

PROFESSIONAL SERVICES AGREEMENT

PARTIES: ***Barnum Public Schools***
3675 County Road 13
Barnum, MN 55707

And,

ICS, Inc.
1331 Tyler Street NE, Suite 101
Minneapolis, MN 55413

1. **Overview.** The School District of Barnum Public Schools (“District”) and ICS, Inc. (“ICS”) (collectively, “Parties”) enter into this Professional Services Agreement (“Agreement”) for professional services for the District pursuant to the terms and conditions of the Agreement including Attachments A, B and C. To develop and implement the Agreement in a timely manner, a three-phase approach will be used. Phase I (“PI”) is for assessment and development of a Facility Plan. Phase II (“PII”) is for referendum planning services **if** the Facility Plan approved in Phase I requires a public referendum. Phase III (“PIII”) is for implementation of the Plan. This Agreement defines the responsibilities of both parties during each phase and constitutes a binding contract for Phase I, II and Phase III professional services to be provided by ICS.
2. **Scope of Professional Services.** The scope of professional services (“Services”) for Phases I, II and III are defined in Attachments A, B and C to this Agreement. PI Services include ICS assisting the District in the development and adoption of the Facility Plan. PII Services include Public Referendum Services to assist District through public referendum and PIII Services include implementation of the improvements portion of the Facility Plan upon approval of the Facility and Funding 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, repairs, energy conservation measures, and other facility improvements.

For Phase III Services, ICS and the District shall enter a mutually agreeable Project Specific Agreement (“PSA”) utilizing AIA contract forms modified to define the particular scope of work and other needs for each specific project or projects. The PSA shall supersede this Agreement with respect to the particular project or projects defined under the PSA.

ICS 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. 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, where required by law, that are received from construction contractors for the work at issue according to the laws in the state where the specific project is located.

3. **Fee and Payments.**

PI Services: The District shall pay ICS a fee of \$13,500 (\$15,000 minus 10% for membership with the Northeast Service Cooperative) for PI Services under the Agreement. The costs associated with PI shall be paid in full following the completion of PI Services and the presentation of the Plan to the Board. ICS shall invoice the District 50 percent of the fee for PI Services when this Agreement is signed, and the remaining 50 percent when PI Services are completed. PI Services shall be deemed completed upon receipt by the District of the Deliverable set forth in Attachment A. Payments shall be made within 30 days of the District receiving ICS's invoice. If the District terminates this Agreement for convenience pursuant to Section 7 below prior to the completion and payment for PI, the District shall pay ICS within thirty (30) days of the date of termination the unpaid portion of the \$13,500 fee for PI services, if any.

PII Services. The District shall pay ICS a fee of \$10,000 for PII Services under the Agreement. ICS shall invoice the District the fee for PII Services upon the board decision to move forward with the Facility plan developed in PI assuming the Facility plan requires a public referendum.

PIII Services. The District and ICS shall undertake good faith efforts to negotiate a PSA for each project undertaken in Phase III including a reasonable fee for PIII Services within 30 days of the Board's approval of the Plan utilizing the fee schedule in Attachment C. Payments shall be made within 30 days of the District receiving ICS'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 adjusted by mutual written agreement of the parties no later than fourteen (14) days after submission of the Change Order in accordance with the Change Order. ICS shall not be required to perform any services under the Change Order until the parties have signed a mutual written agreement for these adjustments. 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 District, the price and payment terms and time for performance shall be equitably adjusted. Claims for equitable adjustment must be asserted in writing within a reasonable time from the date ICS becomes aware of a change to the Services.

4. **Work Product.** The District and ICS agree that the Work Product ICS creates during performance of PI and PII Services is proprietary information and may be copyrighted by ICS. The District shall not sell, share, or distribute ICS’s work product to any party, individual or entity. The District 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. ICS has the right to use, reproduce, and to make derivative works from documents and other data generated or collected during PI and PII Services.

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

The provisions of this section shall not apply if the District has removed a particular project from Phase III. Further, nothing in this Agreement shall be construed to limit the District’s ability to fully comply with its obligations under the MGDPA, including its obligations to respond to requests for data.

5. **Insurance.** Upon request of the District, ICS shall provide a certificate of insurance to the District identifying ICS’s insurance coverage. ICS shall maintain the following insurance in full force and effect until the Services are completed:

Coverages	Limits of Liability
General Liability	\$2,000,000 Each Occurrence \$4,000,000 Aggregate
Automobile Liability	\$1,000,000 Combined Single Limit
Umbrella Liability	\$5,000,000
Workers Compensation	Statutory
Professional Liability	\$1,000,000 Each Claim \$3,000,000 Aggregate

The above limits may be procured through primary and excess policies. ICS shall include the District as an additional insured on its general liability and automobile liability insurance policies applicable to the Services and required by this Agreement.

6. **Indemnification.** To the fullest extent permitted by law, ICS agrees to indemnify the District and its employees, officers, board members, insurers, attorneys, and agents from and against any and all monetary damages including reasonable costs, judgments, or other forms of monetary legal liability including reasonable attorney’s fees that are

proven to be legally caused by the negligence of ICS in performing or failing to perform its obligations under this Agreement, but only for the amount of damages which are equal to ICS's proportion of the total fault which is proven to have directly caused the damages. ICS's indemnification obligation shall apply to its subconsultant(s), anyone employed or hired by ICS, or anyone for whose acts ICS may be legally liable. ICS's indemnification obligation under this paragraph will not apply to any damages proven to be legally caused by the District's negligence in performing or failing to perform its obligations under this Agreement. ICS's duty to indemnify the District pursuant to this paragraph shall survive the completion, expiration, or termination of this Agreement.

To the fullest extent permitted by law, the District agrees to indemnify ICS and its agents, representatives, employees, officers, board members, insurers, and attorneys from and against any and all monetary damages including reasonable costs, judgments, or other forms of monetary legal liability, including reasonable attorney's fees that are proven to be legally caused by the negligence of the District in performing or failing to perform its obligations under this Agreement, but only for the amount of damages which are equal to the District's proportion of the total fault which is proven to have directly caused the damages. The District's indemnification obligation shall apply to its agents, representatives, officers, board members, insurers, attorneys and anyone employed or hired by the District, or anyone for whose acts the District may be legally liable. The District's obligations under this paragraph will not apply to any damages proven to be legally caused by the negligence of ICS in performing or failing to perform its obligations under this Agreement. The District's duty to indemnify ICS pursuant to this paragraph shall survive the completion, expiration, or termination of this Agreement.

7. 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 District 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 its Services under this Agreement. If ICS elects to suspend Services, ICS shall give fourteen (14) days' written notice to the District before suspending Services. In the event of a suspension of Services, ICS shall have no liability to the District for delay or damage caused the District because of such suspension of Services. ICS's fees for the remaining Services, and the time schedules, shall be equitably adjusted.

If ICS defaults by failing to substantially perform, in accordance with the terms of this Agreement, the District may give written notice to ICS (i) terminating this Agreement effective fourteen (14) days from the date of written notice, or (ii) setting forth the nature

of the default and requesting that ICS cure the default within fourteen (14) days from the date of written notice. If ICS fails to cure the default within 14 days of written notice, the District may give notice to ICS of immediate termination. In such event, ICS shall be entitled to receive payment for Services properly performed prior to termination, together with Reimbursable Expenses (Attachment C), if applicable, then due through the date of termination.

Termination or Suspension for Convenience. The District may at any time give written notice to ICS terminating this Agreement within thirty (30) days or suspending the Agreement, in whole or in part, for the District's convenience and without cause. If the District terminates this Agreement or suspends the Project, ICS shall promptly reduce staff, services and outstanding commitments to minimize the cost of termination or suspension. In case of termination for the District's convenience, ICS shall be entitled to receive payment for Services executed prior to termination, together with Reimbursable Expenses (Attachment C), if applicable, then due through the date of termination including ICS's profits thereon, and reasonable costs incurred by reason of such termination for which ICS is not otherwise compensated, plus ICS's anticipated profit on the value of the Services not performed by ICS under the Agreement.

8. 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 District shall supply ICS with any information in its possession relating to the presence of ACM in areas where ICS undertakes any Services that may result in the disturbance of ACM. If either the District or ICS becomes aware of or suspects the presence of ACM that may be disturbed by ICS's Services, it shall immediately stop the Services in the affected area and notify the other party. The District 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 ICS continues with its Services, unless ICS had actual knowledge that ACM was present and acted in disregard of that knowledge, in which case (i) ICS shall be responsible for remediating areas impacted by the disturbance of the ACM, and (ii) District shall resume its responsibilities for the ACM after ICS's remediation has been completed.

Other Hazardous Materials: ICS 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 ICS shall be responsible for the removal and disposal of any OHM that ICS uses in providing its Services under this Agreement.

The District shall supply ICS with any information in its possession relating to the presence of OHM if their presence may affect ICS's performance of the Services. If either the District or ICS becomes aware of or suspects the presence of OHM may interfere with ICS's Services, it shall immediately stop the Services in the affected area and notify the other party. The District 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 ICS had actual knowledge that OHM were present and acted in disregard of that knowledge, in which case (i) ICS shall be responsible for the remediation of any areas impacted by its release of such OHM, and (ii) the District 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 ICS's performance of the Services.

9. **Disputes.** ICS and the District 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.
 - a. 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 district court in the jurisdiction in which the District is located. Demand for mediation shall be provided in writing to the other party within a reasonable time after the Dispute has arisen.
 - b. If the dispute is not resolved within 30 days after the conclusion of mediation proceedings, the Parties may pursue any legal remedy, including pursuing a claim in District Court.
 - c. Notwithstanding anything in this Agreement to the contrary, either party may pursue any legal remedy it deems appropriate without first resorting to informal discussion or mediation to the extent necessary to prevent a claim from being barred by the applicable statute of limitations or repose.
10. **Independent Consultant Relationship.** It is expressly understood that ICS is an independent contractor and not an employee of the District. ICS shall have control over the manner in which its Services are performed under this Agreement. ICS shall supply, at its own expense, all materials, supplies, equipment, and tools required to accomplish the Services contemplated by this Agreement. ICS is not entitled to any benefits from the District, including, without limitation, insurance benefits, sick and vacation leave, workers' compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits. Nothing in this Agreement shall be deemed to constitute an employment, partnership, joint venture, or agency relationship between the parties. This

paragraph shall not alter or limit the District's obligations to pay ICS for its Services as set forth in this Agreement.

11. Other Provisions.

- a. This Agreement shall be governed by the laws of the State of Minnesota. This Agreement specifically includes Attachments A, B and C. Any litigation proceedings between the District and ICS related to this Agreement shall be venued in Minnesota's state or federal district courts pursuant to applicable law.
- b. The District shall provide ICS access to all applicable locations and facilities to assist ICS's performance of the Services under the Agreement.
- 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. This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.
- e. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against ICS. The Services under this Agreement are being performed solely for the benefit of the District, and no other entity or individual shall have any claim against ICS because of this Agreement or the performance or non-performance of the Services in the Agreement.
- f. The District shall make decisions and carry out its other responsibilities in a timely manner so as not to delay ICS's performance of its Services. The District shall be responsible for and ICS may rely upon the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the District to ICS pursuant to this Agreement. ICS 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. All notices and other correspondence with respect to this Agreement shall be directed to the addresses listed at the beginning of this Agreement, or to such addresses as the parties may, from time to time, designate in writing.
- i. Governmental Notice Pursuant to Minnesota Statute 13.05, subd. 11:
 - (a) If a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity. All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision. The remedies in section 13.08 apply to the private person under this subdivision.
 - (b) This subdivision does not create a duty on the part of the private person to provide access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.
 - (c) Notwithstanding anything in the Agreement to the contrary, ICS shall comply with all the requirements of the Minnesota Government Data Practices Act (MGDPA). If ICS seeks to use information collected during its performance of this Agreement that is specific to the District and that is classified as public, private, or confidential information under the MGDPA, the consent of the District and, as to private or confidential data, the consent of the subject of the data shall be required to use such information, and the District or the subject of the data may elect not to provide consent to ICS.

Acceptance

The Parties hereby accept this Agreement in its entirety, including Attachments A, B and C.

ACCEPTED FOR
Barnum Public Schools

ACCEPTED FOR
ICS

BY: _____
Mike McNulty

BY: _____
Jeff Schiltz

TITLE: Superintendent

TITLE: Managing Partner

DATE: _____

DATE: _____

PHASE I – Assessment and Plan Development

1.0 Listening Workshops

ICS 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, Teachers, Community Members and Students. During the workshops, participants will complete educational and needs prioritization using a variety of ICS's tools. The output of these meetings is to define a collective vision for the District, from educational needs to facility improvement needs. ICS includes up to eight (8) 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 ICS and the District:

- Communications Planning
- Facility Assessment Summary including:
 - Annual Energy and Operational overview
 - Architectural and aesthetics needs
 - Building Component and Systems Review
 - Site
 - Building envelope
 - Building hardware and equipment
 - Interior surfaces
 - Mechanical Systems
 - Plumbing systems and fixtures
 - Electrical systems and fixtures
 - Life safety systems (excluding full code compliance review)
 - Building utilization
- Space Needs Analysis
- Educational Adequacy Assessment

To help control costs during the Assessment Phase, the District agrees to provide access to District personnel any internal information to the extent permitted by the law. In an effort to keep costs down, it is both ICS and the District's intent to utilize past assessment information as part of the Facility Assessment Summary.

3.0 Deliverable

A comprehensive report containing assessment findings.

PHASE I – Assessment and Plan Development continued

Plan Development

Utilizing the report generated from 2.0 above, ICS will assist the District to formulate its Long-Range Facility Plan. It is expected the Plan shall be objective and identify potential financial resources necessary to execute it. ICS's services during Phase I shall include:

1.0 Presentation and Revision of Preliminary Plans

- 1.1 Identify needs including cost estimates
- 1.2 If new or replacement facilities are desired, provide budgets and justification
- 1.3 Prepare financial solutions, including identification of funding sources
- 1.4 Based on feedback, provide recommendations and revise plans, as needed

2.0 Communication

- 2.1 Facilitate up to two School Board and/or Community Work sessions
- 2.2 Supporting the District with local media/communications as needed.
- 2.3 Provide updates to the School Board, as needed.

Once a preliminary Facility plan ("Preliminary Plan") is developed, ICS and the District 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 the Summer/Fall of 2021.

3.0 Deliverables

Deliverables included:

- 3.1 A Facility Plan that can be presented to the Board for consideration along with a Long Term Facilities Maintenance (LTFM) Plan that can be submitted to the state.

Deliverables NOT included:

- 3.2 Renderings and/or scale models are NOT included.
- 3.3 Full engineering and architectural drawings are NOT included.

ICS does not include any public relations costs associated with any bond election.

PHASE II– Public Referendum Services

- 1.0 Scope of Services
 - 1.1 Referendum Communications Planning
 - 1.2 District Voter Analysis
 - 1.3 Learned Public Referendum Process Consulting Services
 - 1.4 Public Engagement Outreach Planning and Support
 - 1.5 This agreement shall extend to include 2 public referendum efforts by ICS and the District. If the first effort for a public referendum is not successful – ICS and the District shall negotiate in good faith any further cost of ICS services for the 2nd Referendum effort.

PHASE III – Long Range Plan – Implementation/Construction

Renovations and updates included in the Plan may begin immediately following Board approval. As the owner’s partner for the Plan, ICS may utilize the services of sub consultants. The District will have the right to reject the selection of these or any sub-consultants. It is the District’s intent to utilize ICS for professional services as described below:

- 2.0 Professional Services
 - 2.1 Upon Development of the final project scope and schedule, ICS proposes to provide construction phase representation services with compensation to be structured as a lump sum fixed fee. Our role during this phase of the process can range from providing comprehensive owner’s representation services to full program management services including design, construction management, and commissioning. Upon determination of the actual improvement scopes, we will work collaboratively with District administration to determine the most advantageous delivery methodology to utilize for the specific projects. This lump sum fixed fee will be finalized with the District following determination of the project scope and timeline.

2.2 Professional services do not include competitively bid construction contracts. Construction contracts will be entered by the District directly with contractors utilizing Minnesota procurement statutes for competitive bidding requirement.

3.0 Compensation

It is the intent of both parties that fees for Phase III services for plan implementation, if the School Board proceeds forward with a project as a result of the process, will be negotiated by both parties. ICS and the District will utilize standard AIA contract documentation as the basis of the Phase III contracts, and both parties agree to negotiate in good faith for final fee percentages and terms and conditions based on the final scope of work established under Phase I.

Typical industry standard fees are in the following range of total project budget:

	Typical Design Fee	Typical CM Fee	General Conditions/Reimbursable
Heavy renovation/remodeling	7.5% - 9.5%	2.5% - 3.8 %	See Attachment C
Light renovation/remodeling	6.5% - 8.5%	2.5% - 3.5%	See Attachment C
Additions	6.5% - 8.5%	2.5% - 3.5%	See Attachment C
New Construction	5.5% - 7.5%	1.5% - 3%	See Attachment C

Typical Reimbursable Compensation for Construction

Site services (full-time supervision and project management) costs are based on duration and scope of the project. These services will be estimated once the final scope and schedule is determined and billed as reimbursable costs according to the following rate schedule:

Managing Principal	\$280/hr
Construction Executive	\$260/hr
Project Director	\$180/hr
Project Manager (PM 1, 2, 3 – Blended Rate)	\$150/hr
General Superintendents	\$150/hr
Site Superintendent	\$130/hr
Safety Director	\$120/hr
Project Engineer	\$90/hr
Clerical/Accounting	\$85/hr
Design Consultant – Architect/Engineer/Etc.	Based on firms current rate structure
Travel/Lodging	At Cost

ICS will develop a lump-sum amount for these services for each specific project in conjunction with the District as each project scope is finalized. These services are typically less than a general contractor delivery model and therefore do not result in an added amount to the construction cost of the project.

ENROLLMENT COMPARISON
BARNUM SCHOOL DISTRICT NO. 91

FY 2020-2021 Enrollment Compared to FY 2019-2020

(Resident and non-resident students in our buildings)

MONTH	ELEMENTARY (K-6)			SECONDARY (7-12)			TOTALS			
	FY 19-20	FY 20-21	Inc/Dec	FY 19-20	FY 20-21	Inc/Dec	FY 19-20	FY 20-21	Change Prior Yr	Change Beg. Of Yr.
Sept.	369	339	-30	346	358	12	715	697	-18	-
Oct.	373	337	-36	351	357	6	724	694	-30	-3
Nov.	374	335	-39	347	353	6	721	688	-33	-9
Dec.	371	336	-35	348	356	8	719	692	-27	-5
Jan.	373	335	-38	350	357	7	723	692	-31	-5
Feb.	374	335	-39	349	353	4	723	688	-35	-9
Mar.	374	332	-42	350	352	2	724	684	-40	-13
April	373	331	-42	349	352	3	722	683	-39	-14
May/June	373	329	-44	349	351	2	722	680	-42	-17

(The figures listed above are submitted monthly by our attendance secretaries. These are resident and non-resident students in our buildings only. The numbers do not represent resident students attending elsewhere either by enrollment options or tuition agreement)