

## **PROJECT DEVELOPMENT AGREEMENT**

THIS PROJECT DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the 27 day of August, 2017, by and between **Hermantown School District** (the "District") and **Johnson Controls, Inc.** ("Consultant").

### **RECITALS**

- A. The District desires to obtain certain professional services in connection with preparing a plan for comprehensively improving its facilities and infrastructure (the "Plan"); and
- B. Consultant desires to provide such services and has the background and experience to do so.

### **AGREEMENT**

NOW, THEREFORE, the parties agree as follows:

#### **1. Overview and Scope of Services**

The District desires to develop the Plan. To develop and implement the Plan in a timely and logical manner, the parties will undertake a phased approach.

The scope of work for Phase I and Phase II is set forth on Attachment A hereto. The scope of work for Phase I services is referred to herein as the "Phase I Services" and the scope of work for Phase II services is referred to as the "Phase II Services". Such scopes of work are together referred to herein as the "Services". The purpose of Phases I and II is for Consultant to work with the District to formulate the Plan.

Although not part of the Services and not a binding commitment on the part of the District, it is anticipated that following completion of Phase II the District will consider in good faith entering into definitive agreements with Consultant for implementation of some or all of the facilities and infrastructure improvements identified in the Plan. Such implementation is generally referred to as "Phase III". Phase III services are contemplated to include: architectural services; mechanical, electrical, structural and civil engineering services; construction management services; and commissioning services (in accordance with Minn. Stat. § 123B.72). Phase III services would not include

construction contracts. Any construction contracts associated with the implementation of Phase III work would be entered into by the District and separate construction contractors, in accordance with the District's procurement requirements.

It is the District's intent to negotiate in good faith with the Consultant in order for Consultant to provide to the District the Phase III services summarized above; provided, however, the parties understand and agree that the District is not obligated to contract with Consultant for such Phase III services. Any Phase III services to be provided by Consultant to the District will be the subject of separate, mutually agreeable, definitive agreements between Consultant and the District. Any estimates of the cost of construction shall be only estimates and shall not constitute a representation or warranty regarding 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 in accordance with procurement statutes.

The District and Consultant acknowledge and agree that this Agreement and the Services furnished hereunder do not constitute the "privatization" of any of the District's government functions, or otherwise require or authorize Consultant to perform any such functions as defined in Minn. Stat. Chapter 13 ("Chapter 13") or otherwise. The District and Consultant acknowledge and agree that data created, collected, received, stored, used, maintained, or disseminated by Consultant in connection with this Agreement, but not conveyed to the District, is not subject to disclosure under Chapter 13. The District will promptly notify Consultant, and Consultant will promptly notify the District, of any Chapter 13 requests relating to the work hereunder.

## **2. Compensation**

The District shall pay Consultant \$47,000 in consideration of the Phase I and Phase II Services. Such amount shall be payable within sixty (60) days of delivery to the District of the Plan (as further detailed in Attachment A). Such amount is referred to herein as the "PI/PII Fee". Notwithstanding the foregoing, in the event the District elects to enter into definitive agreements with Consultant for Phase III services within sixty (60) days of the delivery of the Plan, the PI/PII Fee shall not be payable hereunder but shall instead be added to the price of the Phase III services and shall be invoiced and collected in accordance with the definitive agreements for the Phase III services.

**3. Time of Performance**

All Services will be performed in a timely manner. It is contemplated that the Services will be completed and the Plan will be provided to the District for Board of Education consideration on or before April 2013. It is further contemplated that the Board will officially consider the Plan in 2013, unless an alternate time line is agreed to by the parties.

**4. Access**

The District will provide Consultant reasonable access to all applicable locations and facilities in order to enable Consultant to perform the Services.

**5. District's Use of Deliverables**

In the event the parties do not enter into definitive agreements for Phase III services and the District has paid all amounts owing to Consultant hereunder, the District may use the deliverables provided to it pursuant to Attachment A for its own business purposes, including furnishing such deliverables to its other contractors; it being understood and agreed that, in such circumstances, the deliverables are furnished by Contractor without warranty on an as-is, where is basis, and the District hereby releases Consultant from any liability associated with District's use of the deliverables and indemnifies and holds Consultant harmless from any claims arising out of or associated with its or any of its other contractors use of such deliverables. However, nothing herein shall constitute an obligation of the District to defend or indemnify Consultant, for Consultant's negligent or wrongful acts.

**6. Relationship with Others**

Consultant shall cooperate fully with the District, other consultants on adjacent projects, municipalities, local government officials, public utility companies, and others as may be directed by the District. This shall include attendance at meetings, discussions, and hearings as may be requested by the District, furnishing data as may be requested from time to time by the District to effect such cooperation and compliance with all directives issued by the District.

## **7. Termination**

Either party may terminate this Agreement for any reason by giving written notice to the other party at least fifteen (15) days prior to the effective date of termination. In the event of termination, the District shall compensate Consultant for work to the date of termination based on the hourly rates set forth in Paragraph 19 below. In no event will the amount of such payment exceed the amount of the PI/PII Fee set forth in paragraph 2 above. The District shall make such payment no later than five (5) days after the effective date of termination.

## **8. Independent Contractor**

The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties. Neither Consultant nor any of its employees, agents, subcontractors or representatives shall be considered employees, agents, or representatives of the District. Except as otherwise provided herein, Consultant shall maintain, in all respects, its present control over the means and personnel by which it performs under this Agreement. From any amounts due Consultant, there shall be no deductions for federal income tax or FICA payments nor for any state income tax, nor for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of Consultant.

## **9. Changes; Extra Services**

In the event that a substantial change is made in the scope, complexity or character of the Services contemplated under this Agreement, or if it becomes necessary for Consultant to make substantial revisions to documentation completed or in progress and which have been approved by the District, such Services will be deemed "extra services". Consultant must notify the District in writing before it provides any services deemed to be extra services. If Consultant has failed to provide written notice, it shall not be entitled to compensation for the alleged extra services.

## **10. Power & Authority**

Each party represents and warrants to the other that (i) it has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder, (ii) all corporate, board, body politic, or other approvals necessary for the execution, delivery, and performance of this Agreement have been obtained, and (iii) this Agreement constitutes its legal, valid, and binding obligation.

## **11. Warranty of Services**

Consultant warrants that the Services shall be performed in accordance with all applicable laws and in a timely, professional, and skilled manner that adheres to standards not less than those generally accepted in the industry. Consultant shall promptly correct any failure of the Services to conform to this warranty.

## **12. Indemnity and Limitation of Liability**

Consultant shall indemnify and hold the District, its Board, officers, agents, and employees harmless against liability, causes of action, claims, damages or cost and expense arising from any professional errors and omissions and/or negligent acts and omissions of Consultant in the performance of this Agreement.

CONSULTANT SHALL NOT BE LIABLE TO DISTRICT, NOR SHALL THE DISTRICT BE LIABLE TO THE CONSULTANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR THE LIKE) ARISING IN ANY MANNER FROM THIS AGREEMENT OR THE SERVICES HEREUNDER REGARDLESS OF HOW CHARACTERIZED AND REGARDLESS OF WHETHER THE CONSULTANT OR DISTRICT OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. CONSULTANT'S TOTAL LIABILITY TO THE DISTRICT AND THE DISTRICT'S TOTAL LIABILITY TO CONSULTANT FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE GREATER OF (i) \$25,000.00, OR (ii) THE AGGREGATE AMOUNTS PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT. The foregoing waivers and limitations are fundamental elements of the basis for this Agreement between Consultant and the District, and each

party acknowledges that the other party would not have entered into this Agreement without such waivers and limitations.

**13. Insurance**

Consultant shall not commence Services under this Agreement until it has obtained at its own cost and expense all insurance required herein. All insurance coverage is subject to approval of the District and shall be maintained by Consultant until final completion of the Services.

Consultant further agrees that to protect itself, as well as the District under the indemnity section set forth above, subject to the policy terms and conditions, it shall at all times during the term of this Agreement have and keep in force:

- A. Commercial General Liability, including contractual liability
  - 1. Bodily Injury and Property Damage: \$1,000,000 per occurrence  
\$1,000,000 products & completed operations aggregate
  - 2. Personal Injury Liability Limit: \$1,000,000 per occurrence

- B. Commercial Automobile Liability (Owned, Non-owned, Hired)
  - Bodily Injury and Property Damage: \$1,000,000 per accident

- C. Professional Liability

Professional liability insurance for negligent acts, errors and omissions arising out of Professional services provided by the Consultant under this Agreement with a combined single limit of \$1,000,000 per claim, \$2,000,000 aggregate.

- D. Workers' Compensation

Consultant shall obtain and maintain for the duration of this Agreement statutory workers' compensation insurance and employer's liability insurance as required under the laws of the State of Minnesota.

Insurance certificates evidencing that the above insurance is in force shall be submitted for examination and approval prior to the execution of this Agreement. The District's failure to require certificates or other evidence of insurance demonstrating conformance to the coverage levels specified above does not alter Consultant's responsibility to comply with the insurance specifications. The District may withhold payment for failure of Consultant to furnish certificates of insurance as required above.

**14. Choice of Law**

This Agreement shall be construed in accordance with the laws of the State of Minnesota applicable to contracts made and performed in the State or Minnesota.

**15. Equal Employment and Nondiscrimination and Affirmative Action**

In connection with the Services under this Agreement, Consultant agrees to comply with the applicable provisions of state and federal equal employment opportunity and nondiscrimination statutes and regulations.

**16. Severability; Waiver**

In the event that any clause, provision, or portion of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or materially impair the benefits intended to inure to either party under this Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

**17. Covenant Against Contingent Fees**

Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Consultant a fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award

or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

**18. Authorized Agent of the District**

The District shall appoint an authorized agent for the purpose of administration of this Agreement. Consultant is notified of the authorized agent of the District is as follows:

Brad Johnson  
Superintendent of Schools

**19. Hourly Billing Rates**

The hourly billing rates for services of JCI and JCI's consultants, if any, are set forth below.

Architect II - \$125 / hr  
Architect I - \$110 / hr  
Engineer II - \$125 / hr  
Engineer I - \$100 / hr  
Project Manager II - \$110 / hr  
Project Manager I - \$95 / hr  
Project Assistant - \$50 / hr

**20. Modification of Agreement**

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the District and by Consultant.

**21. Entire Agreement**

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous contracts presently in effect between the District and Consultant relating to the subject matter hereof.

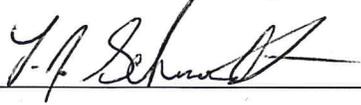
## **22. Counterpart Signatures**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one single agreement between the parties.

*[Remainder of page intentionally left blank. Signature page next follows.]*

IN WITNESS WHEREOF, each party has caused this Project Development Agreement to be executed by its duly authorized representative as of the date first written above.

**Johnson Controls, Inc.**

By: 

Printed Name: Larry Schmidt

Title: Area General Manager

**Hermantown School District**

By: 

Printed Name: Gregory A. Carlson

Title: Board Chair

## ATTACHMENT A

### PHASE I – Preliminary Assessment

#### 1.0 Data Gathering: & Analysis

Data gathering and analysis during the Preliminary Assessment Phase will focus on the following areas:

Facility Condition	Educational Adequacy	District Demographics
Deferred Maintenance	Space Programming	Historic Trends
Utility Expense	Safety & Security	Student Enrollment Projections
IAQ & ADA Compliance	Building Capacity	School Locations
Interiors/Structure/Envelope	Educational Support Areas	GIS mapping of students
Technology	Instructional Aids	
Lots/Walks/Fields	Classroom Size	
Mechanical/Electrical	Physical Attributes	
Savings Potentials		

#### 2.0 Development & “Ideation” Workshops

Consultant will facilitate a series of meetings with key stakeholder groups to gather their input. The stakeholder groups may include the Board of Education, Principals, Teachers, PTSA/Site Council Representatives, Union Representatives, Special Education Representatives, Community Members, Business Community and Students. During the workshops, participants will complete facility needs assessments using a variety of Consultant's tools. The output of these meetings is to define a collective vision for the District, from educational needs to facility improvements.

#### 3.0 Communications

- 3.1 Present process overview and assessment updates to the District and, as necessary and in conjunction with the District, to other stakeholder groups
- 3.2 Organize tours of other school projects, as requested
- 3.3 Provide updates to the Board of Education, as requested

In order to help control costs during the Preliminary Assessment Phase, the District agrees to provide access to District personnel and internal information to the extent

permitted by the law. Consultant will maintain the confidentiality of all private or confidential information.

#### 4.0 Deliverable

A preliminary report containing findings and general recommendations based on the above-described assessment.

### **PHASE II - Plan Evaluation**

Utilizing the preliminary assessment report from Phase I, Consultant will help the District formulate the Plan. Consultant's services during Phase II include:

#### 1.0 Presentation & Refinement of Preliminary Assessment

- 1.1 Identify renovations and updates needed at each school, including cost estimates
- 1.2 Identify efficiency improvements and savings potential, including cost/benefit analysis
- 1.3 Present impact of demographics on school locations
- 1.4 If new or replacement schools are contemplated, provide cost and budgetary estimates
- 1.5 Assist the District in identification and assessment of potential funding sources

#### 2.0 Additional Development & "Ideation" Workshops

Utilizing professional consensus building tools and techniques, Consultant will facilitate a series of meetings to gather input on the preliminary assessment. The input from these meetings will be used to prepare a draft Plan. Based on feedback, Consultant will provide recommendations and revise the draft Plan as needed.

#### 3.0 Communication

- 3.1 Facilitate consensus building
- 3.2 Provide input in regard to a District communications plan
- 3.3 Present draft Plan to the District and, as necessary and in conjunction with the District, to other stakeholder groups
- 3.4 Provide updates to the Board of Education, as requested

#### 4.0 Deliverables

A Plan for comprehensively improving the District's facilities and infrastructure. It is expected that the Board will officially consider the Plan in 2013.