**ARCHITECTURAL SERVICES CONTRACT**

between

SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON

(PORTLAND PUBLIC SCHOOLS)

and

**CONSULTANT**

Contract No. ARCH

This Contract Shall be binding on District only if it is

signed by THE DEPUTY CLERK OR AUTHORIZEDDESIGNEE

This Architectural Services Contract (“Contract”) is made by and between School District No. 1J, Multnomah County, Oregon (“Portland Public Schools” or “District”) and CONSULTANT (“Consultant”). The parties agree as follows:

**CONSULTANT DATA**

**Business Name:** CONSULTANT

**Contact Person:**

**Address:**

**City, State, ZIP:**

**Telephone:**

**Email:**

**Consultant must submit a completed “Request for Taxpayer Identification Number and Certification” (Form W-9) with this signed contract.**  Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant. **Consultant certifies under penalty of perjury that Consultant is a**

[ ] [ ]  Sole Proprietor **[ ]** **[ ]** Corporation **[ ]** [ ] [ ]  Limited Liability Company

[ ]  Partnership

[ ]  Other [describe:      ]

 **District Point of Contact:**  Name of Dept./School Contract Manager (*Email prefix@pps.net*), Name of Dept./School, Portland Public Schools, P.O. Box 3107, Portland, Oregon 97208-3107

**\*All information in this contract is subject to public records law. Please contact the District Point of Contact listed above if you have questions.**

**TERMS AND CONDITIONS**

1. **Term and Termination**

This Contract becomes effective on       or the date on which the Contract is fully executed by both parties, ***whichever is later***. ***No party shall perform work under this Contract before the effective date***.  An email notification with a copy of the fully executed contract will be sent to the Consultant email listed above upon execution. At that time, work under the contract may begin.

Unless earlier terminated as provided below, this Contract shall continue through     .

Check if applicable:

[ ]   As provided for in (enter RFP/ITB/Quotes solicitation number, e.g., RFP #2016-1922), this Contract may be renewed for up to ( e.g. four additional one-year terms) by amendment signed by both parties.

1. **Initial Project Information.**
	1. **Project Name or Title:**
	2. **Description of the Work:**
	3. **Construction Cost Budget:**
	4. **Scheduled Construction Commencement and Completion:**
	5. **Consultant’s Project Team:**
	6. **Contract Price:**
2. **Contract Documents.** This Contract consists ofthese Terms and Conditions and the documents (“Exhibits”) listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence over all other documents. The Exhibits to this Contract include the following documents:

Exhibit A (Description of Services)

Exhibit B (Payment Schedule)

Exhibit C (Project Schedule)

Exhibit D (Insurance Requirements)

Exhibit E (Career Learning)

Exhibit F (General Conditions of the Contract for Construction)

Exhibit G (District Practices)

Exhibit H (Design Advisory Group Charter)

1. **Consultant’s Duties.**
	1. Consultant Representative: Consultant shall identify a Consultant Representative authorized to act for Consultant on the Project. The Consultant Representative will have the authority to make commitments which shall be binding upon the Consultant. District has the right to review and approve any representative proposed by Consultant, which approval shall not be unreasonably withheld. Consultant shall not appoint a representative to whom District has reasonably and timely objected. Consultant shall not substitute representatives without District’s review and approval. Consultant acknowledges that this Contract was awarded in part on the basis of the unique background and abilities of the key personnel and subconsultants identified by Consultant. Consultant shall not remove, re-assign, or replace key personnel without District’s prior written consent. The name of the Consultant Representative is      .
	2. Subconsultants: Consultant shall identify by firm, name, and title, the primary subconsultants who will perform Services under this Contract. Consultant shall not engage or assign any person or entity to whom District has made a reasonable and timely objection. District has the right to review and accept any subconsultant substitutions proposed by Consultant. District shall not unreasonably withhold its review and acceptance of these substitutions. Upon District request, Consultant shall promptly provide copies of Consultant’s Contracts with subconsultants. Once accepted by the District, subconsultants shall not be changed without the express written consent of the District prior to such change being made.
	3. Conflicts: Consultant represents that Consultant has no existing interest and shall not acquire any interest, direct or indirect, that would reasonably appear to interfere in any manner or degree with the performance of Services under this Contract and that Consultant shall employ no person having such interest. Should a conflict be realized during the course of the project, Consultant shall take all necessary steps to resolve such conflict to the satisfaction of the District without additional cost or time allowance.
	4. Insurance: Before beginning Services, Consultant shall obtain and maintain for the duration of this Contract all insurance coverages listed in Exhibit D. Maintenance of insurance coverage is a material element of this Contract and Consultant’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract, as required or when requested, may be treated as a material breach.
2. **Scope of Consultant’s Services.**
	1. Legal and Policy Compliance: Consultant shall provide the services (“Services”) described in detail in Exhibit A in accordance with the terms of this Contract, federal, state, or local law or ordinance and applicable District rules, policies, and administrative directives. Consultant shall provide the Services so that the Project will be completed expeditiously, economically, and in District’s best interests.
	2. Standard of Care: Consultant shall perform the Services with skill, care, and diligence in accordance with the standard of care applicable to such Services performed by recognized firms providing similar services in the Pacific Northwest, and/or on projects similar to the Project in scope and scale. Consultant shall be responsible to District for all Services provided whether provided by Consultant or by subconsultants it engages.
		1. All persons or entities providing Services under this Contract shall be licensed as may be required by state and federal law.
		2. Consultant shall provide prompt written notice to District if Consultant becomes aware of any material deficiencies, errors, omissions, or inconsistencies in District services or information or if in Consultant’s opinion the Construction Cost Budget will not be sufficient to complete the construction as Programmed.
	3. Time is of the Essence: Upon receipt of District’s written notice to proceed, Consultant shall begin providing Services and shall complete its performance in accordance with Exhibit C. Consultant shall not be responsible for delay in performance to the extent those delays are caused by circumstances beyond Consultant’s reasonable control.
	4. Authorized Services: Consultant shall perform only the Services authorized by this Contract. Additional Services (as defined in Exhibit A) will be compensated only as authorized in writing by District. District will not, in any event, pay for Additional Services made necessary by Consultant or any subconsultant mistakes.
	5. Approvals; Permits: Consultant represents that it and its subconsultants have experience and knowledge of the applicable approval and permit application requirements of any governmental jurisdiction and shall be responsible to provide the Services in the form and at the time required to obtain such approvals or permits. To the extent required by Exhibit A, Consultant shall assist District in preparing and submitting any such applications and will execute such applications on District’s behalf. Consultant shall not execute such documents for District. {for the two fill in fields shown, PM is to select one statement or the other and then delete this note in red}
	6. Independent Contractor: By its signature on this contract, Contractor certifies that the service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600, and that Contractor is solely responsible for the work performed under this Contract. Contractor represents and warrants that Contractor, its subcontractors, employees, and agents are not "officers, agents, or employees" of the District within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300). Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Contract.
	7. Other Service Providers: District reserves the right to enter into other Contracts for work additional or related to the Project, and Consultant agrees to cooperate fully with these other contractors and with District personnel. When requested by District, Consultant shall coordinate its performance under this Contract with such additional or related work. Consultant shall not interfere with the work performance of any other contractor or District employees.
3. **District’s Duties.**
	1. Written Information: Unless otherwise provided for under this Contract, District shall provide written information in a timely manner on requirements and limitations on the Project. This information shall include District’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.
	2. District Representative: District shall identify a District Representative authorized to act on its behalf on all Project matters. District shall approve Consultant’s submittals in a timely manner to avoid unreasonable delay in the orderly and sequential progress of Consultant’s Services. The Name of the District Representative is      .
	3. Other Consultants: District shall coordinate the services of its own consultants with Consultant’s Services. Upon Consultant’s request, District shall furnish copies of the scope of services in the contracts between District and District’s consultants.
	4. Site Access: District may provide Consultant access to the Project site before Services begin and shall cause District contractors to provide Consultant access to their work wherever it is in preparation or progress.
4. **Portland Public Schools Equity In Public Purchasing and Contracting Policy**

In July 2012, the PPS Board of Education passed the Portland Public Schools Equity in Public Contracting Policy, 8.50.095-P. The policy has three objectives:

Business Equity: The District will provide professional, supplier, construction and personal service purchasing and contracting opportunities to small businesses that have been historically under-utilized, including businesses owned by people of color, service-disabled veterans and women.

Consultant Workforce Equity: The District will ensure apprenticeship opportunities in the construction trades and will promote construction employment opportunities for people of color and women.

Career Learning Equity: The District will continue to provide career learning opportunities for students, providing them exposure to various potential career paths, including, but not limited to, architecture, engineering and related services, legal and accounting services, as well as building trades and construction work.

DEFINITIONS:

“Certified Business” means a company certified by the State of Oregon Certification Office of Business Inclusion and Diversity (COBID) as a Minority Business Enterprise (MBE), a Women Business Enterprise (WBE), business owned by Service Disabled Veteran (SDV) and/or an Emerging Small Business (ESB) pursuant to Oregon Revised Statutes Chapter 200; and/or

A company certified in the States of Oregon, Washington and California by the U.S. Department of Transportation (U.S. DOT) as a Disadvantaged Business Enterprise (DBE) pursuant to Code of Federal Regulations (CFR) Title 49, Subtitle A, Parts 23 and 26; and/or

A company certified by the State of Washington Office of Minority and Women’s Business Enterprises (OMWBE) as a Minority Business Enterprise (MBE) and/or Woman Business Enterprise (WBE) pursuant to Washington Administrative Code, Title 326, Chapter 326-20.

* + 1. BUSINESS EQUITY

Aspirational Goals for the Participation of Certified Business Firms:

The Aspirational Goal for the District is as follows: Of the total amount the District pays against the contract resulting from this Contract, 18% or more is paid to a Certified Business. Such payment may be made by the District, its prime consultants or subconsultants.

* + 1. CERTIFIED BUSINESS UTILIZATION REPORTING

The District has implemented an online Certified Business utilization tracking system. This web-based software system facilitates Certified Business utilization reporting for all construction, architecture, engineering, and related services contractors doing business with Portland Public Schools. The system is designed to streamline and automate subcontractor utilization reporting requirements and includes the following key features:

* Automated tracking of Certified Business utilization, using the COBID database
* Online verification of subcontractor payments
* Automated communication with contractors via email regarding reporting status

Prime contractors will be required to use the online system to submit first tier subcontractor data and monthly reports on progress payments to all subcontractors. Subcontractors will be required to use the online system to verify payments received from prime contractors, identify any further tiers of subcontractors, and submit monthly reports on progress payments to their own subcontractors. Prime contractors and subcontractors must access the system at least monthly, when prompted, to manage contract information and provide the required subcontractor and payment information. Prime contractors are responsible for ensuring that all subcontractors comply with the utilization tracking requirements.

The Certified Business utilization tracking system is online at <https://pps.diversitysoftware.com>. Access information will be provided to the designated point of contact for each contractor after contract award.

* + 1. CAREER LEARNING EQUITY

The intent of this objective is to increase the numbers of young people of color and young women in career learning programs.

For contracts $250,000 and greater, Contractor will offer District-specified career learning opportunities to District students as described in the Exhibit entitled “Career Learning Equity.”

1. **Drawings, Specifications and Other Documents.**
	1. Instruments of Service: Instruments of service (“Instruments of Service”) include drawings, specifications, and other documents, including those in electronic form, prepared by or on behalf of Consultant for District’s use with respect to the Project. Consultant will be deemed the author and owner of the Instruments of Service and may retain all common law, statutory, and other reserved rights, including copyrights.
	2. Authorized Use: Consultant grants to District a nonexclusive and perpetual license to use and reproduce Consultant’s Instruments of Service for purposes of constructing, using, and maintaining the Project. All copies, including those in electronic form, of drawings, specifications, or other Instruments of Service provided to and retained by District under this Contract will be the property of District which may use them without Consultant’s further authorization for any proper purpose relating to the Project, including but not limited to additions to or completion of the Project and communications with the public. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project does not constitute a publication in derogation of Consultant’s reserved rights. If and upon the date the Consultant is in default of this Contract, the foregoing license shall be supplemented by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project. Notwithstanding any other provision of this Contract, Instruments of Service may be continuously used for construction of the Project until the Project is complete, regardless of any dispute between the parties, including without limitation any dispute for payment. The Consultant shall obtain similar irrevocable, nonexclusive licenses from the Consultant’s consultants consistent with this Contract.
	3. Changes; Unauthorized Use: Consultant is not responsible for changes to Instruments of Service made by others without Consultant’s knowledge and authorization. Any unauthorized use of the Instruments of Service will be at the user’s sole risk and without liability to Consultant. District’s use or distribution of the Instruments of Service for any purpose other than a purpose authorized under this Contract will be at District’s risk and to the fullest extent permitted by law, District agrees to indemnify and hold harmless Consultant, its principals, employees, and subconsultants from and against claims, damages, losses, and expenses (including attorney fees) for personal injury or death or damages to property arising out of or resulting from District’s unauthorized use of the Instruments of Service.
	4. Records Maintenance: Consultant shall maintain complete and accurate records of all services performed and all documents produced under this Contract for six years after completion or abandonment of the Project. Consultant shall make these records available to District upon reasonable notice.
	5. Delivery of Project Records: Upon District’s written request or following the termination of this Contract for any reason and at no cost to District, Consultant shall promptly deliver to District all Project records, including all administrative documents produced, compiled, or maintained by Consultant as a part of the Services provided for the Project, including the following:

* + 1. One reproducible hard copy set and one electronic set of the construction and permit documents, including the bidding requirements, specifications, and cost estimates for the Project;
		2. One set of fixed image  files of the drawings that comprise the construction and permit documents;
		3. One set of non-fixed image CADD and/or REVIT drawing files of the site plans, floor plans (architectural, plumbing, structural mechanical and electrical), roof plans, sections, and exterior elevations of the Project; and
		4. All final or draft, studies, reports, calculations, drawings, maps, models, photographs, technology data, and documents prepared by Consultant under this Contract. Such documents shall be provided in pdf format as well as in their native file formats and shall be provided on an appropriately sized flash drive.
1. **Payments.**
	1. Exhibit B (Payment Schedule): District shall pay Consultant for Services performed under this Contract according to the provisions of Exhibit B.
	2. Monthly Invoices: Consultant shall provide District with monthly invoices detailing Services rendered and reimbursable expenses incurred in the preceding month. Invoices shall include itemization of all approved Contract amendments whether or not they are currently being billed. Consultant expressly waives any right to additional payment for any services in the absence of District’s written authorization or request.
	3. Payment Method: Upon work completion and acceptance, invoice approval, and according to this Contract’s Terms and Conditions, District shall pay Consultant for Services rendered and for reimbursable expenses authorized under this Contract net 30 days. District shall make no deductions from Consultant’s compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of construction changes other than those for which Consultant is liable.
	4. Reimbursables: Upon District request, Consultant shall provide to District or District’s authorized representative, all records of reimbursable expenses, of expenses pertaining to a change in Services, and of any Services performed on the basis of hourly rates or expense, no later than 15 days from date of request. Consultant shall save these records for at least three years after final payment.
	5. Errors and Omissions; Fee Adjustments: District will not pay for any change order Consultant fee increases due to Consultant’s errors or omissions. Regardless of the structure of Consultant’s fee, the fee may be adjusted downward if, in accordance with this Contract, District reduces the Services to be provided under this Contract.
	6. Financial Record Maintenance: Consultant shall maintain complete and accurate records for 6 years. Consultant shall make available to District for review and audit all Project-related accounting records and documents, and any other financial data. Upon District’s request, Consultant shall submit exact duplicates of originals of all requested records to District.
	7. Non-Appropriation; Adequate Funding: District is prohibited from contracting for services for which it has not received appropriated funds. If payment for Services under this Contract extends into District’s next fiscal year, District’s obligation to pay for such work shall be subject to approval of future School Board appropriations to fund this Contract. Moreover, continuation of this Contract at specified levels is specifically conditioned on adequate funding under the District’s budget adopted in June of each year. District reserves the right to adjust the level of services provided for in this Contract in accordance with funding levels adopted by District’s Board of Education.
2. **Early Termination.**
3. Mutual: District and Consultant may terminate this Contract at any time by written Contract.
4. District’s Sole Discretion: District in its sole discretion may terminate this Contract for any reason on 30 days’ written notice to Consultant.
5. Breach: Either party may terminate this Contract in the event of a breach by the other party. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party does not entirely cure the breach within 15 days of the date of the notice, then the non-breaching party may terminate this Contract at any time thereafter by giving a written notice of termination.
6. Consultant Licensing, etc.: Notwithstanding Section 10(c), District may terminate this Contract immediately by written notice to Consultant upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Consultant must hold to provide services under this Contract.
7. Furlough: District reserves the right to terminate or otherwise suspend this Contract if District’s School Board determines that funding is insufficient to remain open and calls for a District-wide furlough or similar temporary District closure. Any temporary closure shall not affect amounts due Contractor under this Contract, subject to a pro-rated adjustment for reduction in services or need for goods during the furlough.
8. Payment on Early Termination. Upon termination pursuant to this Section, District shall pay Consultant as follows:
9. If District terminates this Contract for its convenience under Section 10(a) or 10(b), then District must pay Consultant for work performed before the termination date if and only if Consultant performed in accordance with this Contract. District shall not be liable for any direct, indirect, or consequential damages. Termination by District shall not constitute a waiver of any other claim District may have against Consultant.
10. If District terminates this Contract under Sections 10(c) or 10(d) due to Consultant’s breach, then District must pay Consultant for work performed before the termination date less any setoff to which District is entitled and if and only if Consultant performed such work in accordance with this Contract.
11. **Indemnification**
	1. Claims for Other Than Professional Liability. To the furthest extent permitted by Oregon law, Consultant shall defend, indemnify, and hold harmless the District and its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities of the Consultant or the Consultant’s Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Contract or any supplement or amendment hereto.
	2. Claims for Professional Liability. Consultant shall indemnify and hold harmless the District and its officers, agents, and employees and members from and against all claims, suits or actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of or relating to the professional negligent acts, errors or omissions of Consultant or its Consultants, partners, joint ventures, subcontractors, officers, agents or employees acting under or pursuant to this Contract or any supplement or amendment hereto.
	3. District’s Negligence. Notwithstanding sections 9(a) and 9(b), above, Consultant is not required to indemnify the District for such claims, suits, actions, losses, damages, liabilities, costs, or expenses to the extent they arise from District’s own negligence.
12. **Other Provisions.**
	1. **Unsupervised Contact with Students; Criminal Background Checks.** This provision is required by statute. “Unsupervised contact” with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct supervision by District personnel. ORS 326.603; OAR 581-021-0500.

**CHOOSE ONE:**

* + 1. [ ]  Consultant will have no direct, unsupervised contact with students in the performance of this contract.
* Consultant shall ensure that Consultant, any subconsultants, and their officers, employees, and agents will have no direct, unsupervised contact with students.
* Consultant will discuss any questions or concerns about these requirements with District Point of Contact (named on the first page of this Contract) before beginning work.
* Consultant, any subconsultants, and their officers, employees and agents must immediately remove themselves from any situation involving direct, unsupervised contact with students.
* If Consultant is unable to ensure through a security plan that none of its officers, employees, or agents or those of its subconsultants will have direct, unsupervised contact with students in a particular circumstance or circumstances, then Consultant shall notify District Point of Contact and undergo a criminal background check before beginning any work that could result is such contact.
* Consultant must check in at the school office and wear a visitor badge while on District property or in the presence of District students.
* A violation of these provisions is grounds for immediate termination of this Contract by the District.

**OR**

* + 1. [ ]  Performance under this Contract may require or cause Consultant to have direct, unsupervised contact with students. As required by ORS 326.603, **Consultant must undergo a finger-print based criminal background check before beginning work under this Contract**.
* Consultant authorizes District to obtain information about Consultant and its history and to conduct a criminal background check, including fingerprinting, of any Consultant officers, employees, or agents who will have unsupervised contact with students. Consultant shall cause its employees and/or subconsultants, if any, to authorize District to conduct these background checks.
* Consultant shall pay all fees assessed by Oregon Department of Education for processing the background check. District may deduct the cost of such fees from a progress or final payment to Consultant under this Contract, unless Consultant elects to pay such fees directly.
* After completion of the criminal background check, Consultant will be provided with a District badge.
* Consultant must the wear the badge provided by the District while on District property or in the presence of District students.
	1. Services Performed on District Property. Consultant’s personnel performing services on District property shall carry photo identification and shall present such to anyone on request. If such identification cannot be produced by Consultant, or is not acceptable to District, District may provide at its sole discretion such identification tags to Consultant. Consultant shall bear the entire cost of producing and assigning such identification. Consultants that do not have specific uniforms for employees shall provide identification tags as described above, and/or any other mechanism District in its sole discretion determines is required to easily identify Consultants.
		1. Sign-in Required. As required by schools and other District locations, each day Consultant’s Personnel enter an occupied District property, those personnel shall sign into the location’s main office to receive an identification/visitors tag. Consultant’s employees shall display this tag on their person at all times while on District property. This visitors tag is in addition to any badging or other identification that may be required by 9.a or 9.b above.
		2. No Smoking or Drugs. All District properties are tobacco-free zones; Consultant is prohibited from using any tobacco product on District property at occupied facilities. All District properties are drug-free zones and enforced by the Portland Police Bureau.
		3. No Weapons or Firearms. Except as provided by Oregon statutes and District policy, all District properties are weapons- and firearms-free zones; Consultant Personnel are prohibited from possessing on its persons or in its vehicles any weapons or firearms while on District’s property.
		4. Failure to comply with the requirements of this section may result in Consultant’s temporary or permanent removal and/or exclusion from District property. The District shall not consider any delay or compensation claims due to impacts from failure to comply with this section
	2. **Confidentiality**. **Family Education Rights and Privacy Act (“FERPA”) prohibits the re-disclosure of confidential student information.** Contractor agrees to protect the confidentiality of student education records, including personally identifiable information found in education records, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99), collectively “FERPA.”  Contractor acknowledges that information disclosed to Contractor by District may include records that are subject to FERPA, and that to the extent this is the case, Contractor will be considered a “school official” as that term is used in FERPA. As such, Contractor agrees that it will hold all information disclosed to it in strict confidence and will not use such information except as required to perform its obligations under this Contract. Contractor further agrees that will it not disclose or re-disclose any such information except (a) with the express written authorization of District, or (b) as required by law but only to the extent permitted by law and only in the manner prescribed by law.  If Contractor receives a court order or subpoena seeking education records or information contained in education records, it shall immediately notify District in writing. If Contractor re-discloses personally identifiable information from education records on behalf of District in response to an order or subpoena under 34 C.F.R. § 99.31(a)(9), Contractor must provide the notification required under 34 C.F.R. § 99.31(a)(9)(ii). District will assist Contractor with complying with this notification requirement.
	3. Security. Any disclosure or removal of any District matter or property by Consultant will be cause for immediate termination of this Contract. Consultant shall bear sole responsibility for any liability including, but not limited to, attorney fees resulting from any action or suit brought against District as a result of Consultant’s willful or negligent release of information, documents, or property contained in or on District property. District hereby deems all information, documents, and property contained in or on District property privileged and confidential.
	4. Reporting of Child Abuse. Consultant agrees to comply with the Reporting of Child Abuse law (ORS 419B.005 through 419B.050) as if Consultant were a “public or private official” with a duty to report. Having reasonable cause to believe that any child with whom the Consultant comes in contact has suffered abuse or that any person with whom Consultant comes in contact has abused a child, Consultant shall immediately report or cause a report to be made in the manner required in ORS 419B.015. Consultant shall also report to the school principal or designated school authority the circumstances supporting Consultant’s reasonable belief that any child has been abused.
	5. Employee Removal. At District’s request, Consultant shall immediately remove any Personnel from all District properties in cases where District determines in its sole discretion that removal of a Consultant or subconsultant employee or representative is in District’s best interests.
	6. Hours of Labor. As required by ORS 279C.520 and 279C.540, for Consultant’s employees subject to Oregon employment laws:
		1. Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
		2. Exemption. These requirements do not apply to individuals who are exempted under ORS 653.010 through 653.261 or under 29 U.S.C. 201 through 209 from receiving overtime.
		3. Notice to Employees. Consultant shall give notice in writing to its employees performing work under this Contract of the number of hours per day and the number of days per week that the employees may be required to work. Consultant shall provide this notice to its employees either (a) at the time of hire, (b) before they begin work under this Contract, or (c) by posting a notice in a location frequented by employees.
		4. Payment for Workers’ Compensation. As required by 279C.530: All subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
		5. Pay Equity. Consultant shall comply with ORS 279C.520(1)(b) and (c):
			+ 1. Consultant shall comply with ORS 652.220 (Prohibition of discriminatory wage rates based on sex; employer not to discriminate against employee who is a complainant). Compliance is a material element of the Contract. Failure to comply is a breach that entitles the District to terminate the contract for cause.
				2. Consultant may not prohibit any of the Consultant’s employees from discussing the employee’s rate of wage, salary, benefits or other compensation with another employee or another person, and may not retaliate against an employee who does so.
	7. Controlling Law; Venue. Any dispute under this Contract or related to this Contract will be governed by Oregon law, and any litigation arising out of the Contract will be conducted in courts located in Multnomah County, Oregon.
	8. Mediation. Consultant and District agree that any dispute that may arise under the Contract will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to commencement of arbitration or litigation. This provision shall be specifically enforceable in any arbitral or judicial proceeding through stay or abatement of the proceeding upon petition of a party. Mediation shall be conducted in Portland, Oregon, and the mediation fee and expenses shall be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in mediation.
	9. Waiver; Severability. Waiver of any default or breach under this Contract by District will be effective only in the specific instance and for the specific purpose given. Any such waiver does not constitute a waiver of any subsequent default or a modification of any other provisions of this Contract. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held invalid.
	10. Amendments. Any amendments, consents to or waivers of the terms of this Contract shall be in writing and signed by the authorized representatives of both parties.
	11. Media Contacts. Consultant shall issue no verbal, written or electronic releases or statements including, but not limited to, news releases, press releases, or other statements to members of the news media or any other publication regarding this Contract or the Project within one year of Project completion without the District’s prior written authorization. Consultant shall not post or publish any textual or visual representations of the Project without approval of District.
	12. Non-discrimination Clause.Both parties agree that no person shall be subject to unlawful discrimination based on race; national or ethnic origin; color; sex; religion; age; sexual orientation; gender expression or identity; pregnancy; marital status; familial status; economic status or source of income; mental or physical disability or perceived disability; or military service in programs, activities, services, benefits, or employment in connection with this contract. The parties further agree not to discriminate in their employment or personnel policies.
	13. Successors in Interest. This Contract will bind, and inure to the benefit of, the parties, their successors, and approved assigns, if any. Except as previously disclosed and approved, Consultant shall not enter into any sub-consultant Contracts for any of the Services or assign or transfer any of its interest in this Contract, without the District’s prior written consent.
	14. No Third Party Beneficiaries. District and Consultant are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
	15. Entire Contract. When signed by the authorized representatives of both parties, this Contract (and the attached exhibits) is their final and entire Contract. As their final and entire expression, this Contract supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.
1. Notices and Communications:
	1. Notices and communications between the parties to this Contract must be sent to the following addresses:

|  |  |
| --- | --- |
| **District:** | **Consultant:** |
| **Portland Public Schools** | **Company Name** |
| **501 N. Dixon St.** | **Consultant Address** |
| **Portland, OR 97227** | **City, State Zip** |
| **Phone Number** | **Phone Number** |

* 1. The party giving notice will provide notice in writing, dated and signed by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:
	2. If notice is given by personal delivery, it is deemed delivered on the day of delivery.
	3. If notice is given by overnight delivery service, it is deemed delivered one day after date deposited, as indicated by the delivery service.
	4. If notice is given by United States mail, it is deemed delivered three days after date deposited as indicated by the postmarked date.
	5. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

**I have read this Contract, including all exhibits. I certify that I have the authority to sign and enter into this CONTRACT, AND TO BE BOUND BY ITS TERMS on behalf of the party I represent.**

**CONSULTANT DISTRICT**

Consultant Name School District No. 1J, Multnomah County Oregon

 Signature Emily Courtnage

 Director, Purchasing & Contracting

 Consultant Printed Name and Title Date

 Date

**EXHIBIT A**

**DESCRIPTION OF SERVICES**

1. **SERVICES GENERALLY**

**Definitions.**

**Construction Cost Budget.** The Construction Cost Budget is the initial project budget as set forth by the District for the completion of the Work. This budget is exclusive of design, permitting and the District’s internal costs, but may include, in addition to anticipated construction costs, equipment start-up costs, FF&E, and other District furnished items to be incorporated into the Work.

**Program.** The Program represents the District conceptual outline of the Project in its entirety and may include working parameters, objectives, functional guidelines, interfaces, spatial relationships, general size and other characteristics as necessary to guide the design consultants in planning the Work.

**Project Schedule**. The Project Schedule, as defined within these documents and detailed within Exhibit C (Project Schedule) represents the schedule prepared by the Consultant after execution of this Contract that outlines the sequencing of the Consultants Services as required to achieve completion of the Work.

**Beneficial Occupancy**. Beneficial Occupancy is that point in time where the District will take and use a component of the Project for its intended use without subsequently returning it to the contractor and prior to the date of Substantial Completion which will apply to the project as a whole.

**Instruments of Service.** Consultantshall provide such drawings, specifications, reports, illustrations, diagrams and examples as are reasonably required to communicate the scope and nature of the Project for the following purposes:

Defining the project for District, District’s independent consultants, and other agencies or affiliates of the District who may have interest or association with the Project;

Obtaining required permits and approvals for the Project; and

Delineating the scope of the work for competitive bidding and construction.

**Required Consultant Services.** Consultant Services required for successful completion of the work shall include the following:

|  |  |  |
| --- | --- | --- |
| **SERVICE DESCRIPTION** | **Provided by** | **Check if required**  |
| Architecture |       |       |
| Civil Engineering |       |       |
| Survey |       |       |
| Geology |       |       |
| Traffic |       |       |
| Planning |       |       |
| Structural Engineering |       |       |
| Mechanical/Plumbing Engineering |       |       |
| Electrical Engineering |       |       |
| Low Voltage |       |       |
| FF&E Design |       |       |
| LEED Certification |       |       |
| Commissioning |       |       |
| Other:  |       |       |

**Start Up.** Upon final execution of this Contract with District, Consultant shall:

Within the first week following execution of this Contract, review the proposed Project Schedule set forth in Exhibit C and prepare a detailed Services list and work plan to District’s satisfaction. Consultant shall also identify milestone activities or dates, specific task responsibilities, required completion times necessary for the review and approval by District and by all regulatory agencies.

Review the developed work plan with District and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

**Scope of Services.** The Consultant Scope of Services shall be in accordance with the Proposal for Services and shall include the following components:

|  |  |
| --- | --- |
|  |  |
| **SCOPE OF SERVICES** | **Check if required** |
| Pre-Design Phase |       |
| Planning |       |
| Programming |       |
| Public / Stakeholder Participation |       |
| Cost Estimating |       |
| Schematic Design Phase |       |
| Design Development Phase |       |
| Construction Documents Phase |       |
| Permits & Approvals |       |
| Bidding Phase |       |
| Construction Phase |       |
| Record Drawings & Close Out Phase |       |
| Commissioning Assistance |       |
| Other Services |       |

**Pre-Design Phase.** Where applicable, the Consultant shall perform Pre-Design services to identify working parameters for the Project including site, budget and jurisdictional constraints, Consultant shall:

* 1. Review District’s Program, schedule, constraints and criteria special equipment, systems and site requirements as required to develop the parameters for Schematic Design of the Project.
	2. Review all data pertinent to the Project including survey, site maps, existing facility plans, master planning plans and specifications, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by District.
	3. Where applicable, validate existing plans and site conditions for the purpose of preparing as-built drawings of existing facilities where work shall be performed to ensure proper fit between new work and existing.
	4. Investigate and review applicable federal, state, local, and District standards, educational specifications, codes, and regulations pertaining to the proposed Project and identify design issues relating to functional opportunities, needs, directives and constraints imposed thereby. Such investigations shall include, but not be limited to local land use requirements, energy, historic, and neighborhood association groups who may have jurisdiction over or impact on the Project.
	5. Review existing utility connections on site and consult with applicable utility service providers to confirm availability and identify design solutions related to the provision of new, modification of existing, or capping and/or removal of abandoned utilities.
	6. Review such other reference information the District may provide.

**Planning Phase.** Where applicable, Consultant shall work with District personnel to identify the process by which a project program or multiple project programs can be developed. The work may contain individual or multiple sites and may provide provisions for later phases of the design to be completed by separate design consultants. The work may also include budgetary planning and phasing of individual or multiple projects.

**Programming.** Where applicable, Consultant shall perform Programming services to identify working parameters for the Project. Consultant shall identify and analyze functional, design, land use entitlements and constraints and operational parameters, size, scope and budget requirements that will guide the Project’s design. As a final deliverable, Consultant shall prepare for District’s review and acceptance, an architectural program, in narrative and diagrammatic form. Consultant shall develop the program narrative in conjunction with District staff and consultants and shall be responsible for the work which shall include the following:

Review District’s program objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, and general site requirements to establish appropriate guidelines around which and within which the Project will be designed.

Review such other reference information the District may provide.

**Public / Stakeholder Participation.**

a. Consultant shall, in conjunction with District, develop and implement a public and internal stakeholder participation program that provides opportunities for District to present the Project to stakeholders and to solicit questions, comments, and suggestions in an open and collaborative forum. Project stakeholders may include District’s Board of Education, school administration, staff, faculty and students, as well as the school parent teacher association, neighborhood residents and associations, and other stakeholders that District may identify. Consultant shall be responsible to prepare, facilitate, and document the required number of meetings. Following each meeting, Consultant shall prepare and a detailed written report of the proceedings, along with recommendations to District with respect to follow-up actions or communications, if any.

b. Consultant shall identify each required meeting on the Project Schedule, and shall be responsible to prepare the meeting agendas. Consultant’s reports will include documentation of the date, time and location of the meetings, the names and addresses of attendees, the intended objectives and target audience, commentary/minutes of the discussions, and copies of all presentation and resultant outcome materials.

c. Consultant shall provide all public and internal stakeholder presentation materials to the PPS Project Director for review and approval no less than three working days before the presentation. Requested revisions will be discussed as needed and acted on before the presentation. If mutually agreed, the presentation may be delayed until the materials are approved by the District.

d. Presentation materials from a public meeting will be provided in electronic form to the PPS Project Director no later than three working days after the presentation along with any required meeting minutes.

e. In conjunction with District, Consultant shall develop and implement internal District stakeholder meetings that provide opportunities to present the Project and to solicit questions, comments, and suggestions from District administrative and staff personnel in an open and collaborative forum during the course of the design. Internal stakeholder meetings will be conducted for the purpose of explaining current design information in light of applicable design standards, discussion of design components and systems, all to the effect of validating the proposed design as in conformance with the needs of the District.

**Construction Cost Estimates.** Consultant shall develop and maintain Construction Cost Estimates within the parameters of District’s Construction Cost Budget through all phases of its Services. Consultant shall base all Construction Cost Estimates on the most current architectural program as approved by District and shall prepare updated Construction Cost Estimates at the following phases of the Project: End of Schematic Design, end of Design Development, and at Construction Documents, all as provided below. The following conditions apply to each Construction Cost Estimate prepared by Consultant:

* 1. Base all costs on current price information appropriate to the level of design detail with escalation rate and duration clearly identified as a separate line item. Cost escalation rates and projected bid and construction dates shall be as approved by District.
	2. Present each Construction Cost Estimate in a building systems format using the Construction Specification Institute (“CSI”) format.
	3. Include contingencies for design, bidding, and construction as individual line items, with the percentage and base of calculation clearly identified.
	4. Include all information and estimates from District and District’s consultants that are intended to be part of the Construction Cost Budget.
	5. Reconcile each Construction Cost Estimate with District’s Construction Cost Budget. Where the Consultant Cost Estimate exceeds the Construction Cost Budget, Consultant shall at its sole expense provide design scenarios with associated costs that will bring the Construction Cost Estimate within the Budget.
1. **SCHEMATIC DESIGN PHASE**
	* 1. Consultant shall use the written and approved program developed as a result of the Pre-Design Phase, or review the architectural program and information furnished by District, and shall review laws, codes, and regulations applicable to Consultant’s services.
		2. Consultant shall prepare a preliminary evaluation of District’s program, schedule, budget for the work, Project site, and the proposed procurement or delivery method and other Initial Project Information, each in terms of the other, to ascertain the Project requirements. Consultant shall notify District of (a) any inconsistencies discovered in the information, and (b) other information or consulting services that may be reasonably needed for the Project.
		3. Consultant shall present its preliminary evaluation to District and shall discuss with District alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. Consultant shall reach an understanding with District regarding the requirements of the Project.
		4. Based on the Project’s requirements agreed upon with District, Consultant shall prepare and present for District’s approval a schematic design illustrating the scale and relationship of the Project components.
		5. Based on District’s approval of the schematic design, Consultant shall prepare Schematic Design Documents for District’s approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall documented in outline specifications and submitted as a part of the Schematic Design Documents.
		6. Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with District’s program, schedule and budget for the cost of the work.
		7. Consultant shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with District’s program, schedule and budget for the cost of the work.
	1. Consultant shall prepare and submit to District a Construction Cost Estimate for the approved Schematic Design Documents, based upon area, volume or similar conceptual estimating techniques and prepared in accordance with the provisions of this Contract.
2. Consultant shall submit the Schematic Design Documents and the Construction Cost Estimate to District, and request District’s approval.
3. **DESIGN DEVELOPMENT PHASE**
	* 1. Based on District’s approval of the Schematic Design Documents, and on District’s authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Design Development Documents for District’s approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications identifying major materials, components, and systems and establishing general quality levels, and be sufficient to fulfill land use and/or public works permit application requirements of the City of Portland for such applications that may be required by the project.
		2. If District elects to proceed with value engineering, Consultant and its subconsultants shall cooperate with District’s value engineer, by providing requested information and advising District and its value engineer, in good faith, concerning design changes the value engineer may propose. Consultant shall make such changes as District may direct. Substantial changes inconsistent with previous District approvals may be compensated as Additional Services.
		3. Consultant shall prepare and submit an updated Construction Cost Estimate based upon an itemization of major categories with each specification division and otherwise in accordance with the provisions of this Contract.
		4. Consultant shall submit the Design Development documents to District, along with the updated Construction Cost Estimate, and request District’s approval.
4. **CONSTRUCTION DOCUMENTS PHASE**
	1. Based on District’s approval of the Design Development Documents, and on District’s authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Construction Documents for District’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of drawings and specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Project. District and Consultant acknowledge that in order to construct the Project, District’s contractors will be required to provide additional information, including shop drawings, product information, product samples and other similar submittals, which Consultant shall review.
	2. Consultant shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.
	3. Consultant shall compile a project manual that includes the construction contract documents and forms, and may include bidding requirements and sample forms.
	4. Upon achieving completion of the Construction Documents, Consultant shall prepare and submit an updated Construction Cost Estimate based upon the work depicted in the Construction Documents and in accordance with the provisions of this Contract.
	5. Consultant shall submit the Construction Documents to District, along with the Construction Cost Estimate, and request District’s approval.
	6. If District elects to conduct a constructability review of the completed Construction Documents with its own internal assets or by a third party, a report shall be provided to Consultant and Consultant shall revise the Construction Documents accordingly and shall respond in writing to each comment made by the constructability reviewer in one of the following ways:
		1. Indicate where or how the comment is reflected in a change to the Construction Documents, or
		2. Explain why the comment is not reflected in a change to the Construction Documents.
	7. District may require Consultant to supplement its submittal or to prepare an additional submittal if Consultant’s response is insufficient to allow the constructability reviewer to confirm the changes.
5. **PERMITS & APPROVALS**

Consultant shall coordinate with the appropriate jurisdictions, including but not limited to State, County, and local jurisdictions, Historic Preservation organizations, neighborhood associations, and utility purveyors, to ascertain required review and approval processes for construction of the Work. Consultant shall be responsible for establishing points of contact with each jurisdiction, scheduling required meetings, and submitting appropriate documentation in a timely fashion and responding to additional information requests from appropriate jurisdictions such that the work can proceed according to the Project Schedule. Consultant shall identify all requisite costs associated with the review and approval processes and shall provide timely notice to the District of such costs to ensure that payments can be secured without delay to the Project.

1. **BIDDING  PHASE**
	1. The “Bidding Documents” shall consist of bidding requirements and proposed Contract Documents, which include the Construction Documents.
	2. Following District’s approval of the Contract Documents, Consultant shall assist the District in bidding the Project by the following:
		1. Establishing the initial electronic files of the Bid Documents for distribution to the entity responsible for distribution of the Bid Documents to prospective bidders;
		2. Participating in the pre-bid conference for prospective bidders;
		3. Preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the District for incorporation into formal addenda;
		4. Participating in the opening of the bids, and
		5. Assisting in the review of the bids for the purpose of determining the responsibility of the bidders.
	3. Consultant shall provide to District within 48 hours of occurrence, electronic record of the following items produced in this phase:
		1. Meeting report/minutes from the pre-bid site walk;
		2. Upon completion of the Bidding Phase, Consultant shall produce a conforming set of the Construction Documents incorporating all addenda issued. Consultant shall provide District with two complete, reproducible sets of plans and specifications marked as a “Conforming Set.”
	4. Consultant shall consider requests for substitutions, and if the Bidding Documents permit substitutions, shall keep record of all substitutions proposed inclusive of Consultant’s evaluative reports and conclusions,
2. **CONSTRUCTION PHASE**
	1. Consultant shall provide administration of the contract for construction between District and its contractor (“Contractor”) as set forth below and in conformance within that contract (Exhibit F (Draft General Conditions of the Contract for Construction)).
	2. Consultant shall participate in and provide to District within 48 hours of occurrence, electronic record of the Meeting report/minutes from the Project kick-off meeting;
	3. Consultant shall advise and consult with District during the Construction Phase. Consultant shall have no authority to act on behalf of District except to the extent, if any, provided in this Contract. Consultant will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, nor will Consultant be responsible for the failure of others to perform the construction work in accordance with the requirements of the construction contract documents. Consultant shall be responsible for Consultant’s negligent acts or omissions, but shall not have control over or charge of, and will not be responsible for, acts or omissions of Contractor or of any other persons or entities performing portions of the construction work.
	4. Consultant’s responsibility to provide Construction Phase Services commences with the award of the contract for construction and ends on the date Consultant issues the final certificate for payment.
	5. **Evaluation of the Work.** Consultant shall visit the site at intervals appropriate to the stage of construction, and at a minimum, once per week, to become generally familiar with the progress and quality of the portion of the construction work completed, and to determine, in general, if the work observed is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, Consultant shall keep District reasonably informed about the progress and quality of the construction work as it is completed, and report in writing to District (a) known deviations from the Construction Documents and from the most recent construction schedule submitted by the Contractor, and (b) defects and deficiencies observed in the work.
	6. **Change Orders.**
		1. Consultant shall review all of Contractor’s change order requests in the manner described in Exhibit F to determine if those requests are valid and appropriate. Consultant shall recommend to District whether the change should be approved, partially approved, returned to the Contractor for clarification, or rejected.
		2. Consultant shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. District shall request these drawings from Consultant who shall provide the drawings at no additional cost unless District designates the request as Additional Services. Consultant shall submit original tracing(s) and/or drawings and contract wording for change orders to District for duplication and distribution.
	7. **Submittals.**
		1. Consultant shall review Contractor’s schedule of submittals and advise District if the schedule is complete and if proposed review durations are adequate. Consultant shall provide District with proposed revisions to this schedule and advise District on whether District should approve the schedule.
		2. Consultant shall review and approve or take other appropriate action upon Contractor’s submittals such as: shop drawings, project data, samples and change orders, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.
		3. Consultant’s action upon Contractor’s submittals shall be taken as expeditiously as possible so as to avoid causing delay in the construction of the Project or in the work of separate Contractors, while allowing sufficient time in Consultant’s professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed 10 calendar days from its receipt by Consultant. Consultant’s response to each submittal shall be a substantive and acceptable response.
	8. **Requests for Information.** During the course of construction as part of the basic services, all Requests for Information (“RFI”) must be responded to as expeditiously as possible so as not to impact and delay the construction progress. Should the Consultant determine that a response is not possible within three business days, they shall promptly notify the District that additional review time will be needed. In no case shall the review period associated with an RFI exceed seven calendar days from the receipt by Consultant. Consultant’s response to each RFI shall be a substantive and acceptable response. This seven-day time period shall not include time when a submittal is within District’s control or if the submittal is being reviewed by a permitting jurisdiction. In no way does this provision reduce Consultant’s liability if it fails to prepare acceptable documents in a professionally reasonable time.
	9. **Payment Statements.** Within three days of receipt, Consultant shall review and certify the amounts due Contractor and shall issue certificates in such amounts. Consultant’s certification for payment will constitute a representation to District, based on Consultant’s evaluation of the work and on the data comprising the Contractor’s application for payment, that, to the best of Consultant’s knowledge, information and belief, the work has progressed to the point indicated and that the quality of the work is in accordance with the construction contract documents. The foregoing representations are subject (a) to an evaluation of the work for conformance with the construction contract documents upon Substantial Completion, (b) to results of subsequent tests and inspections, (c) to correction of minor deviations from the construction contract documents prior to completion, and (d) to specific qualifications expressed by Consultant.
	10. **Notices of Deficient Work.** Based on on-site observations, Consultant shall keep District informed of the progress and the quality of the work, and shall endeavor to guard District against defects and deficiencies in the work. Consultant shall notify District in writing of any defects or deficiencies in the work by any of Contractor that Consultant may observe. However, Consultant will not be a guarantor of the Contractor's performance.
3. **RECORD DRAWINGS & CLOSE-OUT PHASE**
	1. **As-Built Drawings.** Consultant shall review and evaluate for District, Contractor’s as-built documentation of the actual construction performed during the Project that Contractor prepares and submits. As-builts are documents that show the actual construction performed during the Project, including changes necessitated by change orders, RFIs, Supplemental Drawings/Documents, and detailed by Contractor.
	2. **Record Drawings.** Consultant shall incorporate all construction information from as-built drawings, sketches, details, and clarifications, and prepare one set of final Record Drawings for District. Consultant may insert the following notice on the Record Drawings:

*“These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. Consultant has provided a review of such information consistent with its legal standard of care.”*

* 1. **Manuals / Warranties.** Consultant shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications and shall submit a written summary of such review to the District.
	2. **Project Completion.** Consultant shall conduct inspections to establish or confirm the date of Substantial Completion and the date of Final Completion of the Contractor’s work. At Substantial Completion, Consultant shall review the Contractor’s punch list, conduct a visual inspection of the completed work and prepare an updated punch list of conditions observed and recommending correction, completion, or replacement by the Contractor. Consultant shall review the Project again upon Final Completion to confirm compliance with the construction contract documents, and, when punch list items are completed, shall issue a final certificate for payment representing to District to the best of Consultant’s knowledge and belief the work is completed and in compliance with the requirements of the construction contract documents.
	3. Upon request of District, and prior to the expiration of one year from the date of Substantial Completion, Consultant shall, without additional compensation, conduct a meeting with District to review the facility operations and performance for the purpose of assisting the District in the evaluation of work relative to the Contractor’s Warranty.
	4. **LEED Certification.** If LEED Certification is a part of the Consultant’s scope, the Consultant shall coordinate the review meeting and assemble all parties as required to evaluate building performance and coordinate the preparation and submittal of all applicable LEED Certification documents and reports.
1. **COMMISSIONING ASSISTANCE.** If Commissioning is required as a part of the project Services, Consultant shall coordinate with District the Contractor to ensure that Commissioning services are scheduled and completed at appropriate times during the construction process
2. **ADDITIONAL SERVICES.** Additional Services shall be considered accepted as a part of this Contract only when they have been reviewed and approved by both parties and incorporate into a formal Contract amendment signed by the authorized representatives of both parties. Consultant shall perform the following Additional Services when authorized or directed by District in writing:
	1. Making revisions in drawings, specifications, or other documents when such revisions are:
		1. Inconsistent with approvals or instructions previously given by District.
		2. Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the construction documents.
		3. Due to changes required as a result of District’s failure to respond to a written request from Consultant within a reasonable time.
	2. Providing Services made necessary by significant documented District initiated changes in the Project, including but not limited to size, quality, complexity, District’s schedule, or method of bidding and contracting for construction.
	3. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing Services required in connection with replacement of that work.
	4. Providing Services made necessary by the default of contractor(s), by major defects, or deficiencies in the work of contractor(s).
	5. Providing Services as directed by District that are not part of the Services of this Contract. Consultant shall notify District, in writing, prior to starting any of the Services that it considers the Services it has been directed to do as not part of the Services under this Contract.
	6. Providing Services as an expert and/or witness for District in any mediation, arbitration, and/or trial in which Consultant is (a) not a party, and (b) did not in any way cause the dispute that is being adjudicated.
	7. Providing training, adjusting, or balancing of systems and/or equipment outside of any services required by commissioning that may be a part of this Contract.
	8. For Consultant’s Additional Services the fee to be paid shall be determined in one of the following manners and identified as a part of the extra service authorization.
		1. District may elect to negotiate a fixed fee for Additional Services.
		2. District may compensate Consultant on a time and material for the Additional Services based on the following criteria: (i) additional labor fee shall be calculated based on the approved hourly billing rates as listed below and an agreed upon level of efforts for the principals and employees of Consultant, and (ii) actual expenditures made by Consultant on the project and supported by receipts.
		3. District may negotiate a fixed fee for a portion of the Additional Services and agree on a time and material compensation for the remainder portion of the Additional Services.
		4. District may compensate Consultant on a percentage basis of the final negotiated pricing on change order work accomplished by the Contractor.
	9. No adjustment in Consultant fee shall be made based on a net change to the construction contract award amount as the total Consultant fee payable hereunder is a negotiated amount.

The following rates include overhead, administrative cost, and profit and shall be used to calculate the fee for authorized Additional Services. Sub-consultants hourly rates indicated below include Consultant’s administration fee/mark-up fee.

  Insert Rates Here

**EXHIBIT B**

**PAYMENT SCHEDULE**

1. **COMPENSATION**
	1. The payment of consideration to Consultant as provided herein shall be the entire compensation payable to Consultant for Consultant’s Services performed under this Contract. Except as stated below or otherwise agreed by the District in a written amendment to this Contract, the District shall not pay for any additional Consultant costs or expenses.
	2. Consultant shall perform the Services (exclusive of the Reimbursable Expenses) for the maximum price of $      (“Consultant’s Compensation”).
	3. Reimbursable Expenses are in addition to the compensation for the Services stated in A.2 above and shall not exceed the maximum amount of $     .
		1. Reimbursable Expenses consist of:
2. Costs of transportation between the Consultant’s offices and District sites, including mileage at the current rate established by the United States General Services Administration.
3. Printing, scanning, reproduction, and shipping or mailing services required by the Project, and not part of the Consultant’s internal coordination of the Work.
	* 1. All costs or expenses not listed above shall not be reimbursable. Non-reimbursable expenses include, but are not limited to: Long distance communications, cellular phones, and other communication technology; and food, beverages, or meals.
		2. Reimbursable Expenses shall be limited to actual, allowable, and reasonable costs, documented by third-party receipts, and detailed in separate line items on Consultant’s invoice. District will not pay any mark up over actual allowable costs.
	1. The maximum total payment under this contract, consisting of the Consultant’s Compensation in A.2 and the maximum allowable Reimbursable Expenses in A.3, is $     .
	2. Consultant’s Compensation shall be allocated to each phase under this Contract as stated below. The District will pay Consultant’s Compensation for each phase upon review, comment, and approval of that phase by the District. If completion of a phrase extends past a monthly billing cycle as provided in below, the payment will be based upon the percentage of the phase completed during the billing cycle.

|  |
| --- |
| **PERCENTAGE OF TOTAL COMPENSATION PER PHASE** |
| Pre-Design Phase  |      % |
| Planning |      % |
| Programing |      % |
| Public / Stakeholder Participation |      % |
| Cost Estimating |      % |
| Schematic Design Phase |      % |
| Design Development Phase |      % |
| Construction Documents– includes submission to regulatory agencies, constructability review and revision period |      % |
| Permits & Approvals |      % |
| Bidding Phase |      % |
| Construction Phase |      % |
| Record Drawings and Close-out |      % |
|  Punch List Preparation, Review & Sign-off |  |
|  Prepare Record Drawings |  |
|  Review and Submittal of Close Out Documentation (includes where applicable, final LEED and Commissioning Report) |  |
| Commissioning Assistance |  |
| Other Services |      % |
| TOTAL BASE COMPENSATION | 100% |

1. **PAYMENT METHOD**
	1. Consultant shall submit to District’s authorized representative for approval a copy of Consultant’s monthly pay request format.
	2. Invoices shall be on a form approved by District and are to be submitted monthly to District’s authorized representative.
	3. Invoices shall be detailed and include the following:
	4. Itemization of all project components and the percentages completed;
	5. Previously billed and currently invoiced;
	6. Previously approved contract amendments, whether or not they are being invoiced; and
	7. Separate itemization of any reimbursables that are billable, but not a part of the base compensation under this Contract.
	8. Consultant shall submit to District on a monthly basis documentation showing proof that payments were made to its vendors and subconsultant(s).
	9. Consultant shall submit to District for approval a copy of subconsultant’s monthly invoice.
	10. Upon receipt and approval of Consultant’s properly submitted invoices, District agrees to make payments within 30 days of receipt.

EXHIBIT C

**PROJECT SCHEDULE**

1. Promptly after the execution of this Contract, the Consultant shall prepare and submit for approval to District a schedule showing the order in which Consultant proposes to carry out Consultant's Services (“Project Schedule”). The Project Schedule shall apply to the completion of all Services listed hereunder within the times established by this Contract. The Project Schedule shall be in the form of a critical path type diagram clearly delineating all important activities, increments, milestones and review dates. The Project Schedule, shall include all phases of the work identified within the Scope of Services. Consultant shall update the Project Schedule at least monthly and shall deliver a current Project Schedule to District along with the monthly billing.
2. Consultant shall complete all Services required under the Architectural Programming phase within       calendar days after written authorization from District to proceed.
3. Consultant shall complete all Services required under the Schematic Design Phase within       calendar days after written authorization from District to proceed with this Phase.
4. Consultant shall complete all Services required under the Design Development Phase within       calendar days after receipt of a written authorization from District to proceed with this Phase.
5. Consultant shall complete all Services required under the Construction Document Phase within       calendar days after receipt of a written authorization from District to proceed with this Phase.
6. Consultant shall complete revisions to the Contract Documents within \_\_\_\_\_\_\_ calendar days after receiving direction from the District to implement changes stemming for jurisdictional requirements to implement the Project.
7. Consultant shall proceed with Services required under the Construction Phase, upon the commencement of construction, and will continue through completion and acceptance of the Project by District.

The durations stated above exclude the review periods required by District and other regulatory agencies.

All times to complete tasks set forth in this Exhibit are of the essence, as indicated in this Contract. If delays in the Schedule of Services are imposed by District’s inability to comply with requested meeting schedules or other causes beyond the Consultant’s control, Consultant shall maintain the right to request an adjustment in the Project Schedule if deemed necessary to meet the deadlines set forth in this Exhibit C. If approved, those extensions shall be authorized in writing by District.

EXHIBIT D

**INSURANCE REQUIREMENTS**

1. **MINIMUM INSURANCE LIMITS.** Consultant shall procure, prior to commencement of the Services of this Contract, and shall maintain, for the duration of this Contract, the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/IX or better in the most recent edition of “Best’s Insurance Guide” (or such lesser rating as may be approved by District in writing) and authorized to do business in the state where the Project is located. Consultant’s liabilities, including but not limited to Consultant’s indemnity obligations, under this Contract, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Contract and Consultant’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract, as required or when requested, may be treated as a material breach of contract by District. Further, the Consultant will require that all Subconsultants provide and maintain the types and limits of insurance specified in Paragraph K.
2. **Workers’ Compensation and Employer’s Liability:**

Workers Compensation, with limits as required by applicable law. Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

Employers Liability:

$1,000,000 Each Accident

$1,000,000 Disease, Policy Limit

$1,000,000 Disease, Each Employee

Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

1. **Commercial General Liability (Occurrence Form):**

Combined Bodily Injury and Property Damage:

$1,000,000 Each Occurrence

$1,000,000 Personal and Advertising Injury

$2,000,000 General Aggregate

$2,000,000 Products/Completed Operations Aggregate

$300,000 Fire Damage Legal Liability

$10,000 Medical Expenses Per Person

1. **Commercial Business Auto:**

Combined Bodily Injury and Property Damage

$1,000,000 Each Accident

The following coverages must be included:

* + - 1. Owned Automobiles
			2. Non-Owned and Hired Automobiles

Will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

1. **Excess/Umbrella Liability Coverage:**

$1,000,000 Each Occurrence

$1,000,000 Aggregate

Coverage will be at least as broad as all liability policies described above.

Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

The policy must provide that coverage will be triggered by exhaustion of the General Liability, Commercial Business Auto, Employer’s Liability policies above only and not any other policies; exhaustion of the applicable policies above will be achieved by reasonable compromise for amounts less than the full limits of such applicable policies.

1. **Professional Liability Coverage:**

$2,000,000 Each Claim

$2,000,000 Aggregate

1. **Deductibles and Self-Insured Retention**. Consultant shall inform District in writing if any deductibles or self-insured retentionexceeds ten thousand dollars ($10,000). At its sole discretion, District may 1) accept the higher deductible; 2) require Consultant to insure such deductibles or self-insured retention as respects District, its officers, officials, employees and volunteers; or 3) require Consultant to provide a surety bond guaranteeing Consultant’s payment of deductible or self insured losses and related investigations, claim administration and defense expenses.
2. **Certificates and Certified Copies of Policies**. Certificates of insurance for Consultants’ and Subconsultants’ insurance along with copies of all endorsements necessary to evidence compliance with all insurance requirements will be filed with District and be acceptable to District prior to commencement of the Work. For those insurance coverages that are required to remain in force after Final Completion, additional certificate evidencing continuation of such coverage will be submitted as part of the application for final payment and upon each annual renewal for the duration of coverage required. The additional insured coverage will apply to the Consultants “completed work” and its “on-going operations”. Provision of the certificates and copies of policies as required herein will be a condition precedent to payment.
3. **Notice of Cancellation, Reduction or Expiration.** The insurance policies required by this Exhibit will be endorsed to include a covenant that coverages or limits afforded under the policies will not be canceled, reduced or allowed to expire until at least 30 days’ prior written notice has been given to District. In addition, Consultants and subconsultants will give written notice to District immediately upon learning that their coverages may be cancelled, reduced or their limits impaired by claims. Information concerning cancellation or reduction of limits on account of claims paid or to be paid will be furnished by the Consultant to District not more than three (3) business days from when Consultant learns that revised or reduced limits are likely. When Consultant becomes aware of cancellation, expiration or reduction in coverage or available limits, Consultant, within ten (10) business days, will procure other policies of insurance that meet all requirements of this Exhibit.
4. **District’s Right To Terminate or Cure.** Failure of Consultant or a Subconsultant to secure and maintain insurance with the coverages and limits required by this Exhibit will be a material breach of the Contract entitling District, at its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Consultant for work on the Project, (ii) terminate the Consultant for cause, and (iii) purchase any additional insurance it deems reasonable necessary to protect itself at the expense of the Consultant. Consultant consents to District procuring replacement insurance in Consultant’s name and will cooperate in all respects with District’s efforts in procuring additional or replacement insurance. District will have the discretion to purchase an Owner’s protective policy or other similar policy that affords to District coverages and limits providing reasonably equivalent protections as District would have received if Consultant and Subconsultants maintained the insurance required by this Exhibit. District’s costs incurred in finding replacement insurance or an Owner’s protective policy will either be reimbursed directly by Consultant or may be offset against amounts owed by District to Consultant on the Project or other projects. This requirement will remain enforceable for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
5. **No Waiver by District.** The insurance requirements under this Exhibit can only be waived or modified by District by an express written instrument signed by District acknowledging the reduced coverages or limits. No other act or omission by District or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, will amount to District’s waiver of the insurance requirements of this Exhibit.
6. **Subconsultant Insurance.** All Subconsultants’ insurance will meet all insurance requirements of Consultant as provided in this Exhibit, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for Subconsultants will be no less than the following:

*Architect:*

Workers’ Compensation and Employer’s Liability: same as above except for the following limits for Employer’s Liability:

 $100,000 Each Accident

$100,000 Disease, Policy Limit

$500,000 Disease, Each Employee

Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:

$1,000,000 Each Occurrence

$1,000,000 Personal and Advertising Injury

$2,000,000 General Aggregate

$2,000,000 Products/Completed Operations Aggregate

Business Auto: same as above.

Excess/Umbrella Liability Coverage: none required.

Professional Liability $2,000,000

*Consultant’s Design Professional:*

Workers’ Compensation and Employer’s Liability: same as above except for the following limits for Employer’s Liability:

 $100,000 Each Accident

$100,000 Disease, Policy Limit

$500,000 Disease, Each Employee

Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:

$1,000,000 Each Occurrence

$1,000,000 Personal and Advertising Injury

$2,000,000 General Aggregate

$2,000,000 Products/Completed Operations Aggregate

Business Auto: same as above.

Excess/Umbrella Liability Coverage: none required.

Professional Liability $2,000,000

*Subconsultants:*

Workers’ Compensation and Employer’s Liability: same as above except for the following limits for Employer’s Liability:

 $100,000 Each Accident

$100,000 Disease, Policy Limit

$500,000 Disease, Each Employee

Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:

$1,000,000 Each Occurrence

$1,000,000 Personal and Advertising Injury

$2,000,000 General Aggregate

$2,000,000 Products/Completed Operations Aggregate

Business Auto: same as above.

Excess/Umbrella Liability Coverage: none required.

1. **Additional Insureds.** All of Consultant’s and Subconsultants’ liability insurance policies will be endorsed to expressly name District, District’s Program Manager, or both, their representatives, consultants, trustees, officers, officials, employees, agents, volunteers, affiliates, subsidiaries, and directors as additional insureds. The coverage under the additional insured endorsement will (i) be primary and noncontributory with respect to any insurance of the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Exhibit, and will not be limited to vicarious liability, (iii) not be limited to on-going operations, (iv) be maintained for the same durations as the coverages afforded to the primary insured as required by this Exhibit and blanket endorsements will not be acceptable.