITLE: \_\_\_\_\_

## PHASE I - ASSESSMENT AND PLAN DEVELOPMENT

### ASSESSMENT

#### 1.0 Listening Workshops

Consultant shall facilitate a series of Listening Sessions with key stakeholder groups to gather their input. If applicable, the stakeholder groups may include the Board of Education, Administration, Teacher, Community Members and Students. During the workshops, participants will complete educational and needs prioritization using a variety of Consultant's tools. The output of these meetings is to define a collective vision for the Client, from educational needs to facility Improvement needs. Consultant includes up to five total listening sessions as part of this agreement.

#### 2.0 Data Gathering and Analysis

Data gathering and analysis during the Assessment Phase will focus on the following areas as needed and agreed to by Consultant and the Client:

- Facility Assessment Summary Including:
  - Annual Energy and Operational overview
  - Architectural and aesthetics needs
  - HVAC, mechanical, electrical, building envelope, site, interior, safety and accessibility.

In order to help control costs during Phase I, the Client agrees to provide access to Client personnel and any internal information to the extent permitted by the law. In an effort to keep costs down, it is both Consultant and the Client's intent to utilize past assessment information as part of the facility assessment summary.

#### 3.0 Deliverable

A comprehensive report containing assessment findings.

## PLAN DEVELOPMENT

Utilizing the report generated from 3.0 above, Consultant will assist the Client in formulating its Facility Plan. It is expected the Plan shall be objective and identify potential financial resources necessary to execute the Plan. Consultant' services during Phase I shall Include:

### 1.0 Presentation and Revision of Preliminary Plans

1. Identify needs Including cost estimates.
2. If new or replacement facilities are desired, provide budgets and justification.
3. Prepare financial solutions, Including identification of funding sources.
4. Based on feedback, provide recommendations and revise plans, as needed.

### 2.0 Communication

1. Facilitate up to two School Board and/or Community Work sessions
2. Support the Client with local media as needed. Provide updates to the School Board, as needed.

Once a preliminary facility plan ("Preliminary Plan") is developed, Consultant and the Client may provide formal opportunities for the community to review and comment on the Preliminary Plan. Ultimately, the outcome of Phase I will be a Facility Plan the Board can act on. It is expected the Board will officially consider the plans in fall of 2026.

### 3.0 Deliverables

Deliverables Included:

1. A Facility Plan that can be presented to the Board for consideration.

Deliverables NOT included:

2. Renderings and/or scale models are NOT included.
3. Full engineering and architectural drawings are NOT included.

Consultant has not included any public relations or community survey costs associated with a bond election.

## PHASE II -LONG RANGE PLAN – IMPLEMENTATION

(Program Management, Design and Construction Management, Commissioning)

Renovations and updates Included in the Plan may begin immediately following Board approval. as program manager for the Plan, Consultant may utilize the services of sub consultants. The Client will have the right to reject the selection of these or any subconsultants. It is the Client’s intent to utilize Consultant’s for professional services as described below:

### 1.0 Professional Services

1. To implement the Plan approved by the Board, Consultant shall include all necessary architectural services, mechanical, structural, electrical engineering, construction management/Contract Administration services, on-site job supervision, and commissioning services. Consultant will provide the aforementioned services either directly or using qualified sub consultants.
2. Professional services do not include construction contracts. Construction contracts will be entered into by the Client directly with contractors utilizing MN procurement statutes for competitive bidding requirement, not with Consultant.

### 3.0 Compensation

It is the Intent of both parties that the fees listed below for Phase II services, including program management, project design, plan implementation management, and commissioning, will be billed according to the following fee schedule if the Board proceeds with a project. These fees will be based on the Project cost and include the cost of Consultant’s services and those of inBYLT’s consultants, as follows:

Professional Service	Percent of Total Project Costs
Program Management	16.50%
Architect/Design/Engineering	
Construction Management	
Commissioning	

The Project cost will be determined following the public bidding of the project scopes. This Project cost and the agreed-upon Project value will serve as the basis for the cost of services. The parties shall execute an addendum to this agreement once the Project cost and scope is determined.