

**MEDFORD SCHOOL DISTRICT 549c  
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**Contract # ITB 26-00-22  
Fire Alarm Testing & Inspection 2-Year Contract**

This contract is between the Medford School District 549C, hereafter called Agency, and XXX., hereafter called Contractor.

**Effective Date and Duration**

This contract shall become effective on the date at which every party has signed this contract. Unless earlier terminated or extended, this contract shall expire when Contractor's completed performance has been accepted by Agency or on XXX. However, such expiration shall not extinguish or prejudice Agency's right to enforce this contract with respect to: (i) any breach of a Contractor warranty; or (ii) any default or defect in Contractor performance that has not been cured.

**Statement of service to be provided by Contractor:**

**Fire Alarm System Testing & Inspection**

**Testing & Inspection Frequency:** Perform one test per year on each automatic initiating device (heat, smoke, duct smoke, manual pull stations and beam/optical smoke detectors & sensors, elevator smoke detection devices (contractor must coordinate with district elevator maintenance company) and etc.,) and one functional test on each notification appliance (horn, strobe, etc.) excluding a decibel level test. The testing and inspection is to be done after normal operating hours, starting at 3:30pm on most days. Testing shall also include one test per year on each fire protection/sprinkler system initiating device connected to and supervised by the Fire Alarm system; such tests shall be conducted electrically. All testing shall be completed in accordance with the most recent edition of NFPA 72 – National Fire Alarm Code.

**Reports:** Upon completion of inspections submit an electronic copy to the AHJ, MSD Network Telecom Services Department and a hard copy to the site certifying all tests have been completed. Reports must document any deficiencies found which may require corrective action. The report must list each device or alarm component that was tested.

**Smoke Detector Cleaning Scope:** Perform cleaning of all smoke detectors within the buildings based on Exhibit A (Building Inventory). Cleaning to be conducted during those periods in which each device is inspected.

**Cleaning Frequency & Methods:** Each smoke detector including duct type smoke detectors must be cleaned annually. The method of cleaning shall be in accordance with the manufacturer's recommendations and any special instructions.

**Fire Sprinkler System Testing & Inspection Scope:** Sprinkler maintenance and inspection is covered by others.

**Deficiencies:** All repairs must be authorized by the MSD Network Telecom Services department before proceeding.

Fire Technician Hourly charge will be \$XX/HR

Any equipment purchased related to the repair and maintenance of the fire alarm systems that are included in this ITB are to be purchased at XX% off the list pricing.

## Consideration

Agency agrees to pay Contractor for all work performed under this contract and shall not exceed the maximum sum of \$ XXXXX for a XX (X) year period.

Interim payments shall be made to Contractor following Agency's review and approval of billings submitted by contractor. Contractor will also submit copies of other billings for work performed under the contract when such bills are to be paid by other parties. These other billings are not subject to the maximum compensation amount set forth above.

Contractor shall not submit billings for, and Agency will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this contract, the amendment must be fully effective before Contractor performs work subject to the amendment. Contractor shall notify Agency's supervising representative in writing thirty (30) calendar days before this contract expires of the upcoming expiration of the contract. No payment will be made for any services performed before the beginning date or after the expiration date of this contract. This contract will not be amended after the expiration date.

Contractor shall submit monthly billings for work performed. The billings shall describe all work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings also shall include the total amount billed to date by Contractor prior to the current invoice. Contractor will specifically note in the billing when one-third and two-thirds of the maximum contract amount, including expense reimbursement, has been expended. Billings shall be sent to the supervising Agency representative.

Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this contract, because of the special qualifications of Contractor's key personnel. In particular, Agency through this contract is engaging the expertise, experience, judgment, and personal attention of key personnel. Contractor's key personnel shall not delegate performance of the management powers and responsibilities he/she is required to provide under this contract to another (other) Contractor employee(s) without first obtaining the written consent of Agency. Further, Contractor shall not re-assign or transfer the key person (personnel) to other duties or positions such that the key personnel are no longer available to provide Agency with his/her (their) expertise, experience, judgment, and personal attention, without first obtaining Agency's prior written consent to such re-assignment or transfer. In the event Contractor requests that Agency approve a re-assignment or transfer of the key personnel, Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the key person (personnel).

In order to provide a safe environment for the education of students in Agency's care, and in accordance with Agency policies GCDA/GDDA and GCDA/GDDA-AR, Contractor agrees that Contractor and any personnel of Contractor shall be required to undergo a nationwide criminal background check prior to providing any services under this Contract. In addition, in the event that Contractor and/or any personnel of Contractor may come into direct, unsupervised contact with students in the course of providing services under this Contract, then Contractor and any such personnel of Contractor shall be required to undergo a fingerprint check. Contractor shall be responsible for the costs of such background checks and any fingerprint processing fees. Agency shall be provided with fingerprint results for Contractor and any personnel of the Contractor who may come into direct, unsupervised contact with students in the course

Of providing services under this Contract. If a positive criminal history is reported for Contractor or any Personnel of Contractor, Agency shall make a final determination as to whether that particular individual will be allowed to provide services under this Contract. Contractor also acknowledges and agrees that, during the term of this

Contract, Contractor will notify the person executing this Contract on behalf of Agency, in writing, of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of Contractor and/or any personnel of Contractor for any felony or any other offense listed in ORS 342.143 or any offense that is substantially equivalent to any of the crimes listed in ORS 342.143. Contractor agrees to provide such notification within seven (7) calendar days. The requirement of this paragraph shall not apply if Agency determines, in its sole discretion, that Contractor and any personnel of Contractor will not have more than limited contact with students. In making such determination, Agency shall be entitled to consider, among other circumstances deemed relevant by Agency, the length of time Contractor and Contractor's personnel will be on school grounds, whether students will be in proximity with the site where Contractor and Contractor's personnel will be providing services, and whether Contractor and Contractor's personnel will be providing services alone or under the supervision of other Agency personnel. Contractor acknowledges and agrees that a criminal history record and, if applicable, fingerprint check acceptable to Agency, in its sole discretion, is a condition of this Contract. Contractor will immediately remove any personnel from any Agency property or sites in cases where Agency determines, in its sole discretion that removal of such personnel is in Agency's best interest.

### **Terms and Conditions**

Attached to and incorporated as part of this contract.

### **Amendments**

The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties. Contract work may be extended by written amendment signed by the parties.

### **Contract Provisions for Personal Services**

#### **Independent Contractor**

Contractor shall perform the work required by this contract as an independent contractor. Although the Agency reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the Agency cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

The Contractor represents and warrants that Contractor

- is not an employee of the Medford School District and
- meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit B and by this reference made a part hereof. Contractor is not an "officer", "employee", or "agent" of the Agency.

If Contractor is not a contributing member of the Public Employees' Retirement System, the Contractor is responsible for any federal or state taxes applicable to any compensation or payments paid to Contractor under this contract. If Contractor is a contributing member of the Public Employees' Retirement System, Contractor's contribution to the retirement system will be withheld and a corresponding Agency contribution made. Contractor is not eligible for any benefits from these contract payments for federal Social Security, unemployment insurance or workers' compensation, except as a self-employed individual.

#### **Subcontracts and Assignments; Successors in Interest**

Contractor shall not enter into any subcontracts for any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of Agency. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

### **No Third Party Beneficiaries**

Agency and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

### **Termination**

This contract may be terminated at any time by mutual consent of both parties, or by Agency upon 30 days' notice, in writing and delivered by certified mail or in person. In addition, Agency may terminate or modify this contract, in whole or in part, effective upon delivery of written notice to Contractor, or at such latter date as may be established by Agency, under any of the following conditions:

- If Agency funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
- If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible of the funding proposed for payments authorized by this contract; or
- If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this contract is for any reason denied, revoked, suspended or not renewed.

Time is of the essence of Contractor's performance of each and every obligation and duty under this contract. Agency, by written notice to Contractor of default or breach, any at any time terminate the whole or any part of this contract:

- If Contractor fails to provide services called for by this contract within the time specified herein or any extension thereof; or
- If Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from Agency, fails to correct such failures within 10 business days or such other period as Agency may authorize or require. The rights and remedies of Agency provided in subsection c, above, are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Termination or modification of this contract pursuant to subsections above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination. Contractor shall immediately cease all activities under this contract, unless expressly directed otherwise by Agency in the notice of termination. Further, upon termination, Contractor shall deliver to Agency all contract documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed.

### **Records Maintenance; Access**

Contractor shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that Agency and, notwithstanding section 3, above, the Medford School District and their duly authorized representative shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor that are pertinent to this contract for the purpose of performing examinations and audits, and making excerpts and transcripts. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Contractor and kept accessible for a minimum of three (3) years, except as required longer by law, following final payment and termination of this contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this contract, whichever date is later.

### **Compliance with Applicable Law**

Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279C. Without limiting the generality of the

foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) The Americans with Disabilities Act of 1990 (Pub L No. 101-336), and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

### **Foreign Contractor**

If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

### **Governing Law; Venue**

This contract shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between Agency and Contractor that arises out of or relates to performance of this contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. Provided however, that if any such claim, action, action, or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

### **Indemnity**

Contractor shall defend, save, hold harmless, and indemnify the Medford School District, their officers, employees, agents and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents under this contract.

### **Insurance**

Contractor shall provide insurance as indicated on Exhibit A, attached hereto and by this reference made a part hereof.

### **Ownership of Work Product**

All work products of the Contractor that result from this contract ("the work products") are the exclusive property of the Agency. In addition, if any of the work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants Agency a perpetual, royalty-free fully paid-up, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so, all such work products, including but not limited to databases, templates, materials, training manuals and other training materials and any other information, designs, plans, or works provided or delivered to the Agency or produced by the Contractor under this contract.

### **Force Majeure**

Neither Agency nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, Agency's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

### **Severability**

The parties agree that 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

### **Waiver**

The failure of Agency to enforce any provision of this contract shall not constitute a waiver by Agency of that or any other provision.

**Execution and Counterparts**

This contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**Use of Chemicals**

With respect to chemicals used during the course of the Work, the CONTRACTOR will implement and enforce a program to inventory and properly store and secure all chemicals that may be used or present at the District site, maintain available for inspection all material data safety sheets, and comply with all regulations required by law for the storage, use, and disposal of chemicals. This program will incorporate and include the OWNER/AGENCY'S Hazard Communication Program and be subject to approval of and modification by the OWNER/AGENCY. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the CONTRACTOR'S safety training program. The CONTRACTOR shall submit to the OWNER/AGENCY a list of all Hazardous Materials to be brought by the CONTRACTOR or its Subcontractors onto the OWNER/AGENCY'S property, including the purpose for their use on the Project.

**Recycling**

As required by ORS 279.555, in the performance of this contract the Contractor shall use, to the maximum extent economically feasible, recycled paper.

**Other Requirements**

In addition to Exhibits A and B, other requirements are attached as Attachment A and by this reference made a part, hereof.

**Merger Clause**

**THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): \_\_\_\_\_

Address: \_\_\_\_\_

Citizenship, if applicable:

Non-resident alien \_\_\_\_\_yes \_\_\_\_\_no

Business Designation (check one):

\_\_\_\_\_ Corporation \_\_\_\_\_Partnership

\_\_\_\_\_Sole Proprietorship \_\_\_\_\_Governmental/Non-Profit

Federal Tax ID# \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ OR SSN \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Above payment information must be provided prior to contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject contractor to 31 percent backup withholding.

Certification: I, under penalties of perjury, do hereby certify that (a) the number shown on this form is my correct taxpayer ID (or I am waiting for the number to be issued to me) and (b) I am not subject to backup withholding because (i) I am exempt from backup withholding or (ii) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified me that I am no longer subject to backup withholding.

I, the undersigned also (a) agree to perform the work required by Exhibit A in accordance with the terms and conditions (listed on the front and back side hereof and made part of this contract by reference); (b) certify under penalty of perjury that I/my business am not/is in violation of any Oregon tax laws; and (c) certify I am an independent contractor as defined in ORS 670.600.

I, the undersigned, being first duly sworn, hereby certify under penalty of perjury that I am authorized to act on behalf of \_\_\_\_\_ [insert Proposer's name] and to the best of my knowledge, \_\_\_\_\_ [insert Proposer's name] is not in violation of any Oregon Tax Laws. For purposes of this Certificate, "Oregon Tax Laws" are those laws and programs listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620. I will continue to comply with the tax laws of this state, or a political subdivision of this state, during the term of the public contract, and provide that my failure to comply with the tax laws, of this state or a political subdivision of this state, before I have executed the public contract or during the term of the public contract is a default for which the contracting agency may terminate the public contract, and seek damage and other relief available, under the terms of the public contract or under applicable law.

Contractor's Authorized Agent: \_\_\_\_\_

Signature/Title

Print Name

Date

Contractor: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

**EXHIBIT A**

**INSURANCE REQUIREMENTS**

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

**1. Required by Agency of contractors with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.

**2. X Required by Agency \_\_\_ Not Required by Agency.**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract.

**3. X Required by Agency \_\_\_ Not Required by Agency.**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$250,000, \$500,000 \$2,000,000 or \$4,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the Medford School District (Agency) are Additional Insured but only with respect to the Contractor's services to be provided under this Contract;

**4. X Required by Agency \_\_\_ Not Required by Agency.**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, or \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

**5. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to Medford School District (Agency);

**6. Certificates of insurance.** As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to Medford School District (Agency) prior to its issuance of a Notice to Proceed. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the Agency. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.