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ENGINEERING SERVICES CONTRACT

between

SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON

(PORTLAND PUBLIC SCHOOLS)

and

**CONSULTANT**

**Contract No.**

This Contract Shall be binding on District only if it is

signed by THE DEPUTY CLERK OR AUTHORIZEDDESIGNEE

This Engineering 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 Name:**

**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 [ ] [ ]  Nonprofit Corporation [ ]  Government Agency

[ ]  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. Project Description:
	3. 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)

1. **Consultant’s Responsibilities**
	1. Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and subconsultants identified by Consultant. Consultant shall identify a representative authorized to act on its behalf with respect to the Project and shall not remove, re-assign, or replace key personnel without District’s prior written consent.
	2. 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.
	3. Consultant shall procure prior to commencement of Services and maintain for the duration of this Contract, or such longer time as may be provided, insurance against claims that may arise from or in connection with the performance of Services by Consultant, its agents, representatives, employees and subconsultants as set forth at Exhibit D. 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 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.
	4. Consultant shall coordinate with District personnel or its designated representatives as may be requested, including with other professionals employed by District for the planning, design, coordination or management of other work related to the Project.
2. **Scope of Consultant’s Services**
	1. Consultant shall provide the services (“Services”) as more particularly described in Exhibit A, in accordance with the terms of this Contract, federal, state, or local law or ordinance and applicable District rules and policies, and in a manner so that the Project will be completed as expeditiously and economically as possible within the total budgeted cost to District of all elements of the Project designed or specified by the Project design professional(s) (“Construction Cost Budget”) and in District’s best interests.
	2. 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 locale and on projects similar to the Project. Consultant shall be responsible to District for all Services provided whether such Services are provided directly by Consultant or by subconsultants engaged by Consultant. All persons providing Services under this Contract shall be properly licensed as may be required by Oregon law.
	3. Time is of the essence in the performance of this Contract. Consultant shall commence its performance upon receipt of District’s written notice to proceed and shall complete its performance in accordance with the project schedule set forth in Exhibit C (“Project Schedule”). Consultant shall not be responsible for delay in performance to the extent caused by circumstances or events beyond Consultant’s reasonable control.
	4. Consultant shall perform only the Services authorized by this Contract. Additional Services (as defined in Section C of Exhibit A) will be compensated only as authorized in writing by District. Consultant expressly waives any right to additional payment for any Services in the absence of District’s written authorization or request. To the extent Additional Services are made necessary by the fault or error of Consultant or its subconsultants in the performance of Consultant’s duties, responsibilities, or obligations, the Services will not be compensated.
	5. Consultant shall rely on its good judgment as to the accuracy and completeness of services and information provided by District. Consultant shall provide prompt written notice to District if Consultant becomes aware of any material deficiencies, errors, omissions or inconsistencies in such services or information or if in Consultant’s opinion the Construction Cost Budget will not be sufficient to complete the construction as programmed.
	6. Consultant shall perform all Services as an independent contractor. Although District reserves the right to set the delivery schedule for the Services to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means and manner of Consultant’s performance. Consultant is responsible to determine the appropriate means and manner of performing the Services. Consultant, Consultant’s employees and the subconsultants are not “officers, employees, or agents” of the State of Oregon or District, as those terms are used in ORS 30.265, and will have no authority to bind District for the payment of any cost or expense without District’s express written approval.
3. **District’s Responsibilities**
	1. Unless otherwise provided for under this Contract, District shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written statement setting forth District’s objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.
	2. District shall identify a representative authorized to act on District’s behalf with respect to the Project. District shall render decisions and approve Consultant’s submittals in a timely manner calculated to avoid unreasonable delay in the orderly and sequential progress of Consultant’s Services.
	3. District shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
	4. District shall coordinate the services of its own consultants with those Services provided by Consultant. Upon Consultant’s request, District shall furnish copies of the scope of services in the contracts between District and District’s consultants. District shall furnish the services of consultants other than those designated in this Contract, or may authorize Consultant to furnish them as Additional Services, when Consultant requests such services and demonstrates that they are reasonably required by the scope of the Project. District shall require that its consultants maintain professional liability insurance as appropriate to the services provided.
	5. Notwithstanding anything to the contrary in this Contract, District shall be required to furnish information or services described only to the extent that such information or service is both reasonably required to perform Consultant’s services under this Contract and is actually requested by Consultant. District shall provide surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.
	6. District shall provide Consultant access to the Project site prior to commencement of the Services and shall obligate its 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 contractors or subcontractors.

* + 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 consultant 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. Drawings, specifications and other documents, including those in electronic form, prepared by or on behalf of Consultant are instruments of service 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. Consultant grants to District a nonexclusive, irrevocable, and perpetual license to use and reproduce Consultant’s instruments of service for purposes of constructing, using, and maintaining the Project. Consultant will obtain similar nonexclusive, irrevocable, and perpetual licenses from Consultant’s subconsultants consistent with this Contract. 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, and District 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. 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 Consultant is in default of this Contract, the foregoing license shall be supplemented by a second, nonexclusive license permitting District 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 Article 4, 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.
	3. Consultant is not responsible for changes or alterations 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 consultants from and against claims, damages, losses and expenses, including, but not limited to, attorneys’ fees, for personal injury or death or damages to property, to the extent arising out of or resulting from District’s unauthorized use of the instruments of service.
	4. Consultant shall maintain complete and accurate records of all services performed and all documents produced under this Contract for a period of five (5) years after completion or abandonment of the Project. Such records shall be made available to District, in full, upon reasonable notice.
	5. Following the termination of this Contract, for any reason whatsoever, Consultant shall promptly deliver to District, upon written request and at no cost 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, which are and will remain District’s property and which District may utilize in any way permitted by law, including the following:
		1. One reproducible hard copy set of the construction, permit, and as-built documents, including the bidding requirements, specifications, and cost estimates for the Project;
		2. One set of fixed image CAD files of the drawings that comprise the construction, permit, and as-built documents;
		3. One set of non-fixed image CAD 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.
	6. Consultant will provide complete copies of any such documents to District upon District’s written request.
2. **Compensation and Payment**
	1. District shall pay Consultant for Services performed under this Contract according to the provisions of Exhibit B.
	2. No increase in Consultant’s fee will be due from change orders generated during construction to the extent caused by Consultant’s error or omission.
	3. Regardless of the structure of Consultant’s fee, the fee may be adjusted downward if the Services to be provided under this Contract are reduced by District in accordance with this Contract.
	4. Consultant shall provide District with monthly statements of Additional Services rendered and reimbursable expenses incurred in the preceding month. Consultant expressly waives any right to additional payment for any Change in Services if Consultant does not give timely written notice of the Change in Services and if such services are not billed as Change in Services within sixty (60) days following their rendition.
3. **Early Termination**
4. Mutual: District and Consultant may terminate this Contract at any time by written Contract.
5. District’s Sole Discretion: District in its sole discretion may terminate this Contract for any reason on 30 days’ written notice to Consultant.
6. 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.
7. 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.
8. 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 Consultant under this Contract, subject to a pro-rated adjustment for reduction in services or need for goods during the furlough.
9. Payment on Early Termination. Upon termination pursuant to this Section, District shall pay Consultant as follows:
10. 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.
11. 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.
12. **Records and Audits**
	1. 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 shall be available to District or District's authorized representative at mutually convenient times. These records shall be preserved by Consultant for a period of three (3) years after final payment.
	2. Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. 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.
13. **Indemnity and Liability**
	1. To the furthest extent permitted by Oregon law, Consultant shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to, in whole or in part, the willful misconduct, recklessness, or negligent acts, errors, or omissions of Consultant, its officials, officers, employees, subconsultants, consultants, or agents in the performance of the Services.
	2. Consultant shall pay to District any and all costs incurred by District, or for which District may reasonably become liable, to the extent caused by Consultant’s negligence in its performance hereunder, including negligent delays, or the District may withhold such costs from amounts owing to Consultant.
	3. Other than as provided in this Contract, District’s financial obligations to Consultant will be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event will District be liable for any claim, regardless of whether based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Contract or the Services performed in connection with this Contract.
14. **Special 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 performing services on District property or for District shall be in full uniform at all times. Uniforms will include shirt with company identification attached. In addition, all such persons 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 of work Consultant's employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are in the school or other location.
		2. No Smoking. Smoking or other use of tobacco is prohibited on District's property.
		3. No Drugs. District's property sites are designated drug-free zones enforced by the Portland Police Bureau.
		4. No Weapons or Firearms. Except as provided by Oregon statutes and District policy, weapons and firearms are prohibited on District's property.
	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 attorneys’ 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. **Employee Removal.** At District’s request, Consultant shall immediately remove any employee from all District properties in cases where District determines in its sole discretion that removal of that employee is in District’s best interests.
1. **Miscellaneous Provisions**
	1. **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 pay 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 excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. Exemptions apply to individuals engaged in administrative, executive or professional work who perform predominantly intellectual, managerial or creative tasks, exercise discretion and independent judgment; and earns a salary and is paid on a salary basis.
		3. Notice to Employees. Consultant shall give notice in writing to its employees, who perform work under this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
		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.
	2. **Non-Appropriation; Adequate Funding.** If payment for work under this Contract extends into District’s next fiscal year, District’s obligation to pay for such work is subject to approval of future School Board appropriations to fund this Contract. 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 may adjust the level of services provided for in this Contract in accordance with funding levels adopted by the School Board.
	3. **Law and 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.
	4. **Mediation.** Consultant and District agree that any dispute that may arise under this Contract shall be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of litigation or arbitration. Such mediation will occur in Portland, Oregon, and the mediator’s fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in the mediation.
	5. **Severability.** 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 will be construed and enforced as if this Contract did not contain the particular term or provision held invalid.
	6. **Entire Contract.** This Contract and the attached exhibits constitute the entire Contract between the parties. All understandings and Contracts between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification, or change in the terms of this Contract will bind either party unless in writing signed by both parties. Any written waiver, consent, modification, or change will be effective only in the specific instance and for the specific purpose given.
	7. **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.
	8. **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.
	9. **Media Contacts.** Consultant shall issue no news release, press release or other statement to member of the news media or any other publication regarding this Contract or the Project without the District’s prior written authorization.
	10. **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.
2. **Notice and Communications**
	1. Notices and communications between the parties to this Contract may 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 the party giving notice or 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 (1) day after date deposited, as indicated by the delivery service.
	4. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it is deemed delivered three (3) 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.

**CONSULTANT HAS THE POWER AND AUTHORITY TO ENTER INTO AND PERFORM THIS CONTRACT; THE PERSONS EXECUTING THIS CONTRACT ON BEHALF OF CONSULTANT HAVE THE ACTUAL AUTHORITY TO BIND CONSULTANT TO THE TERMS OF THIS CONTRACT.**

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| **CONSULTANT** **Consultant Name** Signature  Printed Name and Title Date | **DISTRICT****School District No. 1J, Multnomah County, Oregon** Emily CourtnageDirector, Purchasing & Contracting Date |

EXHIBIT A

SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON

(PORTLAND PUBLIC SCHOOLS)

ENGINEERING SERVICES CONTRACT

**SCHEDULE OF SERVICES**

1. **SERVICES**
	1.
2. **DELIVERABLES**
	1.
	2.
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1. **ADDITIONAL SERVICES**

Consultant shall perform the following Additional Services when authorized or requested in writing by District:

* 1. Making revisions in drawings, specifications, or other documents when such revisions are:

* + 1. Inconsistent with approvals or instructions previously given by District.

* + 1. Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the construction documents.

* + 1. Due to changes required as a result of District’s failure to respond to a written request from Consultant within a reasonable time.

* 1. 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.

* 1. 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.

* 1. Providing Services made necessary by the default of consultant(s), by major defects, or deficiencies in the work of consultant(s).

* 1. 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 this Contract.

* 1. Providing Services as an expert and/or witness for District in any mediation, arbitration, and/or trial in which Consultant is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.

* 1. Providing training, adjusting, or balancing of systems and/or equipment.

* 1. 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.

* + 1. District may compensate Consultant on a time and material for the Additional Services based on the following criteria: 1) 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 2) actual expenditures made by Consultant on the project and supported by receipts.

* + 1. 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.

* + 1. District may compensate Consultant on a percentage basis of the final negotiated pricing on change order work accomplished by the Consultant.

* 1. 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 which include overhead, administrative cost and profit shall be utilized to calculate the fee for Additional Services. Sub-consultants hourly rates indicated below include Consultant’s administration fee/mark-up fee.

  Insert Rates Here

**EXHIBIT B**

**SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON**

**(PORTLAND PUBLIC SCHOOLS)**

**ENGINEERING SERVICES CONTRACT**

**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.

OR

The District will pay Consultant at the hourly rates stated below.

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| CONSULTANT’S COMPENSATION |       |

1. **PAYMENTS**
	1. Invoices shall be on a form approved by District and are to be submitted monthly to District’s authorized representative.
	2. Consultant shall submit to District on a monthly basis documentation showing proof that payments were made to its vendors and consultant(s).
	3. Consultant shall submit to District for approval a copy of subconsultant’s monthly invoice.
	4. Upon receipt and approval of Consultant’s properly submitted invoices, District agrees to make payments within thirty (30) days of receipt.

**EXHIBIT C**

**SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON**

 (PORTLAND PUBLIC SCHOOLS)

ENGINEERING SERVICES CONTRACT

**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”).
2. The Project Schedule shall apply to the completion of all Services listed hereunder within the times established by this Contract.
3. The Project Schedule shall be in the form of a progress chart clearly delineating all important increments and review dates.
4. Consultant shall update the Project Schedule at least monthly and shall deliver two (2) copies of a current Project Schedule to District along with the monthly billing.

**EXHIBIT D**

**SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON**

 (PORTLAND PUBLIC SCHOOLS)

ENGINEERING SERVICES CONTRACT

**INSURANCE REQUIREMENTS**

**Minimum Limits of Insurance.** Consultant shall procure, prior to commencement of the Services of this Contract, and shall maintain, for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees and consultant(s). 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.

Coverage shall be at least as broad as the following scopes and limits:

* 1. **Commercial General Liability.** One million dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to each project/location or the general aggregate limit will be twice the required occurrence limit.
	2. **Commercial Automobile Liability**. One million dollars ($1,000,000) per accident for bodily injury and property damage.
	3. **Workers' Compensation Liability.** For all of Consultant’s employees who are subject to this Contract and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of one million dollars ($1,000,000) per accident for bodily injury or disease. Consultant shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
	4. **Employers’ Liability.** For all of Consultant’s employees who are subject to this Contract and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, an Employment Practices Liability policy. That policy shall provide employers’ liability coverage with minimum liability coverage of one million dollars ($1,000,000) per occurrence. Consultant shall provide an endorsement that the insurer waives the right of subrogation against District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.
	5. **Professional Liability**. This insurance shallcover Consultant and his/her consultant(s) for two million dollars ($2,000,000) aggregate limit subject to no more than ten thousand dollars ($10,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter.

District reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

**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.

**Other Insurance Provisions**. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

* 1. District, District’s Program Manager, or both, their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Consultant; instruments of Service and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage will contain no special limitations on the scope of protection afforded to the Additional Insureds.
	2. For any claims related to the projects, Consultant’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Consultant’s insurance and will not contribute with it.
	3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties will not affect coverage provided to the Additional Insureds.
	4. Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
	5. Each insurance policy required by this clause shall be endorsed to state that coverage will not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District.

**Acceptability of Insurers**: Insurance is to be placed with insurers admitted in Oregon with a current A.M. Best's rating of no less than A:VII. Consultant shall inform District in writing if any of its insurers have an A.M. Best’s rating less than A:VII. At its sole discretion, District may 1) accept the lower rating or 2) require Consultant to procure insurance from another insurer.

**Verification of Coverage**: Consultant shall furnish District with:

* 1. Certificates of insurance showing maintenance of the required insurance coverage; and
	2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements shall be received and approved by District before Services commence.