

# **RFP for Facility Assessment and Long-Range Facility Planning Consultants**

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**ADVERTISEMENT  
REQUEST FOR PROPOSALS FOR EDUCATIONAL FACILITY ASSESSMENT AND  
LONG-RANGE PLANNING SERVICES**

The Colton School District ("District"), Colton, Oregon, is seeking proposals from qualified firms to provide the District with a facility assessment on four (4) school buildings and assist in the development of a Long-Range Facility Plan to include all the District's buildings.

Proposals will be accepted by Colton School District at 30429 S Grays Hill Rd, Colton, Oregon 97017, until March 18, 2021 at 3:30pm. Accepted proposers may begin work on April 19, 2021 and should be completed by October 31, 2021.

A copy of this Request for Proposal (RFP) may be obtained from District's website at [colton.k12.or.us](http://colton.k12.or.us) or by contacting Chris Gibb, Executive Director of Operations, phone 503-824-3535 or email [businessmanager@colton.k12.or.us](mailto:businessmanager@colton.k12.or.us).

The District reserves the right to reject any and all proposals and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the District to pay any costs incurred by respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the District to accept or contract for any expressed or implied services. The successful vendor must comply with the District's equal opportunity requirements.

Chris Gibb, Executive Director of Operations

Colton School District

Colton, Oregon

**Publish:** Tuesday March 2, 2021

Molalla Pioneer, Oregon Procurement Information Network (ORPIN)

## **I – INTRODUCTION**

The Colton School District (“District”) is requesting sealed proposals from qualified firms for a district wide Facility Assessment, followed by the development of a Long Range Facility Plan. The District will employ a consulting firm (or firms) to evaluate the physical condition of existing school facilities, develop and prioritize options, prepare final documents, and present recommendations to the District.

### **1. District Overview**

District located in Colton serves Clackamas County covering 189 square miles. The District provides educational services to approximately 600 students and employs about 100 personnel.

The District has one K-5 elementary school, one 6-8 middle school, one 9-12 high school. In addition to the schools, the District manages a district office and transportation building for a total facilities footprint of over 160,000 square feet.

The facility assessment will be used to develop, and be incorporated into, a long range facility plan. This plan will guide the District in effectively maintaining district assets and support the District’s educational goals. In addition, the District is presently considering the issuance of a School Improvement General Obligation Bond to address deferred maintenance needs and district growth.

### **2. Term of Contract**

The District anticipates awarding single or multiple contracts as a result of this RFP. The contract term will be up to, but not greater than 9 months. A timeline of contract deliverables is included in the Statement of Work.

### **3. Request for Proposal Calendar**

Request for Proposal Issued: March 1, 2021

Deadline for inquires and requests for clarification: March 11, 2021

Proposal Due Date: March 18, 2021

District team RFP evaluation and interviews (if needed): March 29 – April 1, 2021

Notification of Intent to Award: April 5, 2021

Board Approval: April 12, 2021

## II – PURPOSE AND SCOPE OF WORK REQUIRED

### Phase 1: Facilities Assessment

This assignment is for the Consultant to complete a Facilities Assessment for the following School/District buildings:

Building Name	Gross Square Footage
Colton High School	57861
Colton Middle School	43000
Colton Elementary School	57085
Colton Transportation	3025
Colton District Office	3288

The overall purpose of the successful firm is to assist the District with conducting a facility condition assessment and collecting district-wide data. The Facilities Assessment will be conducted on the above listed School/District buildings in compliance with facility assessment standards established by the Oregon Department of Education (ODE) Office of School Facilities. Buildings will be assessed and evaluated per OAR 581-027-0035. All work and reports must comply with these requirements. The Facilities Assessment will use the latest template issued by ODE and the Consultant must hold a current Assessor Certification from ODE. The Consultant will provide the completed Facilities Assessment Excel workbooks and a final narrative report. The District will provide any past studies, current bids for work or any applicable reports.

In order to understand the characteristics of each property beyond what is recorded in existing plans, documents, or other materials, the Consultant will interview knowledgeable District staff, and/or tenants for each facility, in order to benefit from their input and perspective. These interviews will be facility-specific and are to be reflected in the final reports.

### **Building System Inventory**

The types of building systems to be assessed may vary with each building and shall include, but are not limited to, the following requirements as identified in OAR 581-027-0035:

- Foundation
- Basement
- Roofing: construction, coverings, openings
- Floor construction
- Exterior enclosure: exterior walls, windows, doors
- Interior construction: partitions, interior doors, fittings
- Stair construction and finishes
- Interior finishes: wall, floor, ceiling finishes
- Elevators, escalators, and other conveying systems
- Plumbing: fixtures, domestic water distribution, sanitary waste, rain water damage

- HVAC: energy supply, heat/cooling generating systems, distribution systems, terminal and package units, controls and instrumentation, systems testing and balancing
- Fire protection: sprinklers, standpipes, fire protection specialties
- Electrical: electrical service and distribution, lighting and branch wiring, communications and security
- Equipment: commercial, institutional
- Furnishings: fixed and movable
- Site improvements: roadways, parking lots, pedestrian paving, site development, landscaping
- Mechanical utilities: water supply, sanitary sewer, storm sewer, heating/cooling distribution, fuel distribution
- Electrical utilities: electrical distribution, site lighting, site communications and security
- Renovations, additions, and portables
- Security
- ADA compliance
- Technology
- Harmful substances
- Indoor air quality

## **Phase 2: Long-Range Facility Plan**

Using the District's Facilities Assessment, the Consultant will develop a District Long-Range Facility Plan (LRFP) to help inform the District of how its educational facilities will support the District's educational vision in the next ten years. The LRFP will identify deficiencies in the current facilities that could impair the success of the District's vision. The report will identify both short- and long-term actions for the District to take to solve the identified issues. The LRFP will take into account District budgetary constraints, as well as District educational priorities. All work will meet requirements identified in OAR 581-027-0040, and be conducted in consultation with the Superintendent, District staff and School Board members.

### **Vision**

The Consultant will work with the Superintendent, School Board, staff and community members to help articulate the District's vision for their facilities and their role in educating our students. They will develop charts, graphs, meeting minutes, and other materials to share the outcome of this work.

### **Facilitation**

The Consultant will:

- Assist the District Facilities Committee in development of a facilities plan that can be used as the basis for a bond proposal;
- Develop a communications plan for sharing information, exchanging ideas and gathering feedback on all aspects of the facilities plan;

- Create a calendar for site visits, meetings, and events;
- Facilitate community and district meetings;
- Develop feedback loops from community and staff on the facilities plan and the priorities set by the Committee;
- Assist the District Facilities Committee in creating a plan that is consistent with the financial resources available to the District as well as a plan to determine a future school improvement bond.

### **Long-Range Facility Plan Requirements**

All work must meet the following requirements as identified in OAR 581-027-0040:

- Population projections by school age group for the next ten years using U.S. Census or Census partner data
- Collaboration with local government planning agencies (city and/or county) that results in:
  - Identification of suitable school sites if needed
  - Site acquisition schedules and programs
- Evidence of community involvement in determining:
  - Educational vision of local community
  - Proposals to fund long-range facility needs
- Identification of buildings on historic preservation lists including the National Historic Register, State Historical Preservation Office, and local historic building lists
- Analysis of district's current facilities' ability to meet district-adopted educational adequacy standards
  - Identification of standards adopted by district that are used to determine educational adequacy for district
  - Identification of ability of current facility capacity to meet district-adopted educational adequacy standards
- If current facilities are unable to meet district-adopted educational adequacy standards:
  - Identify deficiencies in current facilities
  - Identify changes needed to bring current facilities up to district-adopted educational adequacy standards
  - Identify potential alternatives to new construction or major renovation of current facilities to meet district-adopted educational adequacy standards
- A description of the plan the district will undertake to change its facility to match the projections and needs for the district for the next ten years

### **Project Milestones/Consultant Deliverables:**

The following will be developed with District staff input and direction, and produced at relevant project milestones:

- 1) Facility Assessment Report



- Completion Timeframe: 3-6 months from start
- The Facilities Assessment needs to be completed using the template provided by the Oregon Department of Education, which is in an Excel workbook format.
- A narrative report that includes an executive summary, analysis, evaluation, calculations, photos, diagrams, etc., together with all necessary appendices. The report needs to include a breakdown of costs for all deficiencies.
- Provide 10 printed copies of the narrative report, in addition to a digital file.

## 2) Long-Range Facility Plan

- Completion Timeframe: 6-9 months from start
- Coordinate the efforts to develop a LRFP, including community involvement.
- Final report that will address needs identified in the Facilities Assessment and a ten-year plan for addressing these issues as well as the district's foreseeable future needs.
- Availability to present the LRFP to the Board and other stakeholders.
- Provide 10 printed copies of the report, in addition to a digital file.

## **III – PROPOSAL FEES, EVALUATION AND AWARD**

### **Fees**

Facility Assessment – Proposers are asked to provide a cost per each listed building.

Long-range Facility Plan – Proposers are asked to provide a lump sum cost for the District Plan.

### **Evaluation Criteria and Scoring Process**

The Evaluation Committee will consist of six members comprised of District staff and/or Board Members.

The Evaluation Committee shall review all documents submitted. It may also, at its discretion, conduct in person interviews with the Proposers submitting the highest scoring proposal(s). The District also reserves the right to select from proposals alone. The Board will make the final decision regarding the selection of the firm.

The following scoring will be used to evaluate the proposals (100 points maximum):

1. Relevant Oregon experience with school facility projects (30 pts)
2. Experience with facility planning, communications and campaign facilitation services (15 pts)
3. Fee Structure (20 pts)
4. Experience and expertise of key staff. (10 pts)
5. References from previous projects. (15 pts)
6. Ability to work within the compact time period (10 pts)

After consideration of the proposals, the contract award offer will be made to the Proposer that provides the best overall proposal in the opinion of the Board.

Corrections to page 10 of the RFP

## **IV – PROPOSAL SUBMISSION**

Proposers must submit (1) original and (3) complete copies of the proposal to: Colton School District, 30429 S Grays Hill Rd, Colton, Oregon 97017 no **later than 3:00pm, ~~March 11, 2021~~**. **Correction March 18, 2021**

Proposals shall be submitted in a sealed, opaque envelope appropriately marked with the Proposal title, and the name and address of the Proposer. Electronic or faxed submissions will not be accepted. Failure to respond to any or all of the requested information may result in disqualification of the proposal by the District.

### **Cost of Preparation of Response**

Costs incurred by any Proposer in preparation of a response to this Request for Proposal shall be the responsibility of the Proposer.

### **Clarification or Protest of Specifications**

Any Proposer requiring clarification of the information or protesting any provision herein, must submit specific questions/protests or comments in writing or Email to:

**Chris Gibb, Executive Director of Operations**  
**30429 S Grays Hill Rd, Colton Oregon 97017**  
**Business.manager@colton.k12.or.us**

**Correction March 11, 2021**

The deadline for submitting questions and/or protests is ~~February 26, 2021~~. If the District determines that additional information or interpretation is necessary, such information or interpretation will be supplied in Addenda that will be emailed to all persons or firms that have received this Request for Proposal. All such Addenda shall have the same binding effect as though contained in the main body of the Request for Proposal. Oral instructions or information concerning the specifications of the project from District managers, employees, or agents to prospective Proposers shall not bind the District. The Accounting Manager shall issue all addenda not less than five (5) working days prior to the proposal deadline.

### **Reservation of District Rights**

District reserves all rights regarding this RFP, including, without limitation, the following:

- The right to amend, delay or cancel this RFP at any time if deemed to be in District's best interest. In no event shall the District have any liability for any amendment, delay, or cancellation. The Proposer assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.
- The right to accept or reject any or all responses to this Request for Proposal, and to waive any informalities and/or irregularities in such proposals.

- The right to request clarification of any item in a firm’s proposal or to request additional information necessary to properly evaluate a particular proposal. All requests for clarification and responses shall be in writing. Except for requests and responses related to a clarification necessary to evaluate whether a proposal has met minimum requirements, all requests for clarification and responses shall be provided to each evaluation committee member.
- The right to negotiate a Statement of Services based on the Scope of Services described in the RFP and to negotiate separately in any manner necessary to serve the best interest of the District.
- The right to amend any Contracts that are a result of the RFP.
- The right to engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements under it to perform the same or similar services.
- The right to extend any Contracts that result from the RFP without an additional RFP process.
- Although price is a consideration in determining the apparent successful Proposer, the intent of the RFP is to identify a Proposer that has a level of specialized skill, knowledge, and resources to perform the Services as described in the RFP. The Proposer with the lowest Price proposal may not necessarily be awarded a Contract. The District reserves the sole right to determine the best Proposal.

### **Disputes**

In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the District shall be final and binding upon all parties.

### **References**

District reserves the right to investigate references including customers other than those listed in proposer’s submission. Investigation may include past performance of any proposer with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, and its lawful payment of employees and workers.

### **Collusion**

A Proposer submitting a Proposal hereby certifies that no officer, agent or employee of District has a pecuniary interest in this Proposal; that the Proposal is made in good faith without fraud, collusion or connection of any kind with any other Proposer and that the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

### **Confidentiality**

The District is subject to the Oregon Public Records Law (ORS 192.410 to 192.505), which requires the District to disclose all records generated or received in the transaction of District business, except as

expressly exempted in ORS 192.501, 192.502, or other applicable law. Examples of exemptions that could be relevant include trade secrets (ORS 192.501 (2)) and computer programs (ORS 192.501915)). The District will not disclose records submitted by a Proposer that are exempt from disclosure under the Public Records Law.

In general, all submittals in response to this RFP are public records and available for inspection upon request. Proposers who desire that information included as part of their submittal be treated as confidential must mark those pages as "confidential", cite a specific statutory basis for the exemption, and the reasons why the public interest would be served by the confidentiality. *The entire RFP cannot be marked confidential, nor, shall any pricing. Should an RFP be submitted in this manner, no portion of it can be held as confidential unless that portion is segregated in the above manner and meets the above criteria.*

Notwithstanding the above procedures, the District reserves the right to disclose information that the District determines, in its sole discretion, is not exempt from disclosure or that the District is directed to disclose by the District Attorney or a court of competent jurisdiction. Prior to disclosing such information, the District will notify the Proposer. If the Proposer disagrees with the District's decision, the District may, but is not required to enter into an agreement not to disclose the information so long as the Proposer bears the entire cost, including reasonable attorney's fees, of any legal action, including any appeals, necessary to defend or support a no-disclosure decision.

### **Withdrawal of Proposal; Proposal Validity Period**

Proposals may be withdrawn before the RFP submittal deadline by submitting a written request to Chris Gibb, Executive Director of Operations. Proposals that are not so withdrawn shall remain valid for a period of ninety (90) days following the deadline set for receiving proposals.

### **Submitted Materials Property of District**

All material submitted for any portion of this solicitation shall become the property of the District, and will not be returned to proposers.

### **Sufficient Appropriation**

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be affected by sending written notice to the Proposer. The District's decision as to whether sufficient appropriations and authorization are available will be accepted by the Proposer as final. If the determination is made that there is insufficient funding to continue or finalize the proposal, the successful Proposer will be compensated to the level of effort performed, as authorized by the District prior to that determination.

## V – CONTRACT TERMS AND CONDITIONS

### Colton School District Contract

Proposers are advised to thoroughly review and familiarize themselves with the standard contract incorporated as Appendix A.

- If a Proposer takes exception to any of these terms it is advised to contact the Chris Gibb, Executive Director of Operations, per Section IV of this RFP.
- At minimum, the proposal must reflect in writing, any exceptions to specific terms and conditions. District may reject a proposal with significant exceptions to terms and conditions.
- If successful Proposer does not take either one of the two steps above, he or she will be expected to sign a contract including all standard terms and conditions contained in the sample contract.
- Certain contract terms reflect state statute and may not be altered.
- District reserves the right to negotiate final contract terms with the awarded Proposer to the fullest extent allowed by law and as in the best interests of the District.

### Insurance

General Insurance. Proposer, or independent consultant, shall furnish a Certificate of Insurance listing the District as an additional insured under blanket Errors and Omissions Coverage in the amount not less than \$1,000,000, provided that the formation of said contract shall not be complete and the District shall not be liable thereon until said contract has been executed by both the successful Proposer and The District and said Certificate of Insurance, properly executed, has been delivered to and accepted by the District.

Commercial General Liability. Proposer, or independent consultant, shall maintain in force for the duration of this agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Automobile Liability. The Proposer, or independent consultant, shall maintain in force for the duration Automobile (owned, non-owned and hired) Liability insurance with limits not less than \$1,000,000 per occurrence shall be maintained. The District, its officials, employees, servants and agents, will be named as an additional insured as respects to work or services performed under this agreement. This insurance shall be primary and shall be paid and applied first in its entirety prior to any application of insurance the District may carry on its own.

Workers' Compensation. The Proposer, or independent consultant, shall provide and maintain workers' compensation coverage for its employees, officers, agents, or partners, as required by applicable workers' compensation laws.

The District reserves the right to change these criteria if the District extends the contract for the follow up design work.

### **Evidence of Coverage**

Evidence of the above coverages issued by a company satisfactory to District shall be provided to the District, by way of a certificate of insurance before any work or services commence. A 30-day notice of cancellation or material change in coverage clause shall be included. Failure to maintain the proper insurance shall be grounds for immediate termination of this contract.

### **Equipment and Material**

The Proposer, or independent consultant, shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.

### **Subcontractors**

The Proposer, or independent consultant, shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers' compensation insurance with coverage's equivalent to those required of the general contractor in this contract. The Proposer shall require certificates of insurance from all subcontractors as evidence of coverage.

### **Exception or Waivers**

Any exception or waiver of these requirements shall be subject to review and approval by the District, and must be in writing. Proposers are advised to review the insurance requirements contained in the sample contract. Before entering into the contract, the successful Proposer shall furnish to the District certificates of insurance verifying all such coverages are in place with District named as an additional insured. District will not agree to changes that unreasonably increase District's risk.

### **Negotiation with Awarded Contractor**

The District reserves the right to negotiate final contract terms with the awarded contractor to the fullest extent allowed by law and as in the best interest of the District.

### **Personnel Substitution**

If Contractor must substitute personnel included in the original proposal, the following conditions shall apply: Written District approval of substituted personnel is required, prior to the substitution.

## APPENDIX A – PROPOSER’S CERTIFICATIONS AND REPRESENTATIONS

### The undersigned hereby certifies that Proposer:

1. Has the authority and/or responsibility to submit a proposal and to represent the organization in all phases of this RFP process.
2. The information is true and accurate to the best of their knowledge.
3. Shall furnish, within the time specified, the Proposer’s Submittal, the items/services as indicated in the RFP and the Resultant Contract.
4. Is a  Resident Proposer,  Non-Resident Proposer, as defined in ORS 279A.120, of the State of Oregon, and has not discriminated against any minority, women, or emerging small business enterprises in obtaining any required subcontracts, in accordance with ORS 279A.110.

ORS 279A.120 (2) states "For the purposes of awarding a public contract, a contracting agency shall:

- (a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and
- (b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides."

"Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder". (ORS 279A.120 (b)) "Non-resident bidder" means a bidder who is not a "resident bidder" as defined above. (ORS 279A.120 (a))

5. Understands any false statement may disqualify this proposal from further consideration or be cause for contract termination.
6. Understands by submitting this RFP Proposal, the undersigned certifies conformance to the applicable Federal Acts, Executive Orders and Oregon Statutes and Regulations concerning Affirmative Action toward equal employment opportunities. All information and reports required by the Federal or Oregon State Governments, having responsibility for the enforcement of such laws, shall be supplied to the District upon request for purposes of investigation to ascertain compliance with such acts, regulations, and orders.
7. Has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts, and that the Proposer is not in violation of any discrimination laws.

8. Certification Regarding Debarment, Suspension and Other Responsibility Matters

**The Proposer certifies to the best of its knowledge and belief that neither it nor any of its principals:**

- (a) Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from submitting bids or proposals by any federal, state or local entity, department or agency;
- (b) Have within a five-year period preceding the date of this certification been convicted of fraud or any other criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are presently indicted for or otherwise criminally charged with commission of any of the offenses enumerated in paragraph 2 of this certification;
- (d) Have, within a five-year period preceding the date of this certification had a judgment entered against proposer or its principals arising out of the performance of a public or private contract;
- (e) Have pending in any state or federal court any litigation in which there is a claim against proposer or any of its principals arising out of the performance of a public or private contract; and
- (f) Have within a five-year period preceding the date of this certification had one or more public contracts (federal, state, or local) terminated for any reason related to contract performance.

**Where Proposer is unable to certify to any of the statements in this certification, Proposer shall attach an explanation to their offer. The inability to certify to all of the statements shall not necessarily preclude Proposer from award of a contract under this procurement.**

9. Acknowledges Receipt of Addenda No's. **number** through **number** inclusive.

**Proposer's Federal Tax ID # (EIN):** **Number** or **Social Security #:** **Number**



**FAILURE TO SIGN AND SUBMIT THIS FORM MAY BE CAUSE FOR PROPOSAL REJECTION**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

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

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

## APPENDIX B – SAMPLE SCHOOL DISTRICT PROFESSIONAL SERVICES CONTRACT

This Contract is between **School District Name** (the "District") and **Name of Contractor** ("Contractor").

### **STANDARD TERMS AND CONDITIONS**

The parties agree as follows:

1. **Effective Date and Termination Date.** The effective date of this Contract shall be **start date**, or the date on which each party has signed this Contract, whichever is later. Unless earlier terminated as provided below, the termination date shall be **completion date**.
2. **Contractor's Agreement to Sell Services.** Contractor agrees to sell to or provide the District with the Professional Services described in Exhibit 1.
3. **Statement of Work.** Contractor shall perform the work described in Exhibit 1.
4. **Contract Price.** The Maximum not-to-exceed compensation payable to Contractor under this Contract, which includes authorized expenses, is \$**dollar amount**, and is payable in accordance with Exhibit 1.
5. **Contract Documents.** The Contract Documents consist of the following documents which are listed in descending order of precedence: this Contract; exhibits to this Contract, including Exhibit 1 (Statement of Work, Compensation, Payment and Renewal Terms); Exhibit 2 (Insurance Requirements); Exhibit 3 (Certification Statement for Corporation or Independent Contractor); and Exhibit 4 (Workers' Compensation Exemption Certificate).
  - a. A conflict in the Contract Documents shall be resolved in the priority listed above with this Contract taking precedence over all other documents. The Contract Documents are the entire contract between the parties and shall supersede any prior representations, written or oral.
6. **Warranty.** Contractor warrants to the District that all work shall be performed in accordance with the applicable professional standard of care, free of defects in design, and in accordance with all applicable laws, regulations, and ordinances.
7. **Time is of the Essence.** Time is of the essence in the performance of this Contract.
8. **Subcontracts and Assignment.** Contractor shall not subcontract 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 the District, which may be withheld without cause.
9. **Other Contractors.** The District may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with such other contractors and with any District employees concerned with such additional or related work, and shall coordinate its performance under this Contract with such additional or related work. The Contractor shall not commit or permit

any act that will interfere with the performance of work by any other contractor or by District employees.

10. **Independent Contractor Status.** Contractor shall certify status as an independent contractor in accordance with Exhibit 3.
11. **No Third-Party Beneficiaries.** The District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
12. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
13. **Nonperformance.** In the event of nonperformance under this Contract, the District, after seven (7) days' written notice, shall have the right to obtain from other sources such products and/or services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor. For purposes of this section, nonperformance shall be defined as failure to appear and perform work and/or deliver work product as specified and scheduled.
14. **Early Termination.** This Contract may be terminated as follows unless otherwise specified herein:
  - a. The District and Contractor, by mutual written agreement, may terminate this Contract at any time.
  - b. The District in its sole discretion may terminate this Contract at will on 10 days' written notice to Contractor.
  - c. Either the District or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
  - d. Notwithstanding paragraph 8(c), the District may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.
15. **Payment of Invoices**
  - a. Method of Payment. Contractor shall bill the District monthly as services are performed. Payment shall be made as provided in Exhibit 1.
  - b. Payment on Early Termination. Upon termination pursuant to paragraph 8, payment shall be made as follows:

- i. If terminated under 8(a) or 8(b) for the convenience of the District, the District shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. The District shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim the District may have against Contractor.
- ii. If terminated under 8(c) by the Contractor due to a breach by the District, then the District shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
- iii. If terminated under 8(c) or 8(d) by the District due to a breach by the Contractor, then the District shall pay the Contractor for work performed prior to the termination date provided such work was performed in accordance with the Contract less any setoff to which the District is entitled.

**16. Payment for Medical Care and Workers' Compensation (Required by 279B.230)**

- a. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
- b. All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. See Contractor Exemption Certification – Exhibit 4 if you believe you may be exempt from this requirement.

**17. Non-Appropriation/Adequate Funding**

- a. If payment for work under this Contract extends into the District's next fiscal year, the District's obligation to pay for such work is subject to approval of future appropriations to fund this Contract by the School Board.
- b. Continuation of this Contract, at specified levels, is conditioned on adequate funding under the District's budget adopted in June of each year. The District reserves the right to adjust the level of services in accordance with funding levels adopted.

**18. Remedies.** In the event of breach of this Contract, the parties shall have the following remedies:

- a. If terminated under subsection 8(c) by the District due to a breach by the Contractor, the District may complete the work itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the District the amount of the reasonable excess.
- b. In addition to the remedies in paragraphs 8 and 9 for a breach by the Contractor, the District shall also be entitled to any other equitable and legal remedies that are available.

- c. If the District breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.
19. **Hazardous Chemicals.** Contractor shall notify the District prior to using products containing hazardous chemicals to which the District's students or employees may be exposed. Products containing hazardous chemicals are those products as defined in OAR Chapter 437. Upon the District's request, Contractor shall immediately provide Materials Safety Data Sheets in conformance with the requirements of OAR 437-004-9800.
20. **Errors.** The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.
21. **Access to Records.** The Contractor agrees that the District and its authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts.
  - a. Contractor shall maintain all fiscal records directly 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. Contractor acknowledges and agrees that the District's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable 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.
22. **Ownership of Work.** All work products created by the Contractor as part of Contractor's performance of this Contract, including background data, documentation, and staff work that is preliminary to final reports, shall be the exclusive property of the District. If any such work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants the District a perpetual, royalty-free, fully paid-up, non-exclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, re-use, in whole or in part, and to authorize others to do so, all such work products. The District shall have no rights in any pre-existing work product of Contractor provided to the District by Contractor in the performance of this Contract except to copy, use, and re-use any such work product for District use only.
  - a. If this Contract is terminated by either party or by default, the District, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver such partially completed work products, reports, or other documentation that the

Contractor has specifically developed or specifically acquired for the performance of this Contract.

**23. When Work is Performed on District Property, Contractor shall comply with the following:**

- a. Identification. Contractors performing work on District property or for the District shall be in full uniform at all times. Uniforms shall include shirt with company identification attached. In addition, all such persons shall carry photo identification and will present such to anyone on request. If such identification cannot be produced by Contractor, or is not acceptable to the District, the District may provide at its sole discretion, such identification tags to Contractor. Contractor shall bear the entire cost of producing and assigning such identification.
  - i. Contractors that do not have specific uniforms for employees shall provide identification tags as described above, and/or any other mechanism, that the District in its sole discretion determines is required to easily identify Contractors.
  - ii. As required by schools served by the District, on each day of work Contractor's employees shall sign into the Main Office to receive an in-school identification/visitor tag to be displayed on the person at all times they are in the school or other location.
- b. No Smoking. Smoking or other use of tobacco is prohibited on District property.
- c. No Drugs. District property sites and schools served by the District are drug-free zones.
- d. No Weapons or Firearms. Except as provided by Oregon statutes and District policy, weapons and firearms are prohibited on District property.
- e. Safety. Prior to instituting work on District property, Contractor, its subcontractors, and suppliers shall review the safety and security policies issued by the District's Risk Management Department and shall comply with those policies while on District property.
- f. Confidentiality. Contractor will not disclose any information or records regarding students or their families that Contractor may learn or obtain in the course and scope of Contractor's performance of this Contract.
- g. No Unsupervised Contact with Students. "Unsupervised contact with students" means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Contractor will ensure that Contractor, any subcontractors, and their officers, agents, and employees will have no direct unsupervised contact with students while on District property. Contractor will work with the District to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that none of its officers, agents, or employees will have direct, unsupervised contact with students in a particular circumstance or circumstances, Contractor shall so notify the District prior to beginning any work that could result in such contact. Contractor authorizes the District to obtain information about Contractor and Contractor's history and to conduct a criminal background check, including fingerprinting, of

any officer, agent, or employee of Contractor that will have unsupervised contact with students. Contractor also agrees to cause Contractor's employees and/or subcontractors, if any, to authorize the District to conduct such background checks. Contractor shall pay all fees assessed by Oregon Department of Education for processing the background check. The District may deduct the cost of such fees from a progress or final payment to the Contractor under this Contract, unless the Contractor elects to pay such fees directly.

24. **Employment Standards.** The Contractor agrees that upon request by the District, it shall remove from all District premises any Contractor's employee who, in the sole opinion of the District, is guilty of improper conduct, bringing any unauthorized personnel (including their own children) into a facility, or is not qualified to perform the work assigned.
25. **Security.** Any disclosure or removal of any matter and/or property on the part of the Contractor or Contractor's employees shall be cause for immediate cancellation of the Contract. Any liability, including but not limited to, attorney fees, resulting from any action or suit brought against the District as a result of the Contractor's or Contractor's employees' willful or negligent release of information, documents, or property contained in or on District property shall be borne by the Contractor. All information, documents, and property contained within these facilities shall be considered privileged and confidential.
26. **Compliance with Applicable Law.** Contractor shall comply with all federal, state, and local laws applicable to public contracts and to the work done under this Contract, and all regulations and administrative rules established pursuant to those laws.
27. **Printing, Binding, and Stationery Work (Required by ORS 282.210).** If this solicitation is for the purpose of obtaining printing, binding, or stationery work, work awarded under this solicitation shall be performed within this state, unless subject to exception under ORS 282.210(2).
28. **Public Employee Retirement System.** Contractor represents and warrants that (a) Contractor is not active as an employee in the Public Employee Retirement System and (b) Contractor has not received wages from the District or any other public entity during this calendar or fiscal year.
29. **Indemnity and Hold Harmless.** Contractor shall defend, indemnify, and hold the District, its officers, agents, and employees, harmless against all liability, loss, costs, or expenses, including attorney's fees, and against all claims, actions, or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any act or omission of an act sustained in any way in connection with the performance of this Contract or by conditions created thereby, or based upon violation of any statute, ordinance, or regulation. This Contractual indemnity provision does not abrogate common law or statutory liability and indemnification to the District, but is in addition to such common law or statutory provisions.
30. **Insurance.** Contractor shall provide insurance in accordance with Exhibit 2.
31. **Waiver.** Waiver of any default under this Contract by the District shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

32. **Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and rules of the District as they appear at the time of signing or any subsequent addenda. Any legal action involving any question arising under this Contract must be brought in Jackson County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.
33. **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 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 invalid.
34. **Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- a. No waiver, consent, modification, or change in the terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.
35. **Anti-discrimination Clause.** Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits, or employment. Contractor shall not discriminate against minority-owned, women-owned, or emerging small businesses.
36. **Attorney Fees.** If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees. In the event the prevailing party is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in Jackson County, Oregon for the type of legal services performed.
37. **Rule of Construction.** The rule of construction that a contract is construed against the drafter shall not apply to any dispute over the interpretation of application of the Contract.
38. **Notices.** All notices or demands of any kind required or desired to be given by District or Contractor must be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the respective party at the addresses here.



## **EXHIBIT 1**

### **Professional Services Contract**

#### **STATEMENT OF WORK, COMPENSATION, PAYMENT and RENEWAL TERMS\*\***

- 1. Contractor shall perform the following work:**
- 2. The maximum total payment under this Contract, including expenses:**
  - a. This amount includes any allowable expenses. The District will not pay Contractor any amount in excess of the maximum total payment for completing the work and will not pay for work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment to this Contract, the amendment must be in writing and fully executed before Contractor performs work subject to the amendment.
- 3. The District shall pay Contractor on the following basis (include any expenses and the terms and conditions of such expenses):**
- 4. The District will pay expenses on the following terms and conditions:**
- 5. This Contract may be renewed on the following basis:** This Contract will terminate on completion of the work.

\*\*The District shall have the right to withhold from payments due Contractor such sums as are necessary in the District's sole opinion to protect the District from any loss, damage, or claim which may result from Contractor's failure to perform in accordance with the terms of the Contract or failure to make proper payment to suppliers or subcontractors.

## **EXHIBIT 2**

### **Professional Services Contract**

#### **INSURANCE REQUIREMENTS**

**Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below:**

- 1. Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees must have this insurance unless exempt under ORS 656.027 (See Exhibit 4).
  - a. THIS COVERAGE IS REQUIRED.** Attach Certificate of Insurance. If Contractor does not have coverage and claims to be exempt, attach Exhibit 4 in lieu of Certificate.
- 2. Professional Liability/E&O** insurance with a combined single limit of not less than  \$500,000,  \$1,000,000,  \$2,000,000 each claim, incident, occurrence, with an annual aggregate limit of  \$500,000,  \$1,000,000,  \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. This coverage must be provided and remain in force for two years after the completion of the Contract.  
 Required by District  Not required by District
- 3. Commercial General Liability** insurance, on an occurrence basis, with a limit of not less than  \$500,000,  \$1,000,000,  \$2,000,000 each occurrence for Bodily Injury and Property Damage, with an annual aggregate limit of  \$500,000,  \$1,000,000,  \$2,000,000. This insurance must include contractual liability coverage.  
 Required by District  Not required by District
- 4. Commercial Automobile Liability** insurance with a combined single limit, or the equivalent of not less than  \$500,000,  \$1,000,000,  \$2,000,000 each occurrence for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles.  
 Required by District  Not required by District
- 5. Additional Requirements.** Coverage must be provided by an insurance company admitted to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insureds condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.
- 6. Certificate(s) of Insurance Required.** Contractor shall furnish a current Certificate(s) of Insurance to the District prior to Contract execution. The Certificate(s) shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days' written notice from the Contractor's insurer to the District. The Certificate(s) shall also state

the deductible or retention level. For commercial general liability, the Certificate shall also provide that the District, its agents, officers, and employees are Additional Insureds with respect to Contractor's services to be provided under this Contract. An additional insured endorsement shall be attached to the certificate of insurance. No work shall commence until the District receives the certificate and additional insured endorsement. If requested, complete copies of insurance policies shall be provided to the District.

**EXHIBIT 3**

**Professional Services Contract**

**CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR**

**NOTE: Contractor Must Complete A or B below:**

**A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP**

**I certify under penalty of perjury that Contractor is a [check one]:**  Corporation

Limited Liability Company  Partnership authorized to do business in the State of Oregon.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Contractor Title

\_\_\_\_\_  
Date

**B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR**

**Contractor certifies under penalty of perjury that the following statements are true:**

1. If Contractor is providing labor or services under this Contract for which registration is required under ORS Chapter 701, Contractor has registered as required by law, **and**
2. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
3. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business, **and**
4. All of the statements checked below are true.

**NOTE: Check all that apply. You must check at least four (4) to establish that you are an Independent Contractor.**

- A. The labor or services I perform is primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence which is set aside as the location of the business.
- B. I purchase commercial advertising or I have business cards for my business, or I am a member of a trade association.
- C. My business telephone listing is separate from my personal residence telephone listing.  
I perform labor or services only under written contracts.
- D. Each year I perform labor or services for at least two different persons or entities.

I assume financial responsibility for defective workmanship or for service not provided by purchasing performance bonds, errors and omission insurance or liability insurance, or providing warranties relating to the labor or services I provide.

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Contractor Signature

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Contractor Title

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Date

## **EXHIBIT 4**

### **Professional Services Contract**

#### **WORKERS' COMPENSATION EXEMPTION CERTIFICATE**

(To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate box*):

**SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor will not hire employees to perform this Contract.

**CORPORATION - FOR PROFIT**

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest\* in the corporation, and
- All work will be performed by the officers and directors; Contractor will not hire other employees to perform this Contract.

**CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor will not hire employees to perform this Contract.

**PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, and
- All work will be performed by the partners; Contractor will not hire employees to perform this Contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving, or demolition of an improvement to real property or appurtenances thereto.\*\*

**LIMITED LIABILITY COMPANY**

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work will be performed by the members; Contractor will not hire employees to perform this Contract, and

- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving, or demolition of an improvement to real property or appurtenances thereto.\*\*

\*NOTE: Under OAR 436-050-0050, a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

\*\*NOTE: Under certain circumstances, partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated.

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Contractor Signature

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Contractor Printed Name

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Contractor Title

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Date