

Contract No \_\_\_\_\_

This Contract is made and entered into by and between:

	Beaverton School District 16550 SW Merlo Road Beaverton, Oregon 97003
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**SCOPE OF WORK:** as described in.

**SUPERSEDING EFFECT:**

There are no covenants, promises, agreements, conditions or understandings between the Parties, either oral or written, other than those contained in this Contract. This document and all attachments hereto together constitute the entire agreement between the Parties (listed in order of precedence): 1) This Agreement; 2) Exhibit A Terms and Conditions; 3) Exhibit B District Solicitation (including issued addenda), Specifications and Drawings; and 4) Exhibit C Provider Response.

Any Provider Response (proposals) attached to this Agreement are incorporated solely for: (i) any statement of fees and schedule that is consistent with the terms of the Solicitation, this Agreement and Exhibit A to this contract and (ii) any statement of Consultant's and its sub-consultants' scope of services that is consistent with the remainder of this Agreement, or that provides basic services in addition to those stated in this Agreement. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the terms of this Agreement or is not included in this agreement, such proposed terms are void and are expressly and wholly subject to the terms of this Agreement. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

**CONSIDERATION:** The District agrees to pay the Provider for Work performed in a satisfactory manner a total not to exceed \$\_\_\_\_\_. The Provider must submit one invoice at the completion of the Work or must submit an invoice for Work performed at the specific intervals agreed upon by the District (monthly, quarterly, or annually). Invoice(s) shall be submitted Attn: Accounts Payable to the District address above. All invoice(s) and correspondence shall include the Contract number.

**CONTRACT PERIOD:**

 The contract period shall be upon District acceptance: **Date of Full Contract Execution**
**SUBSTANTIAL COMPLETION DATE:** \_\_\_\_\_ **FINAL COMPLETION DATE:** \_\_\_\_\_

**DISTRICT REPRESENTATIVE:**

The District Representative for this contract is: \_\_\_\_\_, Project Manager, at \_\_\_\_\_@beaverton.k12.or.us, (503)356-\_\_\_\_\_.

**THE PROVIDER CERTIFIES THAT THE FOLLOWING STATEMENTS ARE TRUE AND CORRECT:**

1. Provider has filed federal and state income tax returns in the name of the business as part of the personal income tax return for labor/services provided as an Independent Contractor for the previous year, or will be filing this year.
2. Provider has a place of business, business telephone, and provides similar services to more than two different clients within a one year period.
3. Provider has the authority to hire and fire employees to assist in the services contracted.
4. Provider assumes financial responsibility for defective workmanship.
5. Provider has not been an employee of the District within the last eighteen (18) months.
6. Provider has appropriate insurance as required by the Contract General Terms and Conditions.

In consideration of the mutual covenants, stipulations and agreements, the Parties hereto do Contract and acknowledge that they have read and understand this Contract and agree to be bound by its terms and conditions:

<b>Beaverton School District</b>  _____ District Representative Date  _____ Department Administrator Date  _____ District Purchasing Date  <b>Not a valid Contract until all signatories are complete</b>	<b>Contractor</b>  _____ (typed or printed name of officer)  _____ Signature  Title: _____  Date: _____  Phone/Fax: _____
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This contract is pursuant to Oregon Revised Statutes (ORS 279 A, B and C) and Beaverton School District Public Contracting Rules.

EXHIBIT A – Terms and Conditions – Consultant Services Contract

1. **ASSIGNMENT.** The Consultant may not assign, sell, dispose of, or transfer rights or subcontract Work under the Contract, either in whole or in part, without the District's prior written consent.
2. **AUTHORITY.** The Consultant represents and warrants that it has the power and authority to enter into and perform the Contract and that the signer of this Contract has the authority to bind and obligate the Consultant.
3. **CHANGES.** The terms and conditions contained in this Contract may not be added to, modified, superseded or otherwise altered except by a written modification signed by an authorized representative of the District and Consultant.
4. **COMPLIANCE WITH LAWS.** If the Consultant fails to comply the District shall have the right to terminate this Contract.
  - a. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances as applicable. All laws, regulations and executive orders applicable to the Contract are incorporated by reference where so required by law.
  - b. Consultant expressly agrees to comply with: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659.425; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) ORS Chapter 659, as amended; (viii) all regulations administrative rules established pursuant to the foregoing laws; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products, if applicable.
  - c. Consultant shall comply with the provisions of ORS 279B.020 – Maximum hours of labor.
  - d. Consultant, its sub Consultants, and all employers providing work, labor or materials under this Contract are subject to the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Consultant shall be responsible for all federal or state taxes applicable to compensation or payments paid to Consultant under this Contract. Consultant certifies that (i) it is not an employee of the District; (ii) if Consultant is currently performing work for the District or the federal government, Consultant's work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and (iii) if this payment is to be charged against federal funds, it is not currently employed by the federal government.
  - e. Consultant must certify compliance with the Oregon tax laws in accordance with ORS 305.385.
5. **CONFIDENTIAL INFORMATION:** Consultant acknowledges that it or its employees, sub-consultants, sub Consultants or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of District or District's clients. Any and all information provided by District and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, sub-consultants, sub Consultants or agents in the performance of this Contract shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items including software, that result from Consultant's use of the Confidential Information and any Work Product that District designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by District to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than the District without the obligation of confidentiality; (e) is disclosed with the written consent of the District; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
  - a. **NON-DISCLOSURE.** Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the District under this Contract, and to advise each of its employees, sub consultants, sub Consultants and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist the District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise the District immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Consultant will at its expense cooperate with the District in seeking injunctive or other equitable relief in the name of the District or Consultant against any such person. Consultant agrees that, except as directed by the District, Consultant will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at the District's request, Consultant will turn over to the District all documents, papers, and other matter in Consultant's possession that embody Confidential Information.
  - b. **INJUNCTIVE RELIEF.** Consultant acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to the District that is inadequately compensable in damages. Accordingly, the District may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any

other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the District and are reasonable in scope and content.

6. **CONTINUING OBLIGATION.** Notwithstanding the expiration date of this Contract, the Consultant is obligated to fulfill its responsibilities until warranty, guarantee, maintenance, and parts availability requirements have completely expired.

7. **DELAYS IN DELIVERY.** Neither the District nor Consultant shall be held responsible for delay or default caused by fire, riot, acts of God, terrorism, war or any other cause which is beyond the party's reasonable control.

8. **DRUG STATEMENT.** The use of drugs, alcohol, or any tobacco products is prohibited on all District property.

9. **FERPA.**

- a. Consultant is hereinafter considered to be "other school officials" within the meaning of FERPA. A school official is a person or company with whom the District has contracted to perform a special task and who has a legitimate educational interest in the records they have access to.
- b. Consultant agrees to comply with both FERPA and corresponding Oregon law respecting student education records. Personally identifiable information obtained from the District by the Consultant in the performance of their services: (i) will not be disclosed to third parties, except as expressly provided for in FERPA §§99.31, without signed and dated written consent of the student, or if the student is under eighteen (18) years of age, signed and written consent of the student's parents/guardians and (ii) will be used only to fulfill the Consultant's responsibilities under this Agreement.

10. **FOREIGN CONSULTANT.** If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State's Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

11. **GOVERNING LAW/VENUE.** The laws of the State of Oregon shall govern this contract. Any action or suit commenced in connection with this contract shall be in the Circuit Court of Washington District or the Federal District Court for Oregon. The prevailing party shall be entitled to reasonable attorney fees and costs as awarded by the Court, including any appeal. All rights and remedies of District and Consultant shall be cumulative and may be exercised successively or concurrently.

12. **IDENTIFICATION OF EMPLOYEES.** Consultant shall ensure that its employees have identifying uniforms or

other designation of identity (ID badge, hat, coat with Consultant logo/name) while on District property.

13. **INDEMNITY.**

- a. Claims for other than professional liability. Consultant shall indemnify, defend, save, and hold harmless the District and its Board members, administrators, teachers, employees and agents, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its sub-consultants, sub Consultants, agents, or employees under this contract.
- b. Claims for professional liability. Consultant shall indemnify, defend, save, and hold harmless the District and its Board members, administrators, teachers, employees and agents, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature arising out of the Professionally negligent acts, errors or omissions of consultant or its sub-consultants, sub Consultants, agents, or employees in the performance of professional services under this Contract.
- c. Owner Defense Requirements. Notwithstanding the obligations under Sections 11 a. and 11 b., neither Consultant nor any attorney engaged by Consultant shall defend any claim in the name of the District, nor purport to act as legal representative of the District, without the prior written consent of the District General Counsel. Owner may, at any time and at its election, assume its own defense and settlement of any claims in the event that: it determines that Consultant is prohibited from defending the District; Consultant is not adequately defending the District's interests; an important governmental principle is at issue; or it is in the best interests of the District to do so. The District reserves all rights to pursue any claims it may have against Consultant if the District elects to assume its own defense.

14. **INSPECTION AND ACCEPTANCE.** The quality of Work shall be subject to inspection by the District. Should it be found that the quality of the Work is not satisfactory, and that the requirements of the specifications are not being met, the District shall insist on compliance and will provide the Consultant with a 'cure date'. If the Consultant does not comply the District may terminate the contract after providing 30 days written notice. Within a reasonable time, all goods delivered are subject to final inspection and acceptance after delivery or completion at the District's facility. If any goods or services are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract or specifications, the District shall have the right to require correction or replacement at no additional cost to the District.

15. **INSURANCE** Before commencing work, Consultant shall procure and maintain:

- a. **WORKER'S COMPENSATION** as required by law.
- b. **EMPLOYER'S LIABILITY** in the minimum amount of \$500,000 when the Consultant has employees performing services under the contract.
- c. **COMPREHENSIVE AUTOMOBILE LIABILITY** including owned, non-owned and hired vehicles: \$1,000,000 Combined Single Limit Bodily Injury and Property Damage any one occurrence and a minimum of \$2,000,000 in the aggregate. The District shall be named additional insured on auto and liability policies

and shall be provided a copy of the additional insured endorsement. May be waived if Consultant has no vehicle while providing work under the contract.

- d. **COMPREHENSIVE GENERAL LIABILITY** to include premises operations, independent Consultants, products/completed operations, and blanket contractual: \$1,000,000 Combined Single Limit Bodily Injury, Property Damage, and personal injury any one occurrence and \$2,000,000 in the aggregate. May be waived only by the District Risk Manager.
- e. **PROFESSIONAL LIABILITY.** Consultant shall maintain in force during the duration of this agreement (and, if it is a claims made policy, for a year following completion of the project) a professional liability policy, in the minimum amount of \$1,000,000.
- f. **"TAIL" COVERAGE.** If any of the required liability insurance is on "claims made" basis," tail" coverage will be required at the completion of this contract for duration of 24 months, or the maximum time period reasonably available in the marketplace. Consultant shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Contract. If Continuous "claims made" coverage is used, Consultant shall be required to keep the coverage in effect for duration of not less than 24 months from the end of the Contract. This will be a condition of the final acceptance of work or services.
- g. The District, its employees, officials and agents shall be named as an Additional Insured on general liability and auto and be provided a copy of the additional insured endorsement. Such insurance shall be primary. Certificates of Insurance shall be issued, prior to the commencement of the contract, to Beaverton School District, Attn: Purchasing Department, 16550 SW Merlo Rd, Beaverton, OR 97003. The Consultant agrees to pay for the insurance specified and agrees to provide the District with a 30 days notice of cancellation if non-renewal occurs during the contract period. Insurance companies must have an A rating.
- h. The District reserves the right to require additional insurance coverage, limits, and terms which will be delineated in an attachment to this agreement.
- i. This insurance shall be considered as primary insurance and exclusive of any insurance carried by Beaverton School District, and the insurance evidenced by the required certificates shall be exhausted first, notwithstanding the fact that Beaverton School District may have other valid and collectible insurance covering the same risk.

16. **INVOICING AND PAYMENT.** Consultant shall issue invoice(s) for each Work segment as mutually agreed upon or progress payment(s) as acceptable to the District. Payment shall not be made prior to receipt of a valid invoice. Credit and discount periods will be computed from the date of receipt of the invoice to the date the District's check is mailed. Payment will be made within thirty (30) days after the acceptance of a proper invoice. Final payment shall be made upon completion and acceptance of the Work. The District will not pay any additional charges unless specifically agreed to in writing by the District. The invoice(s) shall be submitted to Beaverton School District, Accounts Payable Department, 16550 SW Merlo Road, Beaverton, OR 97003. Each invoice must include the project

work authorization number, purchase order number or contract number, an itemized list of the pricing elements that match the Pricing Schedule and/or the quote provided for the individual project (if applicable), the project name/number and the District Contract Manager's name.

17. **MANUFACTURES WARRANTIES.** Manufactures warranties received by the Consultant which are applicable to any material equipment, parts, property and services furnished by the Consultant under this Contract shall survive acceptance and payment, and shall run to the District, its successors and assigns, and shall not be deemed to be exclusive.

18. **PERFORMANCE STANDARD.** All services performed in connection with this Agreement shall be performed in a manner consistent with the standard of care applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project. Consultant covenants and warrants that it shall be responsible for performing and completing, and for causing any Sub Consultants to perform and complete the Work in accordance with all Laws applicable to the Site and/or the Work. The Consultant shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

19. **PERMITS AND RESPONSIBILITIES.** Without additional expense to the District, the Consultant shall be responsible for maintaining any necessary licenses and permits to conduct business.

20. **PRICES.** All pricing is considered fixed and firm for the Contract term. The Consultant warrants that the price of the Goods and Services covered by this Contract are not in excess of the Consultant's lowest prices in effect on the date of this Contract for comparable quantities of similar Goods or Services.

21. **PUBLIC CONTRACTS.** This contract includes the following terms and conditions as prescribed by Oregon Revised Statutes as applicable:

- a. 279B.020 Conditions concerning maximum hours of labor on public contracts.
- b. 279B.220 Conditions concerning payment, contributions, liens, withholding.
- c. 279B.225 Condition concerning salvaging, recycling, composting or mulching yard waste material.
- d. 279B.230 Condition concerning payment for medical care and providing workers' compensation.
- e. 279B.235 Condition concerning hours of labor.

22. **PUBLICITY.** Consultant agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of the District.

23. **SECURITY.** Consultant shall comply with all virus protection, access control, back-up, password, and other security and other information technology policies of the District when using, having access to, or creating systems for any of the District's computers, data, systems, personnel, or other information resources.

24. **SECURITY CHECK:** The Consultant agrees that each of its employees, sub Consultants' employees and principals / owners involved in the Work may, at the option of the District, be subject to a security check, at any time, through the Beaverton Police Department or other venue. The District retains the option to require the immediate removal of any sub

Consultant, employee or agent. Notwithstanding the foregoing, Consultant, and not the District, remains solely responsible for performing background checks on, and screening for public safety all sub Consultants and employees, and, to the extent allowed by law, shall provide such screening methodologies and information to District upon request.

25. **SEVERABILITY.** If any 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 shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

26. **TAXES.** The District is exempt from Federal, State, and Local taxes.

27. **TERMINATION.**

- a. **Terminate For Convenience.** This Contract may be terminated at any time by mutual written consent of the parties, or the District may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Consultant.
- b. **The District's Right to Terminate For Cause.** The District may terminate this Contract, in whole or in part, immediately upon notice to Consultant, or at such later date as the District may establish in such notice, upon the occurrence of any of the following events:
  - i. The District fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Consultant's Work;
  - ii. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or the District is prohibited from paying for such Work from the planned funding source;
  - iii. Consultant no longer holds any license or certificate that is required to perform the Work; or
  - iv. Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Consultant's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of the District's notice, or such longer period as the District may specify in such notice.
- c. **Consultant's Right to Terminate for Cause.** Consultant may terminate this Contract upon 30 days' notice to the District if the District fails to pay Consultant pursuant to the terms of this Contract and the District fails to cure within 30 business days after receipt of Consultant's notice.
- d. **Enforcement.** Termination under any provision of this Contract shall not extinguish or prejudice the District's right to enforce this Contract with respect to any breach of a Consultant warranty or any defect in or default of Consultant's performance that has not been cured, including any right of the District to indemnification by Consultant. If this Contract is so terminated, Consultant shall be paid in accordance with the terms of the contract for services rendered and accepted.

- e. **Remedies.** In the event of termination pursuant to above, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay any excess to the District upon demand.
- f. **Consultant's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Consultant shall immediately cease all activities under this Contract, unless the District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Consultant shall deliver to the District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon the District's request, Consultant shall surrender to anyone the District designates, all documents, research or objects or other tangible things needed to complete the Work.
- g. **Limitation of Liabilities.** Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the contract or (ii) any damages of any sort arising solely from the termination of this contract in accordance with its terms.

28. **TRANSPORTATION.** The Consultant is responsible for transportation of its employees to and from the Work site.

29. **WAIVER.** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and not custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

30. **BUSINESS EQUITY.** The Consultant understands that the District maintains a goal of engaging minority and women owned emerging small businesses (MWESB) as service providers in delivering services necessary to implement our bond program. The District aspires to a goal of ten (10) percent MWESB content, by contract value, in completing our capital bond work, and the Consultant shall expend reasonable efforts to reach this content in the total value of their contracts with the District. The Consultant shall also report to the District updates of the percentage content of MWESB in their contract, once each month, to account for any contract amendments that may occur throughout the course of their service.

END