



ROGUE RIVER SCHOOL DISTRICT #35

DESIGN-BUILD (DB) SERVICES

REQUEST FOR PROPOSALS

RFP No. 23-24 #2

*For Design and Construction of Pre-Kindergarten Early Learning Center
and School Based Health Clinic on the Rogue River School District grounds*

OWNER: Rogue River School District #35
1898 East Evans Creek Road
PO Box 1045
Rogue River, OR 97537
(541) 582-3235

Rogue River School District #35 (School District) is seeking proposals from experienced firms interested in providing Design-Build (DB) services for designing and constructing a Pre-Kindergarten Learning Center and School Based Health Center in the same building on existing school grounds with a project budget of \$3 million dollars. The purpose of this request for proposal solicitation document (RFP) is to establish a DB contract between the most qualified contractor (Proposer) and the School District.

Attached please find the project RFP with referenced attachments, including a sample DB contract that is subject to change prior to signing by the winning Proposer. The School District will serve as the contracting agency for the project. This RFP may be examined and downloaded electronically at the Rogue River School District's website at <http://www.rogueriver.k12.or.us>.

A **MANDATORY** pre-proposal conference will be held on **August 15, 2023, 10:00 AM, local time**, at the Rogue River School District's Administration Office, 1898 East Evans Creek Road, Rogue River, OR 97537. The administration office is located to the east of the Junior/Senior High School at the top of the hill, beyond where the buses are parked. Following the conference, a tour of the existing school facilities will be held.

RESPONSE DUE DATE AND TIME: Respondents must submit one (1) original, six (6) complete copies, and one (1) CD, DVD, or thumb drive of their proposal in PDF format to: Don Sweeney, Business Manager, Rogue River School District #35, Administration Office, PO Box 1045, 1898 East Evans Creek Road, Rogue River, Oregon 97537. **Proposals must be received no later than 2:00 PM, local time, on Wednesday, September 6, 2023.** All proposals that are not time-stamped by the deadline will be considered late and will be returned to the Proposer unopened. **Proposers are solely responsible for ensuring that the School District receives its proposal.**

This RFP will result in a public works contract subject to the State of Oregon Prevailing Wage rates (ORS 279C.800 to 279C.870) and other statutory public contracting provisions.

Proposers must familiarize themselves with the entire RFP. All questions and comments about this RFP must be directed ONLY **in writing** to Don Sweeney, the School District's Business Manager, at don.sweeney@rogueriver.k12.or.us.

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REQUEST FOR PROPOSALS FOR DESIGN-BUILD PROJECT FOR DESIGN AND CONSTRUCTION SERVICES FOR A PRE-KINDERGARTEN EARLY LEARNING CENTER AND SCHOOL BASED HEALTH CENTER

SECTION I: GENERAL INFORMATION

Rogue River School District #35 (School District) solicits proposals for a construction firm interested in providing Design-Build (DB) services for *Construction of Pre-Kindergarten Early Learning Center and School Based Health Clinic on the Rogue River School District Grounds.*

The proposals will be received per the following:

1 PROPOSALS DUE:

Deadline: **2:00 PM – Wednesday, September, 2023**

To: Don Sweeney, Business
 Manager
 Rogue River School District#35
 Administration Office
 PO Box 1045
 1898 East Evans Creek Road
 Rogue River, Oregon 97537

2 MANDATORY PRE-PROPOSAL CONFERENCE: A **MANDATORY** pre-proposal conference will be held on **August 15, 2023, 10:00 AM, local time**, at the Rogue River School District's Administration Offices, 1898 East Evans Creek Road, Rogue River, OR 97537. The Administration Offices are located to the east of the Junior/Senior High School at the top of the hill, beyond where the buses are parked. Following the conference, a tour of the existing school facilities will be held. Any statements made by the District's representatives at this pre-proposal conference will not be binding upon the District unless confirmed by a written addendum to this RFP.

3 DB APPROACH: The School District has chosen the Design Build Contractor (DB) project approach over the more traditional Design-Bid-Build in order to obtain the earliest occupancy of the Building at a Guaranteed Maximum Price (GMP). In addition, the project sequencing, scheduling and logistics required to complete the work within the earliest reasonable time can best be achieved by the DB approach. It is the intent of the School District to enter into a contract with the selected DB which will include design services pre-construction services with a GMP for the entire scope of work.

4 MINIMUM PRE-QUALIFICATIONS FOR DB FIRMS: Certain minimum qualifications have been established in order for the Proposers to be considered for the contracts described in the RFP.

4.1 Proposers shall have five or more years' continuous experience as a currently incorporated construction firm that has completed at least four other projects of comparable size, cost and complexity during that time.

4.2 Proposers shall have completed at least two DB projects within the State of

Oregon within the last five years. The project(s) must have included key personnel (project manager and superintendent) assigned to this project. Key personnel's experience may be with their present employer or with a previous employer.

- 4.3 Proposers shall be capable of providing a full contract price performance bond and full contract payment bond for labor and material for the project. The foregoing bonds shall include the preparation and completion of design and related personal services as agreed to in the final contract.
- 4.4 Proposers shall have key personnel available for the time and magnitude of the project throughout its duration. Key personnel assigned to the project shall maintain their assigned positions throughout the project unless requested to be removed by the School District or unless substitutions are otherwise approved by the School District.
- 4.5 Due to the fast-paced timeline associated with this RFP, Proposers may self-certify that they meet these requirements by filling out the prequalification statement enclosed as Attachment A. **Prequalification is mandatory**. Proposals that do not contain the signed Prequalification Statement will be deemed nonresponsive to this RFP and will be disqualified from further consideration.
- 5 **RFP METHOD:** The School District will use the Request for Proposals (RFP) competitive procurement method. The process has several major components, including but not limited to: 1) RFP Notice; 2) Mandatory Pre-Proposal Conference including walk-through of the Project Site; 3) Question / Answer Period; 4) Receipt of Proposal Response; 5) Proposal Evaluation, Scoring and Short List; 6) Reference Checks; 7) Optional Interviews with Finalist(s); 8) Recommendation to and Approval by the School District's Board of Directors; 9) Contract Negotiation.
- 6 **EVALUATION FACTORS:** Proposers responding to this RFP will be evaluated on several factors as set forth in the RFP, including but not limited to fee, qualifications, prior experience with similar or relevant projects, proposed cost control approach, proposed schedule, technical merit, design-build team experience, and overall project approach for the complete work.
- 7 **RFP CONTACT:** The primary contact person for this solicitation is Don Sweeney (don.sweeney@rogueriver.k12.or.us), the School District's Business Manager. Between the period of time that the RFP is issued and the time when the Intent of Award is posted, please direct all contact regarding the solicitation and the DB process or the evaluation process for this project to this individual, **in writing**, unless specially re-directed by the RFP Contact.
- 8 **RFP DOCUMENTS:** A copy of the RFP specifications and documents are on file and may be obtained for review at the addresses listed below, or on the School District's website at <http://www.rogueriver.k12.or.us>, or on ORPIN at <http://orpin.oregon.gov/>. Request may also be made by contacting the RFP Contact. The RFP will not be mailed or faxed, but an electronic copy can be emailed.

Rogue River School District #35
1898 East Evans Creek Road
Rogue River, OR 97537
541-582-3235

- 9 **INFORMATION OF RECORD:** The official source of information for this project until the Intent of Award is the Rogue River School District #35, Administration Office, 1898 East Evans Creek Road, Rogue River, Oregon 97537.
- 10 **INTERESTED PARTIES LIST:** As a courtesy, the School District will provide copies of Addenda items (official changes / revisions / updates to the process or documentation) via email to DB firms who register on the Interested Parties List, but it is important for all DB firms to understand that it is their responsibility to check with the RFP Contact for regular updates. Please contact the RFP Contact, [Don Sweeney](#), to ensure your firm is on the Interested Parties List, if you have not already been informed that you are.
- 11 **SCHOOL DISTRICT'S RIGHT TO CANCEL PROCESS OR REJECT PROPOSALS:** The School District may cancel a solicitation process, or reject any proposal in whole or in part when it is in the School District's best interest as determined by the School District. This may include rejecting any proposal not in compliance with all prescribed public contracting procedures and requirements, and for good cause, rejection of all proposals upon a finding that it is in the public interest to do so. If the School District chooses to reject the proposal in part, it may in certain instances provide notice of any correction or modifications to prospective DB firms who originally submitted proposals, solicit supplemental information from them, and set an expedited deadline for their supplemental submissions.

SECTION II: OVERVIEW OF PROJECT

The Rogue River School District 35 is made up of four schools; East Elementary, West Elementary, the Junior/Senior (Jr./Sr.) High School, and South Valley Academy.

The following project components are intended to be an outline of the work to be performed; however, the list is not all inclusive:

1 **PROJECT COMPONENTS:**

The Rogue River School District aims to construct an early childhood learning center and school-based health clinic using a \$3,000,000 budget provided by the state of Oregon through Lottery Bonds. The district already had an initial design and location for the project in 2018-19, but some community members raised concerns about the proposed site, prompting the district to explore alternative locations within its property.

The building's final square footage and design will be determined based on the proposed location, and the successful proposer will work with the district to assess various options that can better meet the needs of both the district and the community. The building will serve as a Pre-Kindergarten learning center with multiple classrooms, accommodating children as young as six weeks old. It should also have an age-appropriate playground or play area for the children's use. Furthermore, the school-based health center must be integrated into the same building.

The project budget must also cover the installation of parking lots or site improvements required for the building's construction. The successful proposer should have the expertise to design the building from scratch or have a team already in place to accomplish this project's design phase. The successful proposer will need to be able to coordinate with local jurisdictions to make sure all appropriate land use laws have been met.

The district will solicit community input on the final design and location of the building, and the successful proposer may be requested to create several rough designs to facilitate community feedback. The district acknowledges that multiple designs will entail additional costs, and is receptive to ideas to offset these expenses.

If the district determines that the best location on its school grounds has size limitations due to current Oregon building codes, the building may be smaller, and the project may not use the entire \$3,000,000 budget.

The district does not require a Guaranteed Maximum Price (GMP) or pre-designs from bidders. Instead, the successful proposer will be chosen based on their ability to complete the project in a timely and cost-effective manner. Scoring for proposals will be described in a separate section.

- DESIGN AND CONSTRUCTION BUDGET:** The design and construction budget is \$3,000,000. This project must comply with all prevailing wage laws.

SECTION III: OVERVIEW OF SERVICES NEEDED

- DB FUNCTION:** The DB will coordinate and manage the design process and the construction process. The DB shall be skilled in providing design, developing schedules and preparing accurate construction cost estimates. In addition, the DB shall be skilled in performing value engineering, analyzing alternative designs, costs and constructability issues, studying labor conditions, understanding construction methods and techniques, and coordinating and communicating these activities through the design and construction phases to all members of the Project Team. The DB shall be familiar with the local labor and subcontracting market. The DB must be skilled in the design/build delivery system and will lead and coordinate the design/build requirements associated with this project in terms of the building, plumbing, HVAC, electrical and fire sprinkler systems. The DB will be responsible for the design and construction of the project with an emphasis on quality, durability, energy efficiency, and low maintenance.

- Design Phase**

The DB will initially meet with school district officials to discuss possible locations for constructing the facility on school grounds. Following this meeting, the DB will conduct a preliminary investigation into the feasibility of construction on these sites and present their initial findings to the school district personnel and school board upon request. The design and location of the building will also include a public input phase, during which the DB will send a representative to any public meetings scheduled by the school board to gather input from the public on design and location options.

Moving on to the Schematic Design Phase, this is where ideas are put on paper to explore options. Sustainability elements of the project will also be introduced during this phase. The Design Development Phase will follow, during which the "base" concept from the schematic design phase will be further developed, with more detailed drawings of the interiors and exteriors, finishes, and preliminary ideas about required structural improvements and mechanical systems.

The Contract Drawing Phase is where decisions about finishes, design details for interiors and exteriors, and specific details regarding floor, wall, mechanical, structural, and lighting will be finalized down to the allowable options list. Finally, during the Bidding Phase, subcontractors will submit their proposals based on the Contract Drawings.

- PRE-CONSTRUCTION PHASE:**

During the design phase, the DB shall create the design, analyze the design, recommend modifications for improving the constructability of the facility, and provide the District with the highest quality facility within the specified timeframes and budget. DB shall also be

responsible for the plumbing, HVAC, electrical and fire sprinkler systems.

CONSTRUCTION PHASE: During the Construction Phase, the DB shall manage the construction, provide and pay for all materials, tools, equipment, labor, professional and non-professional services, and shall perform all other acts and supply all other items necessary to fully and properly perform and complete the work defined in the sample contract attached to this RFP. The DB shall manage those services defined in “DB Scope of Services” of this RFP and other services as may be contractually agreed upon between the DB and the District. The School District will serve as the contracting agency for the project. The School District’s Board of Directors, acting as the Local Contract Review Board, approved this procurement process at its April 18, 2023 regular board meeting.

SECTION IV: DB SCOPE OF SERVICES

1 The DB shall provide the services described in the sample contract document, DB Sample Agreement between District and DB where the basis for payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as well as the following:

1. DESIGN SERVICES

1.1 Define program, space needs, and project scope. This phase will involve meetings with school staff, students, parents, and community members for program development. For each component in the project, determine relationships of proposed new spaces to existing building and site.

1.2 Develop schematic designs for the building and site for the District’s comment and approval.

1.3 Create detailed plans for building elevations, material selections, mechanical systems, plumbing systems, electrical/control systems, and final design.

1.4 Provide energy modeling for mechanical and other building systems under consideration.

1.5 Prepare a final design plan based on the input received from the District.

2. PRECONSTRUCTION SERVICES:

2.1 Manage design and construction planning for the work, selection of materials and systems, construction feasibility, materials and labor availability, time requirements, costs, alternative designs and materials, budgets, and economics. Attend meetings with the District to be held at the Rogue River School District administration offices.

2.2 Prepare scheduling, cost estimates, value-engineering recommendations, review documents for constructability, and provide alternative options for sequencing of the work.

2.3 Provide estimating and cost control services. Provide recommendations to the District for keeping costs within the project budget. Prepare any required updated estimates and estimate reconciliations at major design milestones. Develop a project budget and reporting system and provide monthly cost status reporting, including cash flow projections.

2.4 Review documents for completeness, adequate detailing, compliance with program and adherence to codes or applicable agency requirements.

2.5 Implement a cost-loaded scheduling system for use during the preconstruction and construction phases.

2.6 Implement all long-lead procurement items and recommend and implement an early purchase phase project approach if warranted.

2.7 The project will be built under the jurisdiction of the Jackson County Building Department or the City of Rogue River Building Department. The DB will submit for and obtain all required permits and retain copies for the District's permanent files. All plan check and building permit fees and any required System Development Charges will be paid by the District. All other permit fees (including but not limited to permit fees associated with plumbing, HVAC, electrical and fire sprinkler systems) will be applied for and paid for by the DB.

2.8 Perform labor, vendor, and supplies analysis. Develop bid packaging strategy that encourages maximum participation by Minority and Women Owned Emerging Small Businesses Enterprises; local contractors, subcontractors, vendors, and labor resources as well as diversity of workforce. Implement a Bid process that conforms to the District's Requirements.

2.9 Plan for construction and prepare early bid packages for specific portions of the project, such as site improvements, foundation and structural framing, or other portions of work.

2.10 It is anticipated that the work of the Project shall be divided into bid packages consisting of separate trade contracts, with the DB acting as the general contractor to these separate subcontractors. Recommend bid package strategy to the Design team. Perform subcontractor, supplier, and labor analysis. Develop interest in the project and provide lists of possible subcontractors and suppliers. Encourage maximum participation by local contractors, suppliers, vendors, and labor resources. Develop a bidder prequalification process. Develop a Guaranteed Maximum Price proposal for the entire project.

2.11 Publicly advertise and competitively bid all the work of the Project to subcontractors, as stated in the Special Provisions of this RFP and per public bidding requirements, including design/build subcontractor trades. The subcontracts will be between the DB and the subcontractors. The schedule for the Project will be guaranteed by the contract between the District and the DB. The contract and/subcontracts will contain liquidated damages provisions, in the event of late completion.

2.12 Distribute any bid documents and addenda prepared by the District. Include subcontract and bidding conditions particular to the DB's operations and in keeping with public contracting requirements. Facilitate bidder questions and responses. Conduct pre-bid conferences and site visits.

2.13 Prepare final construction estimates for each bid package before it goes to bid. Review and report on all bids comparing these final estimates.

2.14 Receive and publicly open all bids and conduct bid analysis. Award contracts. Conduct preconstruction conferences. Bid packages shall be bid and awarded in conformance with the State of Oregon public contracting code and Model Public Contracting Rules.

3. **CONSTRUCTION PHASE SERVICES:** The DB shall manage the construction, including, but not limited to, the following:

3.1. Provide all construction supervision, coordination, inspection, labor, materials, tools, construction equipment and subcontracted items necessary for the Project.

- 3.2. Establish procedures for submittals, request for information, payment requests, change orders and other procedures. Develop and maintain logs, files and other documentation.
- 3.3. Develop, maintain and update the master schedule.
- 3.4. Conduct regular site progress meetings with the District on a weekly basis. All site meetings shall be scheduled to take place at a time on a day of the week that is designated by the District. Promptly produce, update and distribute minutes of all meetings.
- 3.5. Coordinate the work of subcontractors and vendors. Provide regular and on-going quality inspection, ensuring that the work complies with the contract documents and all applicable codes and regulations. DB, subcontractors and vendors shall not have direct, unsupervised contact with students.
- 3.6. Establish a change order processing system. The District expects a Guaranteed Maximum Price to include any contingency for the DB's use to cover cost considered reimbursable as cost of the work under the DB contract, and no change orders for that work would be necessary. Any change orders may include such things as changes in scope of work, systems, kinds and quality of materials, finishes or equipment at the request or upon approval of the District. No other change orders will be issued.
- 3.7. Establish and implement a detailed line-item schedule of values and cost reporting system that tracks and reports status of Subcontractor, vendor and supplier payments, change orders, contingency and overall project budget status.
- 3.8. Report progress of the work and recommend such action as may be necessary to keep the project on schedule and within budget. Review all subcontractor requests for time extensions and make recommendations to the District.
- 3.9. Establish a subcontractor payment process. Inspect and verify the status of work performed and materials stored, and certify all subcontractor payment requests. Use a cost-loaded CPM schedule for calculating subcontractor payments. Verify Compliance with prevailing wage rate requirements. Provide comprehensive Monthly Payment Reports, including cost status, quality control reports, RFI, submittal and potential change order status and status of outstanding issues.
- 3.10. Establish and maintain Quality Assurance/Quality Control (QA/QC) program. Also, ensure that any substitution or deviation from the original plan will have the District's approval.
- 3.11. Establish tracking of and participation of local subcontractors, vendors, suppliers and local labor force. Provide monthly summary reports in a format agreeable to the District.
- 3.12. Establish and implement Drug Testing and Safety Plans in accordance with State Law 279C.505.
- 3.13. Provide training to the District's operational and maintenance staff. Prepare Operations and Maintenance Manuals and As-Built Documentation marked up copies of the contract documents including drawings and specifications, as defined in the contract documents.
- 3.14. Work with the District, District's consultant (if any), to develop a detailed punch list for the site, building exterior and building interior. DB shall complete all punch list items to District satisfaction prior to District taking occupancy.
- 3.15. For the purposes of this project, this design build shall be considered to be open book, and upon completion of the project or at appropriate milestones, DB shall provide the District with reports on the GMP, with a final report and reconciliation of the GMP at close of project.

3.16. Prior to the end of 30 days after a certificate of occupancy is provided to the District, conduct a review meeting with the District to review whether it was actually in the best interest of the District to use the Alternate Contracting Method (DB) for the project.

3.17. Prior to completion of the warranty period, conduct a review of the project with the District to identify any issues that are covered by the warranty and in need of correction, repair, or replacement.

2 **COORDINATION OF CONTRACTS:**

The above is considered as a general overview of the scope of services expected from the DB but is not intended to relieve the DB of professional responsibility to perform services in all areas necessary for the School District to have completed, fully operational Pre-Kindergarten Learning and Health Center building, on schedule and within budget, at the end of the contract term.

SECTION V: PROJECT SCHEDULE

Preliminary Rogue River Elementary Schedule:

RFP Proposals and Selection:	August – September 2023
Initial Design Phase	September - October 2023
GMP Determination:	Completion of Design Phase
Construction:	TBD
Project Closeout:	TBD

Construction can start as early as May 2024, with the bulk of the work happening during the summer of 2024 when school is not in session. The project schedule will be discussed further during contract negotiations.

The hopeful substantial completion date for this Project is September 1, 2024.

SECTION VI: SPECIAL REQUIREMENTS

Any firm proposing should note the following special requirements concerning the management of the Project:

- 1 **GMP DETERMINATION:** It is the intent of the School District to enter into a contract with the selected DB where the basis of payment is Cost of the Work Plus a Fee with a Guaranteed Maximum Price (GMP) for the entire scope of the work. Prior to the start of the construction phase of the contract, the DB shall provide the School District with a GMP, which will include estimated construction costs, DB fees, and contingency costs. A full description of items that make up the GMP, including all details, will be required, consistent with the provisions of the contract. The final construction cost shall be the GMP less any contingency costs that were **NOT** used.
- 2 **PUBLIC WORKS BOND; PERFORMANCE AND PAYMENT BONDS; INSURANCE:** The DB will also provide the School District with a Public Works Bond, Performance and Payment bonds for the amount of the initial pre-construction services, including the preparation and completion of design and related personal services as set forth in the final contract, as well as liability insurance certificate(s) upon execution of the DB contract. As the project progresses, the Performance and Payment bonds will be adjusted to reflect the

full value of the contract. **No bid bond is required.**

- 3 **CONTRACTOR PROVIDED OPPORTUNITIES:** The selected DB will be required to develop a plan demonstrating good faith efforts to provide opportunities for local subcontractors, Minority and Women Owned Businesses and Emerging Small Enterprise. The plan shall also include the DB's approach for encouraging a diverse work force. Local contractors are defined as contractors, subcontractors, vendors, and material suppliers residing and doing business within Jackson County or Josephine County, Oregon, for at least the last 12 months. The DB will be expected to provide a monthly status report.
- 4 **SUBCONTRACTOR PROCESS:** The process used to award construction contracts by the DB will be monitored by the School District and the DB will issue status reports on a monthly basis. The DB will be required to follow these procedures:
 - 4.1 The DB must publicly advertise for all sub bid packages at least ten (10) days in advance of the bid closing date in publications of record.
 - 4.2 The DB must publicly solicit, receive and open bids, and award contracts.
 - 4.3 All bids will be required to be written and submitted to a specific location at a specific time.
 - 4.4 The DB must make a good faith effort to obtain at least three (3) bids for all sub bid packages.
 - 4.5 The DB must adhere to all public bidding requirements. The DB's subcontracting records are considered public records, unless exempt. The DB must award the work of each sub bid package to the lowest responsible bidder.
 - 4.6 If the DB cannot obtain three (3) acceptable bids, the DB will be required to provide written explanation to the School District and a recommendation for how the DB desires to proceed with awarding the work. The DB will be required to obtain written approval from the School District to proceed with award of a contract under these circumstances.
 - 4.7 If the DB elects to perform any of the construction of the identified sub bid packages with its own forces, the work must still be competitively bid as described above and the DB must submit the lowest price in order to be awarded a contract for this work. For these sub bid packages, where the DB wishes to submit a competitive bid, bids will be delivered directly to the School District's Business manager, and the School District will administer and open these bids.
 - 4.8 The DB will resolve any and all subcontractor protests.
 - 4.9 While the School District has a strong desire to encourage opportunities for local contractors, suppliers, and labor resources, all work must be awarded under the competitive bidding requirements described above.

SECTION VII: LEGAL INFORMATION

- 1 **CONTRACT FORMAT:** The School District will negotiate with the DB using a standard contract. The contract terms which may be negotiated include the details of contract performance, methods of construction, timing, assignments of risk, fee and costs, and other matters that affect cost or quality.
- 2 **EQUAL EMPLOYMENT OPPORTUNITY:** All DB firms must be “Equal Opportunity Employers” and comply with the appropriate provisions of state and federal law.
- 3 **WORKER’S COMPENSATION:** All DB firms shall be required to comply with ORS 656.017 regarding Worker’s Compensation, and the winning DB firm must ensure that each of its subcontractors complies with these requirements as well.
- 4 **CCB REGISTRATION:** Firms are required to be registered with the State of Oregon Construction Contractors Board (CCB) or the proposal will not be received or considered.
- 5 **ASBESTOS ABATEMENT:** The project requires that a contractor or subcontractor be licensed under ORS 468A.720 for asbestos abatement.
- 6 **DRUG TESTING CERTIFICATION:** House Bill 2574 became law on October 23, 1999. HB 2574 requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. Proposer is therefore required to certify that Proposer has an employee drug testing program in place that applies to all employees, and will maintain a drug-testing program at all times during the performance of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract. (See Attachment C: Demonstrated Drug Testing Program.)
- 7 **RESIDENT PROPOSER:** No proposal will be received or considered by the School District unless the proposal contains a statement as to whether the firm is a resident Proposer as defined in ORS 279A.120.
- 8 **PREVAILING WAGE RATES:** Prevailing wage rates (PWR) for public works contracts in Oregon are required for this Project. All contractors and subcontractors will abide by the latest determination of the prevailing wage rates as scheduled and published for this region by the Oregon Bureau of Labor and Industry (BOLI).
 - 8.1 The prevailing wage rate publication applicable to this Project is ***Prevailing Wage Rates for Public Works Contracts in Oregon, Effective January 1, 2023***, and is hereby incorporated by reference into the bid specifications (to view or download the publication, visit https://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and select *Prevailing Wage Rates for Public Works Contracts in Oregon, Effective: January 1, 2023*).
 - 8.2 No proposal will be received or considered by the School District unless the proposal contains a statement that the firm will comply with the provisions of ORS 279C.800 – 279C.870.
- 9 **ADDITIONAL STATUTORY PUBLIC CONTRACTING PROVISIONS:** The winning DB firm must abide by all statutory public contracting provisions including, but not limited to, the following:
 - 9.1 Pay prevailing wage rates; every contract and subcontract must contain a provision that the workers will be paid not less than the applicable prevailing rate of wage for the type of work being performed (ORS 279C.800 to 279C.870);

- 9.2 Prepare **weekly** certified payroll reports and statements and submit them to the Contracting Agency by the fifth business day of the following month, make sure all subcontractors do the same (ORS 279C.845);
- 9.3 Post in an accessible and conspicuous place on the work site the applicable rates for the project and fringe benefit plan information; ensure all employees know they are working on a PWR project (ORS 279C.840(4) & (5));
- 9.4 Make prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- 9.5 If the Contract calls for demolition Work described in ORS 279C.510(1), the Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective;
- 9.6 If the Contract calls for lawn or landscape maintenance, the Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- 9.7 Understand Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including rate of interest;
- 9.8 Understand any Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- 9.9 Abide by hours of labor in compliance with ORS 279C.520;
- 9.10 Pay daily, weekly, weekend and holiday overtime as required in ORS 279C.540;
- 9.11 Abide by environmental and natural resources regulations (ORS 279C.525);
- 9.12 Make payment for medical care and attention to employees (ORS 279C.530(1));
- 9.13 File a Public Works bond; verify that all subcontractors required to pay prevailing wages have also filed a public works bond (ORS 279C.836);
- 9.14 Follow retainage rules (ORS 279C.550 to 279C.570):
 - a. If a Prime Contractor does not file certified payroll as required (at least once per month), the Contracting Agency MUST withhold 25% of amounts due the prime contractor, in addition to any other required retainage.
 - b. If a first-tier subcontractor does not file certified payroll reports as required, the Prime Contractor MUST withhold 25% of amounts due the first-tier subcontractor.
 - c. Once certified payroll reports are submitted, the Contracting Agency or Prime Contractor must pay amounts withheld per this statute within 14 days.
- 9.15 Understand and maintain relations with subcontractors in accordance with ORS 279C.580;
- 9.16 Certify compliance with the Oregon tax laws in accordance with ORS 305.385; and
- 9.17 Certify that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or

licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055, before the subcontractors commence Work under the Contract.

- 10 **SCHOOL DISTRICT OWNERSHIP OF DOCUMENTS:** All documents, reports, proposal submittals, working papers or other materials submitted to the School District from the DB firm shall become the sole and exclusive property of the School District, the public domain (except for materials deemed to be excluded as trade secrets), and not the property of the DB firm. The DB firm shall not copyright, or cause to be copyrighted, any portion of any said documents submitted to the School District as a result of this solicitation.
- 11 **PUBLIC RECORDS:** Notwithstanding any requirements to make Proposals open to public inspection, the School District may withhold information exempt or conditionally exempt from disclosure under Oregon Public Records law on the following conditions: 1) If the Proposer reasonably believes there are any grounds for exempting information from disclosure under such law, they shall mark the information accordingly. 2) Many exemptions are conditioned upon official or judicial determinations. It shall be the Proposer's obligation to establish that the information is exempt from disclosure. 3) The Proposer shall defend, indemnify, and hold the School District harmless from any claim or administrative appeal, including costs, expenses and any attorney's fees, related to a request to disclose information which Proposer has labeled as confidential. The School District will not keep confidential information about cost, price, and delivery, which may be open to public inspection. Generally any resulting contract is a public record. The School District shall be entitled to use information which the Proposer has labeled as confidential, in whole or in part, for proposal evaluation and may make copies for this purpose. Any restrictions related to the information marked confidential do not apply, if the School District has the right to or has obtained the information from another source.
- 12 **NO GUARANTEE OF CONTRACT; PROPOSAL COSTS:** This DB RFP does not commit the School District to award a contract or to pay any costs incurred by companies responding to the RFP. Any and all costs incurred by a prospective DB firm associated with the submission of a Proposal, interview, contract negotiation, and related expenses are solely the responsibility of that firm.
- 13 **MECHANICS LIENS OR STOP NOTICES:** The resultant contract shall at all times indemnify and hold the School District harmless from all claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration or installation of structures, improvements, equipment or facilities, and from the cost of defending against such claims, including attorney's fees and costs.

SECTION VIII: PROTEST PROCESS

- 1 **PROTEST OF PROCESS AND SOLICITATION:** For public improvement contracts, a prospective Proposer may protest specifications or contract terms and conditions pursuant to OAR 137-049-0260(3), (4) and (5). Unless otherwise specified in the RFP, the protest shall be filed with the RFP Contact no later than 10 days before the proposal opening.
 - 1.1 **PROPOSER'S WRITTEN PROTEST SHALL INCLUDE:**
 - a. A detailed statement of the legal and factual grounds for the protest;
 - b. A description of the resulting prejudice to the Proposer; and
 - c. A statement of the desired changes to the Contract terms and conditions, including any specifications.

- 1.2 **A PROPOSER SHALL MARK ITS PROTEST AS FOLLOWS:**
 - a. “Contract Provision Protest”; and
 - b. RFP Document number (or other information as specified in the RFP document).
- 1.3 **SCHOOL DISTRICT RESPONSE:** The School District is not required to consider a Proposer’s request for change or protest after the deadline established for submitting such request or protest. The School District shall provide notice to the applicable Person if it entirely rejects a project. If the School district agrees with the Proposer’s request or protest, in whole or in part, the School District shall either issue an Addendum reflecting its determination under OAR 137-049-0260 or cancel the solicitation under OAR 137-049-270.
- 1.4 **EXTENSION OF CLOSING:** If the School District receives a written request for change or protest from a Proposer in accordance with this rule, the School District may extend the RFP due date if the School District determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the RFP Document.

2 PROTEST OF INTENT TO AWARD: Anyone responding to the Request for Proposals who is not recommended for award by the Evaluation Committee may protest the recommendation, which is also the Intent to Award, to the Rogue River School District’s Board of Directors, in accordance with OAR 137-049-0450(4)(5)(6)(7).

- 2.1 **FORMAT:** Any protest must be made in writing, be received before the contract is awarded by the School District, clearly state the grounds for the protest, and indicate what condition(s) resulted in the proposal not being recommended for award. Any protest which does not comply with the applicable procedures may be rejected.
- 2.2 **TIMING:** Any protest must be received by the School District no later than seven (7) calendar days after the District’s issuance of an Intent to Award. Upon receipt of the protest, the School District shall notify the Proposer recommended for award of the protest and the Evaluation Committee. The Proposer and the Evaluation Committee shall have three (3) calendar days from the date the protest was filed to respond to the protest in writing, if they so desire.
- 2.3 **SCHOOL DISTRICT RESPONSE:** When a protest is filed, the School District shall prepare a written analysis of the protest, and make a recommendation to the Rogue River School District’s Board of Directors as to appropriate action to be taken.
- 2.4 **THE GROUNDS FOR PROTEST ARE:**
 - a. The Evaluation Committee has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials.
 - b. Different criteria were used to evaluate different proposals.
 - c. The Evaluation Committee unfairly applied the evaluation criteria to a proposal.
 - d. A member or members of the Evaluation Committee had a relationship with a Proposer that represented a conflict of interest.
 - e. The criteria used to evaluate the proposals did not pertain to the services or products requested.
 - f. A member or members of the Evaluation Committee demonstrated bias toward a proposal or Proposer.
 - g. The School District abused its discretion in rejecting the protester’s proposal

- as nonresponsive.
- h. The evaluation of the proposals is otherwise in violation of any provisions of ORS 279A, 279B or 279C.
- i. All higher ranked proposals are nonresponsive.

2.5 **REVIEW OF PROTEST CRITERIA AND DECISION:** The School District shall present the issues orally or in writing at a public meeting. The appellant shall then have ten (10) minutes to specifically address the protest criteria and the Evaluation Committee’s recommendation, and the recommended Proposer(s) shall have a total of ten (10) minutes to respond, divided between them as they wish.

If a protest is timely filed, the Rogue River School District’s Board of Directors shall consider the Evaluation Committee’s recommendation and the allegations of the protest before rendering a final decision and shall state the conclusions reached and reasons, either in writing or on record in a public meeting of the Rogue River School District’s Board of Directors. Any decision to overturn the recommendation shall be based on a finding that one of the criteria above occurred to the substantial prejudice of the appellant.

SECTION IX: RFP PROCESS

1 **RFP POSTED:** Public notice of the RFP will be published in appropriate publications.

2 **MANDATORY PRE-PROPOSAL CONFERENCE:** A **MANDATORY** pre-proposal conference will be held at **10:00 AM, local time, on Tuesday, August 15, 2023**, at the Rogue River School District’s Administration Offices, 1898 East Evans Creek Road, Rogue River, OR 97537. The Administration Offices are located to the east of the Junior/Senior High School at the top of the hill, beyond where the buses are parked. Following the conference, a tour of the existing school facilities will be held. The Pre-Proposal Conference will be the opportunity to discuss the project with the School District and the Design Team. A written addendum will be issued no later than August 28, 2023, to formalize any School District responses to oral questions that are confirmed in writing and raised by the firms at this Conference; or in writing, via an email, sent to the RFP Contact by or before August 23, 2023.

3 **WRITTEN QUESTIONS AND ADDENDA**

3.1 Questions regarding the information contained in the RFP must be submitted **IN WRITING** to the RFP Contact no later than 4:00 PM PST, August 23, 2023. All questions must be **RECEIVED** in writing by the specified date and time. No oral questions will be accepted other than at the Pre-Proposal Conference and only if those questions are confirmed in writing. E-mail questions to the addresses below.

For questions regarding the RFP process:
 Don Sweeney, School District’s Business Manager
don.sweeney@rogueriver.k12.or.us

4 **ADDENDA:** If, in the School District’s opinion additional information or interpretation is necessary, such information will be supplied in the form of an addendum. Addenda shall have the same binding effect as though contained in the main body of the RFP. Any oral instructions or information concerning the specifications or other information given out by the

School District or Design Team to prospective firms shall not bind the School District. All addenda shall be issued by the RFP Contact by August 28, 2023.

- 5 **PROTEST OF SOLICITATION PROCESS:** Protest of the specifications or contract terms and conditions pertaining to the RFP must be submitted in writing to the RFP Contact no less than ten (10) days before the proposal opening. All responses will be made in the form of addendum and sent to all firms on the Interested Parties List. (See Section VIII: Protest Process, Subsection 1.)

- 6 **RFP PROPOSAL DUE AND OPENED:** Interested DB firms' proposals must be received no later than **2:00 PM, local time, Wednesday, September 6, 2023**. Submittals shall be mailed or delivered to:

Don Sweeney, Business
Manager Rogue River
School District PO Box 1045
1898 East Evans Creek Road
Rogue River, Oregon 97537

- RFPs will be opened in the Rogue River School District's Administration Office. Since this process involves an RFP and not a straight bid, the names of participants submitting proposals may be announced, but their cost proposals will not. Information is available and all proposals may be reviewed at the School District Administration Building located at 1898 East Evans Creek Road, Rogue River, Oregon 97537, by appointment only, once notice of the Intent of Award is issued.

- 7 **LATE SUBMISSIONS:** A proposal shall be considered late if received at any time after 2:00 PM, local time, on September 6, 2023. Proposals received after the specified date and time will be rejected and returned unopened.

- 8 **INITIAL EVALUATION:** Proposals submitted in response to this solicitation will be reviewed and scored by the Evaluation Committee of at least three (3) members likely to be selected from one or more of the following staff/groups:
 - 8.1 Rogue River Elementary School / Jr./Sr. High School Staff
 - 8.2 Rogue River School District Board
 - 8.3 Rogue River School District Maintenance Staff
 - 8.4 City of Rogue River Administration, Planning and/or Public Works Departments
 - 8.5 Any other qualified review person as determined by the District

- 9 **NOTICE OF COMPETITIVE RANGE; SHORT LIST:** The School District will provide written notice to all Proposers of the School District's determination of the Proposer(s) included in the short list the top 3 proposers, those/that Proposer(s) that will be invited for an interview. No other proposals will be considered for award. Proposers not selected for the short list may protest by filing a protest letter, pursuant to Section VIII of this RFP.

- 10 **REFERENCES:** References for the finalist(s) will be checked by members of the Evaluation Committee and/or the RFP Contact. Response information will be provided to all members of the Evaluation Committee.

- 11 **OPTIONAL INTERVIEWS:** The Evaluation Committee may invite the top finalist(s) to an oral interview if deemed necessary. Those firms selected for interview will be notified as soon as possible to set the format and time of interviews. Any interviews will be conducted at the Rogue River School District #35 Administration Office, 1898 East Evans Creek Road, Rogue

River, Oregon 97537. Dates available for optional interviews with the top finalist(s) will be approximately Sept. 8-11, 2023. All DB firms should ensure these dates are kept available for potential scheduling.

- 12** **SELECTION:** The method of Contractor selection under this RFP may include, but is not limited to, award without negotiation, negotiation with the highest ranked Proposer, competitive negotiations, multi-tiered competition designed either to identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065.

The Proposer that successfully proceeds through the entire evaluation process, and is determined to be the highest ranked, most responsive and responsible Proposer and apparent best overall value for the School District will be recommended for award of this RFP. The Evaluation Committee will provide its recommendation to the Rogue River School District's Board of Directors for their consideration and approval. For information regarding the Protest of Intent of Award, refer to Section VIII (2) of this RFP.

- 13** **AWARD OF CONTRACT:** The Contract will be awarded to the responsible Proposer submitting the best proposal and complying with the conditions of the Advertisement for Proposals. The District may conduct discussions with Proposers who submit proposals the School District has determined to be closely competitive or to have a reasonable chance of being selected for award. The discussions may be conducted for the purpose of clarification to ensure full understanding of, and responsiveness to, solicitation requirements. The School District shall accord Proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revision of proposals may be permitted after the submission of proposals and before award for the purpose of obtaining best and final offers.

- 14** **CONTRACT NEGOTIATIONS:** Upon approval by the School District's Board of Directors of the Evaluation Committee's recommendation, the School District will proceed to negotiate a contract with the approved DB firm. If negotiations are not successful, the School District may break off negotiations and begin negotiations with the number two ranked DB firm, and so forth until a contract is negotiated. The Board of Directors must approve and make final award of the Contract.

- 15** **CONTRACT BASED ON GMP AGREEMENT:** It is the intention of the School District to enter into a contract with the selected DB which will include a Fixed Fee for the Pre-Construction activities up through submittal of a GMP and a fixed fee for the remaining DB services as part of the total GMP. If the School District is unable to successfully agree upon a GMP for the project with the selected DB, the School District reserves the right to terminate the Contract and commence negotiations with the next ranked finalist. Upon termination of the Contract the School District will accept assignment of long-lead subcontracts previously agreed to and awarded. The School District reserves the right to reject any and all proposals.

- 16** **CONTRACTOR WITHDRAWAL FROM PROCESS:** Once submitted, any firm proposing may withdraw the proposal at any time prior to the day of opening. However, all proposals shall be irrevocable for a period of sixty (60) days from the day of opening.

SECTION X: RFP SCHEDULE

The milestones for the selection process are defined below. **The dates are approximate and SUBJECT TO CHANGE.**

Activity	No Later Than
1. Advertise Request for Proposals	August 7, 2023
2. Mandatory Pre-proposal Conference	August 15, 2023 10:00 AM
3. Deadline for Questions/Protest	August 23, 2023 4:00 PM (PST)
4. Issue Addenda (if needed)	August 28, 2023
5. Proposals Due	September 6, 2023, 2:00 PM (PST)
6. Evaluation Committee Meets	September 8, 2023
7. Evaluation Committee Interviews (if needed)	September 8, 2023
8. Issue Notice of Intent to Award	September 12, 2023
9. Award Contract	September 19, 2023 (RRSD Board Meeting)
10. Begin DB Design Phase	September 20, 2023 (or as soon as contract is executed)

SECTION XI: EVALUATION CRITERIA

Proposals will be evaluated on the basis of the following areas and points assigned:

<u>Evaluation Criteria</u>	<u>Maximum Possible Points</u>
Cover Letter	0 points
Firm Experience	15 points
DB and Related Experience	15 points
Key Personnel Experience	20 points
Overall Project Understanding / Approach	15 points
Scheduling Approach	10 points
Cost Control	15 points
Fee	5 points
References	5 points
Maximum Possible Points	100 points

SECTION XII: SUBMISSION REQUIREMENTS

- 1 **RESPONSE FORMAT:** The responses shall be organized in the manner and shall be presented in the same sequence as indicated below. Any deviation from the format may result in the Evaluation Committee being unable to locate specific information which may result in a loss of points.

Proposals shall be limited to twenty-five (25) 8 ½" x 11" pages total, including all exhibits and/or attachments. 11" x 17" sheets and fold-outs should not be used. All pages shall be numbered. The following pages are exempt from the 25 page limit: cover and back of submittals, a one page cover letter, a one page table of contents, resumes of key personnel, tab and blank divider pages, letter from Bond and Surety Company, and the proposal forms (Attachments A, B, B-1, and C).

The Proposals shall be tabulated in separate sections in response to the detailed proposal requirements. All material shall be in 8 ½" x 11" format, bound vertically on the 11" side. No other material shall be submitted.

- 2 **DOCUMENTS REQUIRED:** Proposal Packages must include the following:
 - 2.1 Response documents and all requested additional related items such as resumes, schedules, bond letter, etc.
 - 2.2 Completed, signed and notarized Prequalification Statement (Attachment A)
 - 2.3 Completed, signed and notarized Statement of Assurances (Attachment B)
 - 2.4 Completed, signed and notarized Non-Collusion Affidavit (Attachment B-1)
 - 2.5 Demonstrated Drug Testing Program (Attachment C)

To clarify, in addition to the Proposal Response and all requested additional related items,

the District is looking for Proposers to submit a completed and signed Prequalification Statement (Attachment A); a completed, signed, and notarized Statement of Assurances (Attachment B); a completed, signed, and notarized Non-Collusion Affidavit (Attachment C-1); a completed and signed Demonstrated Drug Testing Program (Attachment C); and a signed letter from their Bond and Surety Company (need not be notarized).

- 3** **NUMBER OF RESPONSES REQUIRED:** Proposers shall submit ONE (1) ORIGINAL AND SIX (6) COPIES of the total proposal and attachments. In addition, Proposers shall submit one CD, DVD, or thumb drive with a copy of the complete RFP in PDF file format.

SECTION XIII: CONTRACTOR'S RESPONSE DOCUMENT

Proposals must reply to each of the following items. Responses must appear in the same order listed below. Concise and direct answers are encouraged.

- 1** **COVER LETTER:** A letter of introduction stating that the applicant wishes to be considered for the project. Include full name of firm or joint venture, RFP contact person, email address, mailing address, telephone and facsimile numbers. If joint venture, the relationship of the two parties shall be indicated in terms of percentage participation in the work and in the fee.

2 **FIRM EXPERIENCE:**

Firm Description: Provide a brief description of your firm's history, the type of work you have performed and your capabilities. Include an Annual Volume of Figures for the past five years and current bonding capacity. Provide a letter from your bonding or surety company that certifies your firm's bond history, existing bonded contracts and current, total bonding capacity. The bonding/surety company should use its own form letter with its contact information listed. The letter need not be notarized or sent via certified mail, but it should list Proposer's name and be signed by an authorized representative of the bonding/surety company. If a joint venture, provide information for each firm involved. List the sub-consulting firms that will be part of your team during the Pre-Construction phase of the work.

- 2.1 Project Experience: Describe overall firm experience, and provide a listing, in chronological order, in chart format, of your firm's last five (5) completed projects of \$1 million or more performed within the last five (5) years. Include completion date; name of owner; contact person; and current phone number; name of Architect, contact person and current phone number; name of contractor and construction manager; and contact person name and telephone number for each; location of job; description of job (i.e., remodel or new construction, Schools, HVAC upgrades, temperature controls, etc.); final construction contract amount; total dollar amount of change orders.
- a. Specific Facility Experience: Describe specific experience, and provide a listing as indicated above of your firm's experience in the following types of facilities, including all information indicated above:
 - i. Public Agencies and Public Contracting: Describe your firm's experience on projects for public agencies and performed under public contracting statutes and requirements.
 - ii. Design Build: Describe your firm's experience with DB projects.

- 3 **DB AND RELATED EXPERIENCE:** Describe firm experience with DB-GMP projects for the public sector. The listing should follow the format described above in the previous item, but should include both the original GMP and the final cost of the Work. (If the firm's public sector DB-GMP experience is limited, experience with pure CM, General Contractor, Design/Build or DB-GMP for the private sector may be discussed.)

The contractor should provide the contact information for 2 previous design build contracts they have completed. The district may contact these contacts as a reference for the contractor.

4 **KEY PERSONNEL EXPERIENCE:**

- 4.1 Organization of Team: Provide a project organization chart showing your proposed staff for this job, including all professional staff in the following areas: project management; estimating; pre-construction and construction phase services. Identify your Project Manager, Project Executive, and Site Superintendent.
- 4.2 Team Member Resumes: Include resumes for all individuals listed in the chart. Indicate the proposed percentage or full time equivalent (FTE) that each person will work on this project during the 1) Phase I – Pre-Construction Services, and 2) Phase II – Construction Phase Services. (100% = 1.0 FTE). The resumes shall include each individual's education, work history, length of tenure with your firm, and relevant prior experience.
- 4.3 Additional Team Members: For those individuals who are not full time describe how they will work on the project. If your proposal involves individuals from more than one firm, describe prior experience, if any, of the firms and individuals working with each other, and how the proposed team will work for this project.

By listing the individuals in the proposal, the firm assures that these individuals will work on the project at an approximate minimum of the percentages shown. The School District reserves the right to request a substitution of personnel if deemed to be in the best interest of the School District.

Should the firm be invited to an interview, the key personnel listed above will need to be in attendance and questions may be directed solely to them. At a minimum, the Project Manager, Superintendent and Project Executive dedicated to the project shall be in attendance at any interview.

5 **OVERALL PROJECT UNDERSTANDING / APPROACH:**

- 5.1 Organizing the Project: Describe your firm's overall DB plan for completing the project. Discuss your approach to reviewing the program and services to be provided during design phase and for managing construction. Within the parameters described in this RFP, how would you organize and monitor the work to ensure quality, function, timely completion and cost within or under budget? What will be done by your firm to guarantee the GMP will be achieved within the School District's budget as required?
- 5.2 Phasing and Packaging: Given the available project information, describe how your firm will develop phasing and bid packaging for the project.
- 5.3 Project Management: Describe how your firm will approach the project management and construction management aspects of this project. How will your firm ensure that the School District's needs are met?
- 5.4 Organizational Tools: Discuss your firm's approach to providing the successful DB services based on prior experience, including cost, schedule and quality

effectiveness. Include specific examples of actual products, such as estimates, progress reports, schedules, constructability reviews, forms, general conditions budgets, organizational structures, etc.

5.5 Problem Solving: Describe your approach to problem solving for this project. Describe the largest challenge your firm faced within the last five years in working on similar projects, and how you resolved that challenge.

6 **SCHEDULING APPROACH:** Describe how your firm will ensure the School District's schedule requirements are met. Specifically, how will your firm organize your work, staffing, and coordination of team members in order to ensure that all schedule milestones are achieved? How will your firm report progress and mitigate delays? Describe prior experience and approach with fast-track phased construction bid packages. What has been your recent experience on fast-track phased construction in terms of completion of bid packages?

7 **COST CONTROL:** Give a description of how your firm will manage the work to control costs and optimize savings during the pre-construction and construction phases.

8 **FEE:** Provide a proposal of fees and costs as follows:

8.1 State the total Construction Phase fee as a percentage of the cost of the work for services described in the RFP and attachments.

8.2 Provide a "Not to Exceed Cost" as described in the Design Phase for the services described in the RFP and attachments.

Please note: Estimates for fees and costs shall be accompanied with a detailed breakdown. This fee information, while a critical element of the evaluation/selection process, will also be used in the negotiation of the final agreement.

The fee criteria will be evaluated based on clarity of the cost breakdown, the cost itself, and what is included or excluded in the breakdown of cost.

9 **REFERENCES:** Provide at least three (3) references for projects of similar size and scope including client name, key contact's name, address, email, and phone number.

**ATTACHMENT A:
PREQUALIFICATION STATEMENT**

PROJECT TITLE: For Construction of Pre-Kindergarten Early Learning Center and School Based Health Clinic on the Rogue River School District Grounds
Design Build Contractor

PROJECT LOCATION: Rogue River, Oregon

Proposers must meet certain minimum Prequalification Criteria in order to be eligible to submit proposals. In the interest of expediting the contract award and reducing preparation expense to potential Proposers, the Rogue River School District will allow Proposers to self-certify that they meet the following pass/fail Prequalification Criteria and are therefore eligible to propose on this procurement:

Bonding Capacity: The Proposer must be capable of providing, for the full term of the project and one year after completion, a 100% Performance Bond and 100% Payment Bond for a project valued up to 100% of the construction costs, and including the preparation and completion of design and related personal services as agreed to in the final contract, estimated to be up to \$3,000,000 for this DB Contract.

Do you meet these criteria (Yes or No)?

Specialized Experience: The Proposer must have completed at least two projects of similar or greater scope, which have been contracted under either ORS rules and regulations or similar large public bodies in the Northwest United States (Alaska, Washington, Oregon, Idaho, Montana, Northern California) within the last five years.

Do you meet these criteria (Yes or No)?

Availability: The Proposer's anticipated work in terms of time and magnitude for the time period June 2023–October 2024 must accommodate this project, including availability of key personnel for this project.

Do you meet these criteria (Yes or No)?

Licenses: The Proposing firm and its subcontractors must be licensed to do business in the State of Oregon. This means that the firms must have current Oregon Construction Contractors Board registration.

Do you meet these criteria (Yes or No)?

If not, how do you propose conforming to this requirement?

Signature of authorized representative

Title of authorized representative

END OF DOCUMENT

ATTACHMENT B: STATEMENT OF ASSURANCES

PROJECT TITLE: FOR DESIGN-BUILD PROJECT FOR DESIGN AND CONSTRUCTION SERVICES FOR A PRE-KINDERGARTEN EARLY LEARNING CENTER AND SCHOOL BASED HEALTH CENTER

Design Build Contractor

LOCATION: Rogue River, Oregon

- 1) The undersigned attests that he/she has the authority and/or responsibility to represent the organization submitting this Proposal in all phases of the Request for Proposal (RFP) process and in this Statement of Assurances.
- 2) The Proposer understands that this RFP is considered an integral part of the RFP process, and RFP terms shall be binding on the Proposer. Failure of the successful Proposer to accept these obligations in a Contract as authorized by the Statement of Assurances may result in cancellation of an award.
- 3) The Proposer accepts all terms and conditions contained in this RFP and their Proposal Response, and any modifications will be made part of the contract documents. It is understood that all proposals become part of the public file on this matter, unless limited and specific information is identified and exempt under Oregon Public Records Law.
- 4) The undersigned understands that any false or substantially incorrect statement in the RFP or Statement of Assurances may disqualify this Proposal from further consideration or any further Contract.
- 5) The Proposer understands that in responding to the RFP, the Proposer agrees to comply with all applicable federal, state, and local laws, regulations and requirements related to the RFP and performance of any resulting Contract, including but not limited to those referenced in this RFP.
- 6) The undersigned acknowledges receipt of and agrees to be bound by addenda numbered _____ through _____, inclusive and any additional addenda issued until Intent of Award has been posted.
- 7) The Proposer certifies that the Proposer can meet the insurance requirements outlined in the proposed Contract (Insurance Coverage Required) and that the Proposer understands that such coverage must be kept active during the entire term of the Contract, if selected. Proposer shall commence no work under this contract until the Proposer and every subcontractor has a public works bond filed with the Construction Contractors Board in accordance with ORS 279C.830 and all other bonding and insurance requirements have been met and a Notice to Proceed has been issued.
- 8) Non-Collusion: The undersigned certifies that:
 - a) This bid has been arrived at independently and is being submitted without collusion with any other vendor of materials, supplies, equipment or services to limit independent bidding or competition, and
 - b) The contents of this bid have not been communicated by the undersigned or its employees or agents to any person not an employee or agent of the undersigned or its surety on any bond furnished with the bid, and will not be communicated to such person prior to the official opening of the bid.
- 9) The Proposer is a resident Proposer _____ or nonresident Proposer _____ of the State of Oregon as defined in ORS 279A.120.
- 10) The Undersigned certifies that they are in compliance with the requirements for construction contractors or landscape contractors and are registered and bonded with the State of Oregon Construction Contractors Board as follows:

(a) Registration NO. _____ Expiration Date: _____
- 11) The Undersigned agrees, if awarded a contract, that they will comply with the provisions of **ORS 279C.800 – 279C.870** or **Davis-Bacon 40 USC 3141 et seq** as applicable, pertaining to the payment of the prevailing wage rates. By signing below the Undersigned agrees that he/she affirmatively acknowledges the following:

(a) Compliance with ORS 279C.838 and 40 USC 3141 et seq (if both state and federal Davis-Bacon applies. If the state rate is higher, the contractor and every subcontractor shall pay at least the state rate); or compliance with ORS 279C.840 (Davis-Bacon does not apply, and only the state prevailing rate of wage is to be paid); or compliance with 40 USC 3141 et seq (only Davis-Bacon rate of wage applies, or is the highest one for all of the job categories).

12) In the event the Proposer is awarded the contract and fails to complete the work within the time frame specified, including extensions granted, liquidated damages shall be paid to the School District as outlined in the General Conditions of the attached Sample Contract.

13) By signing this page, Proposer hereby certifies that s/he has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts, and Proposer hereby certifies that to the best of Proposer's knowledge, Proposer is in compliance with all Oregon Tax laws described in ORS 305.380(4).

I, the undersigned, have read and thoroughly understand the requirements, special provisions, Proposal Instructions and all other Conditions of the RFP issued by the Rogue River School District FOR DESIGN-BUILD PROJECT FOR DESIGN AND CONSTRUCTION SERVICES FOR A PRE-KINDERGARTEN EARLY LEARNING CENTER AND SCHOOL BASED HEALTH CENTER

I have read and understand the entire contract provisions included in the RFP and agree to abide by and fulfill the requirements thereof if awarded the Contract as a result of this RFP.

Proposer's Name: _____

Address: _____

Phone: _____ **Fax:** _____

Authorized Representative's Signature: _____

Type or Print Name: _____

Representative's Title: _____

Date: _____

Federal Business I.D. No. _____

NOTARY:

Subscribed and sworn before me this _____ day of _____, 20____.

_____ Notary Public for the State of _____.

My commission expires _____.

END OF DOCUMENT

**ATTACHMENT B-1:
NON-COLLUSION AFFIDAVIT**

PROJECT TITLE: For Construction of Pre-Kindergarten Early Learning Center and School Based Health Clinic on the Rogue River School District Grounds

Design Build Contractor

LOCATION: Rogue River, Oregon

STATE OF _____)

)

COUNTY OF _____)

I, _____, after first being duly sworn, depose and say that in submitting the Proposal to which this affidavit is attached, I certify that the Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation; that the Proposal is genuine and not collusive or a sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from Proposing; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Price Proposal or any component of the Price Proposal, of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against the District of anyone interested in the Proposed Contract; that all statements contained in the Proposal are true; and, further, that the Proposer has not, directly or indirectly, submitted its Price Proposal or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, Proposal depository or any member or agent thereof to effectuate a collusive or sham Proposal.

I further state that I sign this affidavit as a (sole proprietor, general partner, joint venture partner, or officer of the Proposing corporation), and that I am so authorized to sign, and I have fully informed myself regarding the accuracy of the statements made herein.

Dated this _____ day of _____, 20____

Signature _____

(Designate Capacity)

Subscribed and sworn before me this _____ day of _____, 20____.

_____ Notary Public for the State of _____.

[SEAL] My commission expires _____.

[Duplicate or modify this form as necessary so that it accurately describes the Entity making the Proposal and so that it is signed on behalf of all general partners or joint venture partners of the Proposer.]

END OF DOCUMENT

**ATTACHMENT C:
DEMONSTRATED DRUG TESTING PROGRAM**

PROJECT TITLE: For Construction of Pre-Kindergarten Early Learning Center and School Based Health Clinic on the Rogue River School District Grounds

Design Build Contractor

PROJECT LOCATION: Rogue River, Oregon

ORS 279C.505 requires that all public contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. Proposer is therefore required to certify that Proposer has an employee drug-testing program in place that applies to all employees, and will maintain a drug-testing program at all times during the performance of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

Proposer states that the Proposer:

CHECK ONE: () Does () Does not Comply with the following:

Proposer has a drug-testing program in place and in compliance with ORS 279C.505(2) which applies to all employees. Proposer shall maintain a drug-testing program at all times during the performance of the Contract awarded. Failure to maintain such a program shall constitute a material breach of contract.

I, the undersigned, a duly authorized representative of the Proposer, hereby certify that the answers to the foregoing questions and all statements herein contained are true and correct.

Signature of the authorized representative

Printed Name: _____

Firm: _____

Representative's Title or Position: _____

Telephone No: _____

END OF DOCUMENT

**ATTACHMENT D:
SAMPLE DB CONTRACT**

The remainder of this page is intentionally blank.

**ROGUE RIVER SCHOOL DISTRICT
SAMPLE DB CONTRACT
(Design Build Contractor)**

THE CONTRACT IS BETWEEN:

OWNER: Rogue River School District #35

And

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR
(referred to herein as the "DB"):** Construction Company, Inc.

The Project is:

The Engineer is:

**The Owner's Authorized
Representative is:**

The Owner's Target GMP Range is:

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Exhibit A GMP Amendment to DB Contract
Exhibit B Construction Co. Inc. Proposal – Response to RFP No. 18-03-16
Exhibit C Rogue River School District #35 -- RFP No. 18-03-16

The Owner and DB agree as set forth below:

THIS Design Build CONTRACT (the “**DB Contract**”) is made and entered into by and between Rogue River School District #35 (“**School District**” or “**Owner**”) and Construction Company, Inc. (the “**DB**”) (Collectively, the “**Parties**”) as of the Effective Date of the Contract.

RECITALS

WHEREAS, the School District requires the services of a Design Build Contractor (DB) for the Rogue for the construction of pre-kindergarten early learning center and school based health clinic on the rogue river school district grounds (the project). The School District will use the DB Contract delivery approach for the construction of this Project. The School District will enter into this DB Contract with the DB firm to provide Pre-Construction Phase Services only, with provisions for adding Construction Phase Services through an Early Work Amendment, and through later acceptance of a Guaranteed Maximum Price (GMP) by subsequent GMP Amendment. Alternatively, to these Amendments, the School District may choose not to continue the DB Contract beyond the completion of the Design Phase, Pre-Construction Phase Services or any Early Work, instead soliciting bids from qualified contractors for the construction of the Project, and otherwise reserving all rights to terminate the Contract for public convenience; and

WHEREAS, the School District requires a contractor competent to perform all Work necessary to complete the Project in accordance with the terms and conditions of the Contract and able to do so within the Contract Price and Time allotted herein; and

WHEREAS, the DB asserts that it is competent and prepared to perform all Work necessary to complete the Project in accordance with the terms and conditions of the Contract, and that it is able to do so within the Contract Price and Time allotted herein.

ARTICLE 1
GENERAL CONTRACT PROVISIONS

- 1.1 **INCORPORATION OF RECITALS**: The foregoing Recitals, which are incorporated herein and made a part hereof for all purposes as if fully set forth, constitute additional promises, representations and warranties of the Parties.
- 1.2 **APPLICABLE VERSION OF LAW OR STANDARD**: All Work shall be performed in accordance with the Law and Standards then in effect, unless otherwise specified in the Contract Document.

ARTICLE 2
DEFINITIONS

Except as expressly defined or modified below or elsewhere in this Contract, all capitalized terms shall have the following meanings. The terms below are expressly defined as follows:

- 2.1 **AFFILIATE**: Affiliate shall mean any subsidiary of DB, and any other entity in which DB has a financial interest or which has a financial interest in DB (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls DB).
- 2.2 **ALLOWANCES**: Allowances shall mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.
- 2.3 **AMENDMENT**: Amendment shall mean a written modification of the Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by DB

and School District's Authorized Representative.

- 2.4 BUSINESS DAYS:** Business Days shall mean every day except Saturday, Sunday, and legal holidays recognized for employees of the State of Oregon.
- 2.5 CHANGE ORDER:** Change Order shall mean a written modification of the Contract, identified as a Change Order and executed by DB and School District's Authorized Representative.
- 2.6 DB FIELD WORK:** DB Field Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Article 12.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for "pick-up" or GC Work under industry standards; provided, however, that (i) DB has reasonably determined that doing such portion of the Work itself is in the best interests of School District, (ii) such Work is identified as DB Field Work in monthly billings and (iii) DB receives prior approval of School District's Authorized Representative as to the scope of such DB Field Work.
- 2.7 Design Phase:** The Architectural Basic Services consist of the usual and customary structural, mechanical, and electrical engineering services. The DB shall manage the Architect's services and the services of its consultants and subcontractors, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the School District. The DB shall coordinate its services with those provided by the School District and the School District's consultants. The DB shall be entitled to rely on the services and information furnished by the School District and the School District's consultants unless the DB has actual knowledge of, or through the course of its review identifies, any inaccuracies or incomplete aspects of the School District-furnished services and information. The DB shall provide prompt written notice to the School District if the DB becomes aware of any errors, omissions, or inconsistencies in such services or information.

Schematic Design Phase Services

During the schematic design phase, the DB will review the program and other information furnished by the School District and School Districts Representatives. The DB shall review laws, codes, and regulations applicable to the DB's services and shall prepare designs and documents accordingly. The DB shall prepare a preliminary evaluation of the School District's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and any other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The DB shall notify the School District of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. The DB shall present its preliminary evaluation to the School District and shall discuss with the School District alternative approaches to design and construction of the Project. The DB shall prepare and present to the School District a preliminary design illustrating the scale and relationship of the Project components. The DB will discuss the preliminary design with the School District and modify it based on comments from the School District and ultimately receive the District's approval of the preliminary design. Based on the School District's approval of the preliminary design, the DB shall prepare Schematic Design Documents for the School District's review and approval. The Schematic Design Documents shall consist of drawings and other documents, including a site plan if appropriate, and preliminary building plans, sections, and elevations. They may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

The DB shall, in consultation with the School District or School District's Representatives, consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on performance, durability, and aesthetic requirements, in developing a design that is consistent with the School District's schedule and

budget for the Cost of the Work. The DB shall also consider the value of alternative materials, building systems, and equipment, together with other considerations based on performance, durability, and aesthetic requirements, in developing a design for the Project that is consistent with the School District's schedule and budget for the Cost of the Work.

The DB shall present the draft Schematic Design Documents to the School District for their review. The DB acknowledges that the School District will seek input from members of the public as part of the School District's review of the draft Schematic Design Documents and that such public input may necessitate changes to the draft documents. The DB will modify the draft Schematic Design Documents, as necessary, based upon the School District's review and ultimately receive the School District's approval of the Schematic Design Documents. Based on the School District's approval of the Schematic Design Documents, and on the School District's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the DB shall prepare Design Development Documents with input from the School District. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels. The DB shall submit the draft Design Development Documents to the School District for their review. The DB will modify the draft Design Development Documents based on the School District's review and advise the School District of any adjustments to the estimate of the Cost of the Work. Prior to beginning to prepare Construction Documents, the DB shall receive the School District's approval of the Design Development Documents.

If the School District approves the Design Development Documents, and authorizes any necessary adjustments in the Project requirements and the budget for the Cost of the Work, the DB shall prepare Construction Documents with input from the School District. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work.

The DB shall incorporate into the Construction Documents the requirements of governmental authorities having jurisdiction over the Project and the requirements of affected utilities, such that the Construction Documents comply with applicable laws, ordinances, and regulations, and are sufficient to secure permits necessary to complete construction.

- 2.8** **CM SERVICES:** CM Services shall have the meaning given in Article 4.3 below.
- 2.9** **CONSTRUCTION DOCUMENTS:** Construction Documents shall have the meaning given in the Professional Services Agreement with the Engineer of Record for this Project.
- 2.10** **CONSTRUCTION PHASE:** The Construction Phase shall mean the period commencing on the School District's execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by School District of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.
- 2.11** **CONSTRUCTION PHASE SERVICES:** Construction Phase Services shall mean all of the Work other than the Preconstruction Phase Services.
- 2.12** **CONTRACT DOCUMENTS:** The Contract Documents shall mean the writings and drawings embodying the legally binding obligations between School District and DB for completion of the Work, as supplemented by Article 3.1 below.
- 2.13** **DESIGN DEVELOPMENT DOCUMENTS:** Design Development Documents shall have the meaning given in the Professional Services Agreement with the Engineer of Record for this Project.

- 2.14 **EARLY WORK:** Early Work shall mean Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the Project.
- 2.15 **EARLY WORK AMENDMENT:** Early Work Amendment shall mean an Amendment to the Contract executed by and between the parties to authorize Early Work.
- 2.16 **FIXED COST FOR GENERAL CONDITIONS WORK:** Fixed Cost for General Conditions Work or GC Work shall mean that fixed sum identified in Article 9.8.
- 2.17 **GENERAL CONDITIONS WORK:** General Conditions Work (“GC Work”) shall mean (i) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work, and (ii) any other specific categories of Work approved in writing by the School District’s Authorized Representative as forming a part of the GC Work.
- 2.18 **GUARANTEED MAXIMUM PRICE (GMP):** GMP shall mean the Guaranteed Maximum Price of the Contract, as stated in dollars within the GMP Amendment, as determined in accordance with Article 7, and as it may be adjusted from time to time pursuant to the provisions of the Contract.
- 2.19 **GMP AMENDMENT:** GMP Amendment shall mean an Amendment to the Contract, issued in the form of Exhibit A and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.
- 2.20 **GMP SUPPORTING DOCUMENTS:** GMP Supporting Documents shall mean the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.
- 2.21 **PRECONSTRUCTION PHASE:** The Preconstruction Phase shall mean the period commencing on the date of this DB Contract and ending upon commencement of the Construction Phase; provided that if the School District and DB agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- 2.22 **PRECONSTRUCTION PHASE SERVICES:** Preconstruction Phase Services shall mean all services described in Article 4.1, and any similar services described in the Request for Proposals, including such similar services as are described in the DB’s RFP Response to the extent they are accepted by School District, but excluding any Early Work. Early Work shall be considered part of Construction Phase Services.
- 2.23 **SCHEMATIC DESIGN DOCUMENTS:** Schematic Design Documents shall have the meaning given in the Professional Services Agreement with the Engineer of Record for this Project.
- 2.24 **SCOPE CHANGE:** Scope Change shall mean only (i) changed site conditions not reasonably inferable from information available to DB at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the School District under the Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to School District of the Allowance items exceeds the total amount of the Allowances).

ARTICLE 3 **CONTRACT DOCUMENTS**

3.1 CONTRACT DOCUMENTS: For valuable consideration as stated below, the School District and the DB agree to the terms of the contract that are set forth in the Contract Documents. For purposes of this Project, the Contract Document shall mean this DB Contract. The DB Contract shall include all exhibits attached hereto, which by this reference are incorporated herein. Exhibits incorporated into this DB Contract include the following:

Exhibit A – GMP Amendment to DB Contract

Exhibit B – Construction Co. Inc. Proposal – Response to RFP No. 23-24 #2

3.2 EFFECTIVE DATE: This DB Contract (hereafter the "Contract") shall become effective on the first date on which every party has signed this Contract and School District has received all necessary approvals.

3.3 THE CONTRACT: ORDER OF PRECEDENCE: This Contract, together with the other Contract Documents, form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence shall be as follows if there are inconsistent or conflicting terms among the Contract Documents:

1. Contract Amendments and Change Orders;
2. The DB Contract Terms and Conditions;
3. The Plans and Specifications;
3. The Request for Proposal (RFP) and any addenda thereto;
4. The DB's RFP Response;
5. Contract Drawings.

ARTICLE 4 **WORK OF THE CONTRACT**

4.1 PRECONSTRUCTION PHASE SERVICES: The DB agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Proposals. Commencement of the Construction Phase shall not excuse DB from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include CM Services performed during the Preconstruction Phase.

4.1.1 The DB shall provide a preliminary evaluation of the School District's program and budget requirements, each in terms of the other.

4.1.2 The DB shall provide the following services relating to design and preconstruction tasks:

- (a) The DB shall consult with, advise, assist, and provide recommendations to the School District and DB's design team on all aspects of the planning and design of the Work.
- (b) The DB shall jointly schedule and attend regular meetings with the Engineer of Record and School District's Authorized Representative. The DB shall consult with the School District and School District's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
- (c) The DB shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
- (d) The DB shall review in-progress design documents, including the documents

generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice on construction feasibility, alternative materials, and availability. DB shall review these completed Schematic Development Documents,

Design Development Documents, and Construction Documents and timely suggest modifications to improve completeness and clarity.

4.1.3 The DB shall provide the following services related to the Project schedule:

- (a) The DB shall prepare, and periodically update, a preliminary Project schedule for the School District's Authorized Representative's review and the School District's Authorized Representative's approval.
- (b) The DB shall coordinate and integrate the preliminary Project schedule with the services and activities of the School District and DB. As design proceeds, DB shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and School District's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without School District's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the DB shall make appropriate recommendations to the School District's Authorized Representative.

4.1.4 The DB shall make recommendations to the School District's Authorized Representative regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.

4.1.5 The DB shall provide the following services relating to cost estimating:

- (a) The DB shall prepare, for the review of the School District's Authorized Representative and approval of the School District, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- (b) When Schematic Design Documents have been prepared by and approved by the School District, the DB shall prepare for the review of the School District's Authorized Representative and approval of the School District, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the DB shall update and refine this estimate at appropriate intervals agreed to by the School District, and School District's Authorized Representative and DB.
- (c) When Design Development Documents have been prepared by the Engineer of Record and approved by the School District, the DB shall prepare a detailed estimate with supporting data for review by the School District's Authorized Representative and approval by the School District. During the preparation of the Construction Documents, the DB shall update and refine this estimate at appropriate intervals agreed to by the School District, School District's Authorized Representative and DB.
- (d) If any estimate submitted to the School District exceeds previously approved estimates or the School District's budget, the DB shall make appropriate recommendations to the School District and School District's Authorized Representative.

- (e) DB shall notify the School District if any construction cost estimate appears to be exceeding the construction budget.
 - (f) The DB otherwise shall work with School District to develop a GMP within the Target GMP Range and within the School District's schedule.
- 4.1.6 The DB shall perform the following services relating to Subcontractors and suppliers:
- (a) The DB shall seek to develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to the School District's Authorized Representative and for their information a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the School District and School District's Authorized Representative to investigate the qualifications of proposed Subcontractors and suppliers, nor shall it waive the right of the School District later to object to or reject any proposed Subcontractor, supplier, or method of procurement.
 - (b) The DB shall provide input to the School District and the design team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. DB shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. DB shall advise School District on subcontracting opportunities for minority/women/ESB firms.
- 4.1.7 The DB shall recommend to the School District's Authorized Representative a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the DB upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the School District's Authorized Representative. The DB shall expedite the delivery of long-lead time items.
- 4.1.8 The DB shall work with the School District in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods.
- 4.1.9 The DB shall work with the School District and the design team to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the School District's analysis and application for energy related incentive programs offered by local utilities and the Oregon Department of Energy.

4.2 **CONSTRUCTION PHASE SERVICES:**

- 4.2.1 Upon execution of an Early Work Amendment or GMP Amendment, the DB shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to School District a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment). Construction Phase Services shall include CM Services performed during the Construction Phase.
- 4.2.2 Notwithstanding any other references to Construction Phase Services in this DB Contract, the Contract shall include Preconstruction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.
- 4.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the GMP, without exceeding a not-to-exceed budget, a maximum not-to-exceed price, or a fixed price ("Early Work Price") to be stated in such Amendment, with such Amendment including all necessary approvals where required. If the Early Work Price is a not-to-exceed budget, then DB shall be obligated to perform the Early Work only to the extent that the Cost of Work therefor, together with the DB Fee, does not exceed the Early Work Price; however, if DB performs Early Work with a maximum not-to-exceed price or fixed price, and incurs cost in excess of that maximum not-to-exceed price or fixed price, respectively, the DB shall complete the Early Work and pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the DB shall diligently continue to work toward development of a GMP Amendment acceptable to School District, which shall incorporate the Early Work Amendments.
- 4.2.4 Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, DB shall provide to School District a full performance bond and a payment security bond in the amount of the GMP. If an Early Work Amendment is executed, DB shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. DB shall provide to School District additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, DB shall provide to School District an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

4.3 **CONSTRUCTION MANAGEMENT (CM) SERVICES:** Throughout the Preconstruction Phase and Construction Phase of the Project, the DB shall provide CM Services upon execution of the GMP amendment, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the School District, School District's Authorized Representative, and other designated Project consultants (the "Construction Principals"). CM Services shall include, but are not limited to:

- 4.3.1 Providing all Preconstruction Phase Services described above;

- 4.3.2 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of the Construction Principals throughout the Construction Phase to all Construction Principals;
- 4.3.3 Continuously monitoring the Project schedule and making adjustments to ensure completion of the Project in the most expeditious manner possible;
- 4.3.4 Working with the School District and School District's Authorized Representative to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the School District with the highest quality Project within the budget, GMP and schedule;
- 4.3.5 Providing Value Engineering ("VE") services ongoing throughout the Project; DB shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to School District for its approval. DB shall actively participate in a formal VE study anticipated to be held at the end of the Design Development phase. DB acknowledges that VE services are intended to improve the value received by School District with respect to cost reduction or life cycle of the Project;
- 4.3.6 Holding and conducting periodic meetings with the School District and the School Districts Representatives to coordinate, update and ensure progress of the Work;
- 4.3.7 Submitting monthly written report(s) to the School District's Authorized Representative; Each report shall include, but shall not be limited to, Project updates including (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress; (v) changes in the work; and (vi) other information as determined to be appropriate by the School District. Oral or written updates shall be provided to the School District as deemed appropriate by the DB or as requested by the School District;
- 4.3.8 Maintaining a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the School District may reasonably require. The log shall be available to the School District and School District Representatives on request;
- 4.3.9 Developing and implementing a system of cost control for the Work acceptable to School District's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The DB shall identify variances between actual and estimated costs and report the variances to the School District and School Districts Representatives at regular intervals;
- 4.3.10 Cooperating with any and all consultants hired by School District, including engineering and abatement firms, for the successful completion of the project;
- 4.3.11 At School District's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;
- 4.3.12 Assisting School District with start-up of the Project. Such start-up may occur in phases due to phased occupancy;

- 4.3.13 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;
- 4.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

ARTICLE 5
RELATIONSHIP AND ROLES OF THE PARTIES

- 5.1 **INDEPENDENT CONTRACTOR:** The DB is an independent contractor and not an officer, employee, or agent of School District as those terms are used in ORS 30.265.
- 5.2 **PERFORMANCE OF WORK:** The DB covenants with School District to cooperate and School District's Authorized Representative and utilize the DB's professional skill, efforts and judgment in furthering the interests of School District; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of School District.
- 5.3 **CONSULTANTS:** The School District retains the right to bring in outside consultants and project managers who will help advise the school district throughout the project.
- 5.4 **FORMS AND PROCEDURES:** The School District has developed or may develop procedures and forms for the administration and tracking of the Contract. The DB agrees to abide by those procedures and use those forms.
- 5.5 **DB'S PROJECT STAFF:** The DB's Project staff shall consist of the following personnel:
 - 5.5.1 Project Principal and Project Manager: **PROJECT PRINCIPAL** shall be the DB's Project Principal and **PROJECT MANAGER** shall be the DB's Project Manager and one or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of DB and participate in all meetings throughout the Project term unless otherwise directed by School District. The DB represents that both the Project Principal and Project Manager have authority to execute Change Orders and Contract Amendments on behalf of the DB.
 - 5.5.2 Job Superintendent and Safety Director: If Construction Phase Services are requested and accepted by School District, **SUPERINTENDENT** shall be the DB's on-site job superintendent throughout the Project term and **SAFETY OFFICER** shall create a site specific safety plan for the Project.
- 5.6 **KEY PERSONNEL:** The DB's personnel identified in Article 5.5, shall be considered Key Personnel and shall not be replaced during the Project without the written permission of School District, which shall not be unreasonably withheld. If the DB intends to substitute personnel, a request must be given to School District at least 30 Days (or such shorter period as permitted by School District) prior to the intended time of substitution. When replacements have been approved by School District, the DB shall provide a transition period of at least 10 Business Days during which the original and replacement personnel shall be working on the Project

concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of School District.

- 5.7 **OWNER'S REPRESENTATIVE AND CONTACT INFORMATION:** The following individual is the School District's representative and Project Manager for this Project:

Name:

Address:

E-mail Address:

Phone / Fax Numbers:

ARTICLE 6 DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

- 6.1 **NOTICE TO PROCEED:** If Construction Phase Services are added to the Contract as set forth in Article 4.2, then a notice to proceed will be issued by School District to begin the designated or full Construction Phase Services ("Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued on or about **Month X, 2024** (assumes construction begins before school is out).

6.1.1 The DB shall not allow any Subcontractor to enter onto, or move Materials, Equipment or Workers onto, the Project Site until the DB has confirmed that the Subcontractor has filed the required Public Works Bond with the Construction Contractors Board.

6.1.2 Construction Phase Services may be added to the Contract as set forth in Article 4.2.

6.1.3 A separate Notice to Proceed (NTP) shall be issued by the School District for any and every Early Work Amendment and the GMP Amendment.

- 6.2 **COMPLETION OF PROJECT:** The DB shall achieve Substantial Completion of the entire Work not later than **Month X, 2024**, and shall achieve Final Completion not later than 30 Days after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion.

(Complete all Work to be done under the Contract GMP Amendment, except for plan establishment and punch list items.)

- 6.3 **TIME IS OF THE ESSENCE:** All time limits stated in the Contract Documents are of the essence.

- 6.4 **TIME EXTENSIONS:** The School District and the DB agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. The DB agrees to make every effort to avoid delays and recover "lost" time in a manner acceptable to the School District.

- 6.5 **LIQUIDATED DAMAGES:** The DB acknowledges that the School District will sustain damages as a result of the DB's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to, delays in completion, use of the Project, costs associated with Contract administration and use of temporary facilities, extended overhead or management costs, extra or extended financing costs, extra or extended services or other design professionals, and claims

by other contractors. The DB and the School District acknowledge that the actual amount of damages would be difficult to determine accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:

- 6.5.1 Liquidated Damages shall equal (to be determined by the School District and DB during the GMP Amendment) for each Calendar Day that Substantial Completion exceeds the required date of Substantial Completion as defined in Article 6.2.
- 6.5.2 The DB agrees to pay to the School District the liquidated damage sums set forth above for each Calendar Day of delay or any fraction thereof and further agrees that School District may deduct such sums from payments the School District otherwise owes to DB under the Contract. If such deduction does not result in payment to School District of the assessed liquidated damages in full, DB shall promptly pay any and all remaining sums due to the School District upon demand.

**ARTICLE 7
FEES, CONTRACT SUM AND GMP**

7.1 FEES: CONTRACT SUM: GMP: School District shall pay DB the Preconstruction Fee described in Article 7.2. In addition, for each Early Work Amendment executed by DB and School District, School District shall pay DB, as payment for the Early Work, an amount equal to the sum of the DB Fee attributable to the Early Work, and the actual cost of all Early Work completed and accepted by School District, but not exceeding the Early Work Price.

If a GMP Amendment is executed, School District shall pay DB, as payment for the Work, the "Contract Sum" which shall equal the sum of the Preconstruction Fee, the DB Fee, and the actual cost of the Work including any Early Work, but not exceeding the GMP.

The GMP shall be determined in accordance with the formula set forth below and as described in Article 7.3. The "Cost of the Work" is defined in Article 9. Costs in excess of the GMP shall be paid by the DB without reimbursement by School District. Changes to the GMP shall only be authorized by Amendment or Change Order.

Preconstruction Fee	+	DB Fee	+	Estimated Cost of the Work (Est. COW) = GMP*
Cost Reimbursement		_____ % of Est. COW		Includes DB's Contingency and the Fixed Cost for GC Work
\$_____Maximum		Becomes Lump Sum		

*Formula assumes no Early Work is performed.

7.2 PRECONSTRUCTION FEE: The Preconstruction Fee shall be payable to DB on a cost reimbursement basis up to a maximum sum of **\$XX**, which shall cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services, as described in Article 4. If DB's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, DB shall pay such additional cost without reimbursement. DB shall not be entitled to any DB Fee upon the Preconstruction Fee. The School District shall pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference; provided that School District may direct instead that any unapplied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to DB with respect to Preconstruction Services performed after execution of the GMP Amendment.

7.3 **ESTABLISHMENT OF DB FEE: ADJUSTMENTS TO DB FEE:**

- 7.3.1 The "DB Fee" shall be a fixed dollar lump sum to be identified in the GMP Amendment, and shall be calculated as **X.XX%** of the Estimated Cost of the Work at the time of establishment of the GMP. In making such calculation, the Estimated Cost of the Work shall exclude the Preconstruction Fee, the DB Fee itself, and any other cost or charge which this DB Contract states is not to be included in calculating the DB Fee, but shall include Allowances, selected alternates, Fixed Cost for GC Work, and reasonable DB contingencies as designated in the GMP Supporting Documents. The DB Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. School District shall pay the DB Fee ratably with each application for payment during the Construction Phase. The DB will provide Lien Waivers from the DB and any applicable subcontractor covering the work performed in connection with each application of payments. In the case of Early Work, the DB Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such DB Fee payments shall be credited against the DB Fee fixed therein.
- 7.3.2 Unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the DB Fee then in effect by multiplying the percentage shown in Article 7.3.1 by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the DB Fee shall be limited to the total DB Fee multiplied by the percentage of Work completed and accepted at the time of termination. The DB Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

7.4 **DETERMINATION OF PRICING OF WORK PACKAGES:**

- 7.4.1 **Collaboration:** The DB shall collaborate with the School District in the development of Work Packages, including those for any Early Work Amendments(s) and the GMP Amendment. Scope of the Work and value of each Work Package shall be determined through collaboration with the School District, and agreed to by the School District prior to execution of any Amendment.
- 7.4.2 **Bid (Pay) Items:** The DB shall propose Pay Items and corresponding estimated quantities for all Work items included in a Work Package. Once the School District has agreed to the Pay Items and estimated quantities for all items of Work, the DB shall propose a fixed lump sum, fixed unit cost, or estimated actual cost reimbursable amount for each Pay Item. The School District and the DB shall meet to review all proposed Pay Items and all necessary supporting data, including but not limited to, the following:
- (a) Cost build-ups: All open-book cost build-ups including Subcontractor quotes and estimates inclusive of labor, material, equipment, overhead, general conditions and fee.
 - (b) Project Bid Item List: The DB shall prepare and submit along with its cost estimate a complete Bid Item List for each Work Package.
 - (c) Cost Estimate Format: The DB shall submit a Microsoft Excel spreadsheet, with all construction cost bid items broken out in a format agreed to by the Project Team. The DB's estimates shall be in the agreed format to facilitate quantity and unit price reconciliation.

- (d) Detailed Back-up: The DB's cost estimate shall be supported by quantity and material take-off calculations, and detailed cost build-ups for each proposed bid item as either a unit cost or lump sum item. The detailed cost build-up, in addition to being in the format agreed upon between the parties, shall include labor, materials, equipment type and rates, overhead and indirect costs not in the DB Fee, and Construction General Conditions.
- (e) Construction General Conditions: The DB shall provide a detailed itemization of all anticipated Construction General Conditions costs with back-up to verify actual cost of each of these items, or estimated cost where actual cost is not available.
- (f) Assumptions: The DB shall provide a list of clarifications and assumptions it made in the establishment of the proposed unit costs, including site conditions, access, staging, construction means and methods, and identification of Work to be subcontracted or self-performed by the DB in accordance with its proposed Contracting and Diversity Plan.
- (g) Schedule Milestone: The DB shall propose key schedule milestones including any Interim Completion Date(s) applicable to the Work Packages and the Contract Completion Date for the GMP amendment.
- (h) Risk: The DB shall identify proposed costs related to construction risks, agreed upon between the School District and DB.
- (i) Pay Item Measurement: The DB shall propose how each Pay Item will be measured and reimbursed as 1) a fixed lump sum amount, or 2) a fixed unit price amount with an estimated quantity independently taken off by the DB, or 3) an actual cost reimbursable amount, or 4) an estimated allowance or provisional sum amount pending later bidding or further scope definition.

7.4.3 **Good Faith Negotiations:** The School District and DB shall negotiate the fixed lump amounts, estimated quantities, fixed unit prices, estimated cost reimbursable amounts, and all other aspects of any Work Package in good faith and shall establish a set of assumptions upon which all Work and unit prices are based.

7.4.4 **Amendment Pricing:** Once all components of a Work Package are agreed upon by the School District and DB, all Pay Item total costs (the Pay Item estimated quantity multiplied by the unit price) shall be rolled into one total amount, which becomes the Cost of the Work for the Work Package. The DB Fee shall then be applied by multiplying the percentage stated by the Cost of the Work for the Work Package. The DB Fee then becomes a fixed amount for that Work Package, subject to adjustment by Change Order in accordance with Article 8. The estimated actual reimbursable costs for any applicable bonds and insurance shall be included. The following formula outlines the procedure:

$$\text{Cost of the Work} + \text{DB Fee} + \text{Bonds \& Insurance} = \text{Early Work Price or GMP}$$

7.5 **DETERMINATION OF GMP:**

7.5.1 **Preliminary, Updated and Final GMP Milestones:** All provisions of Article 7 apply to the determination for the GMP. The DB shall deliver to the School District a proposed GMP and GMP Supporting Documents at the following milestones:

- (a) Milestone #1 – **Month X, 2024:** Preliminary GMP @ 75% Construction Documents with assumed risk strategy and assumptions;
- (b) Milestone #2 – **Month X, 2024:** Final, Firm GMP @ 100% Construction Documents, i.e., Approved Permit Level Drawings.

7.5.2 **Risk/Contingency Allowance:** The parties may agree to include within the GMP a risk/contingency allowance for the estimated cost of certain risk/contingency items. If the parties agree that the GMP will include a risk/contingency allowance, they will set forth their agreement in the GMP Amendment, including but not limited to their agreement on the amount and conditions under which the DB may use the risk/contingency allowance. These are amounts for risk related to Pay Items that are not included in the Cost of the Work.

- (a) **Risk Management Plan:** Certain risk cost items may be identified in the risk management plan, that the parties agree to carry within the GMP, but not price as part of the Cost of the Work when the Amendment for certain construction work is executed.
- (b) **Escalation/De-Escalation and Risk of Changes:** The parties may agree to identify and carry contingency to reflect potential escalation of material and commodity prices during the course of construction, as well as estimated risk costs for changes and differing site conditions.
- (c) **Development of Plans and Specifications:** If the Plans and Specifications are not developed to 100% Final Design at the time when the GMP deliverables are prepared, the DB shall include in the GMP deliverables a contingency amount to reflect costs for construction of Final Design details consistent with the Contract Documents on which the GMP deliverable is based and reasonably inferable therefrom. Contingency costs for such final design development is not intended to include changes in Work scope, kinds and quality of Materials or Equipment.
- (d) **Bid Risk:** For scopes of Work that remain to be bid by Subcontractors, the parties may agree to identify a bid risk contingency amount.

7.5.3 **GMP Supporting Documents:** The DB shall include with each of its GMP proposals the following “GMP Supporting Documents”:

- (a) A list of the Plans and Specifications, including all Addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal;
- (b) A list of the clarifications and assumptions made by the DB in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications;
- (c) Risk Management Plan;
- (d) Contracting and Diversity Plan;
- (e) Conduct of Construction Plan;
- (f) Baseline Schedule;
- (g) Site specific work plans related to each Work Package;
- (h) The proposed Cost of the Work including detailed cost breakdown and build-up of all Pay Items for School District open-book review, with all costs organized by

Pay Items and Early Work Packages. Cost breakdown of Pay Items unit prices shall show estimated labor, material, equipment, general conditions, quantities, and overhead costs. Estimated quantities and unit prices shall be rolled into a total lump sum amount.

- (i) The proposed GMP shall then be established using the formula set forth in Article 7.1, and shall include the Cost of the Work, the DB Fee (based on a percentage of the Cost of the Work, which shall become a fixed amount subject to adjustment by Change Order and in accordance with Article 8), and the reimbursable bond and insurance costs; and;
- (j) The Interim Contract Completion Date(s) and Contract Completion Date upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which those dates are based.

7.5.4 **GMP Open Book Review Process:** The DB shall meet with the School District and the School Districts Representatives to review the GMP deliverables and its GMP Supporting Documents. The DB shall make available to designated School District personnel, including the School District's Authorized Representative, the complete cost estimate and supporting documents including but not limited to books, calculations, take-offs, productivity assumptions, internal equipment rates, risk and contingency assumptions, exclusions, cost data in support of Construction General Conditions, quotations, allowances and provisions sums. The School District will provide confidentiality assurances to the DB as is necessary to allow the School District to perform its cost/price analysis and review. This "Open Book Process" will be repeated and required when the DB submits its cost estimate, Preliminary GMP and Final GMP. If the School District or its consultants discover any inconsistencies or inaccuracies in the information presented, the School District will promptly notify the DB, who shall make appropriate adjustments to the GMP proposal, its basis or both.

7.5.5 **Incurred Costs:** Prior to the School District's acceptance of the DB's GMP proposal, execution of the GMP Amendment and issuance of a Notice to Proceed, the DB shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment. In the event the DB incurs costs, it will be the responsibility of the DB to pay for those costs.

7.5.6 **GMP Plans and Specifications:** The School District shall authorize and cause the School Districts Representatives to review the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the DB in accordance with schedules agreed to by the School District and DB. The DB shall promptly notify the School District if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications. Additionally, the DB shall work with the School District to identify and confirm any Work not specifically shown but required for a complete, fully functional project.

7.6 **FAILURE TO FURNISH ACCEPTABLE GMP:** If the DB does not furnish a GMP acceptable to the School District, or if the School District determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to the School District, the School District may terminate the Contract without liability, and the DB shall not receive

additional compensation beyond the amount due to the DB for Preconstruction Phase Services under the Contract, payable to the date of termination, together with amounts payable for Work completed and accepted by the School District under an Early Work Amendment, if an Early Work Amendment has been executed, plus any applicable costs of bonds and insurance. Termination under this provision shall be for the Public's or School District's convenience. The DB further agrees that the School District shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision. The School District may elect to complete the construction Work for this Project utilizing any alternative procurement method available.

- 7.7 **ACCEPTANCE OF GMP:** Upon acceptance of the GMP by the School District, the parties shall execute a GMP Amendment.
- 7.8 **CONSTRUCTION GENERAL CONDITIONS:** Estimated Construction General Conditions costs not included in the DB Fee shall be negotiated and included in the "Cost of the Work". The DB shall propose estimated Construction General Conditions costs that are cost-effectively tailored to the needs of this Project.
- 7.8.1 All costs related to construction equipment and vehicles shall be negotiated and based upon the DB's internal, actual cost rates, and may not be based upon or exceed industry Bluebook rates in any event. The DB's costs shall include maintenance, operations and fuel, based upon estimated utilization and standby time, as required in order to perform the Work.
- 7.8.2 Exception to 7.8.1: All costs related to specialized construction equipment and vehicles unique to this Project and the DB's approach to the Work, as accepted by the School District, and for which the DB does not have internal, actual cost rates, and for which there are no Bluebook rates, shall be negotiated based upon actual costs as bid or estimated to perform the Work.
- 7.8.3 Actual Costs Reimbursable: All costs proposed by the DB for Construction General Conditions shall be based upon actual costs or, if actual costs are unknown, estimated costs. Unless agreed to as a fixed lump sum amount for a particular Construction General Conditions cost, such estimated General Conditions costs will be subject to later adjustment to reflect actual costs incurred by the DB for the particular item.
- 7.9 **DB'S SOLE RESPONSIBILITY FOR ERRORS:** The DB agrees that review or approval by the School District or its School Districts Representatives of the DB's estimates, proposals, pricing, or any other information disclosed to the School District by the DB during the negotiation of Work Packages, including those under Early Work Amendment(s) or the GMP Amendment, shall not relieve DB of its sole responsibility for any costs resulting from or arising out of defects or deficiencies in the DB's estimates, proposals, pricing, or any other information disclosed to the School District.

ARTICLE 8 **CHANGES IN THE WORK**

- 8.1 **ADJUSTMENTS TO GMP:** Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:
- 8.1.1 DB shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of DB, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.

- 8.1.2 Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). DB shall deliver any such GMP Change Request to the School District's Authorized Representative promptly after becoming aware of any Scope Change. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 8.1.3 DB shall submit its GMP Change Requests as soon as possible, and DB shall not be entitled to claim a GMP increase unless DB submitted a GMP Change Request to the School District's Authorized Representative within the earlier of: (a) 10 Days after DB has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which DB intends to claim a Scope Change; or (c) in any event, prior to DB's signing of a Change Order for the Scope Change.
- 8.1.4 The School District may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include School District's basis for such request, which may include, for example, reduction of the DB's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 8.1.5 DB shall work with School District Representatives to reconcile all differences in its GMP Change Request within seven Days from the date of submission of the GMP Change Request. "Reconciled" means that the DB and School District Representatives have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the GMP Change Request and the School District Representatives position. DB shall submit the Reconciled GMP Change Request to School District, which submission shall be a condition to any DB claim for a GMP increase.
- 8.1.6 If the Reconciled GMP Change Request is not acceptable to School District, DB agrees to work with the School District and the School District Representatives to provide a GMP Change Request that is acceptable to School District.
- 8.1.7 DB agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to School District and to allow School District Representatives and School District access and opportunity to view such documents at DB's offices. Upon School District's reasonable notice, DB shall deliver two copies of such documents to School District and School District Representatives at any regular meeting or at the Site.
- 8.1.8 GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the DB Fee applicable to such change in the Cost of the Work.
- 8.2 EXECUTION BY SCHOOL DISTRICT:** If Engineer of Record is not the School District's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Engineer of Record has no authority to execute Change Orders or Amendments on behalf of School District, and only duly authorized personnel of School District may do so.

ARTICLE 9
COST OF THE WORK

9.1 **COST OF THE WORK (To Be Reimbursed)**: The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by DB in the proper performance of the Work and specifically identified in this Article 9, and only to the extent that they are directly related to the Project.

9.2 **LABOR COSTS:**

9.2.1 Wages of construction workers directly employed by the DB to perform the construction of the Work at the site.

9.2.2 Wages and salaries of the DB's supervisory and administrative personnel (i) stationed at the site, or (ii) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with the School District, or otherwise engaged and off the site when specifically related to the Project, and (iii) under either clause (i) or (ii), only with School District's prior written approval, and only for that portion of their time directly required for the Work.

9.2.3 Fringe benefit costs paid or incurred by the DB for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Articles 9.2.1 through 9.2.2.

9.3 **SUBCONTRACT COSTS:**

9.3.1 DB's actual payment to Subcontractors pursuant to DB's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by the School District.

9.4 **COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE WORK OR STORED ON SITE:**

9.4.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.

9.4.2 Costs of materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to the School District at the completion of the Work or, at the School District's option, shall be sold by the DB. Any sale shall be commercially reasonable and DB shall provide accounting for such a sale within 15 Days of the transaction. Net amounts realized, if any, from such sales shall be credited to the School District as a deduction from the Cost of the Work.

9.5 **COSTS OF MISCELLANEOUS EQUIPMENT AND OTHER ITEMS: EQUIPMENT RENTAL CHARGES:**

9.5.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the DB at the

site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the DB; provided that the School District at the School District's option may require that DB deliver to the School District (at no charge) at the end of the Project any of such items procured for this Project. Cost for items previously used by the DB shall mean fair market value. DB shall charge no additional administrative or other mark-up for purchased items. The DB shall document all small tools purchased for the Project via invoices in monthly billing, and shall document the disposition of small tools which have an individual price that exceeds \$100. A copy of such disposition log shall accompany the payment application whenever these items are included in the application.

- 9.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the DB at the site, whether rented from the DB or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed 100% of the rental rates published from time to time by the American Association of Equipment Dealers in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$10,000, will be subject to School District's prior approval. DB shall deliver to the School District a list of published rates at the School District's request. For all items rented or leased, the DB shall charge the School District only the rental charge incurred by DB with no additional administrative or other mark-up. DB shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the School District. Efforts shall include, but not be limited to, providing the School District with a rent/buy analysis so that the School District may elect for DB to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, when available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with American Association of Equipment Dealer standards.
- 9.5.3 Costs of removal of debris from the site.
- 9.5.4 Cost of long-distance telephone calls, communication devices, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

9.6 OTHER COSTS:

- 9.6.1 That portion of premiums for insurance directly attributable to the Contract and payment and performance bonds as required, but excluding premiums for Subcontractor bonds unless authorized by School District.
- 9.6.2 Sales, use or similar excise taxes imposed by a governmental authority, which are directly related to the Work and for which the DB is liable.
- 9.6.3 Fees and assessments for the building permit and for other permits, and any required inspections, shall be paid by the School District. The DB shall obtain all building permits.
- 9.6.4 DB deposits lost for causes other than the DB's fault or negligence.
- 9.6.5 Costs of drawings, Specifications and other documents required to complete the Work,

except as provided by the School District.

9.6.6 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the School District.

9.7 COSTS TO PREVENT DAMAGE OR INJURY IN EMERGENCIES: The Cost of the Work shall also include costs which are incurred by the DB in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

9.8 FIXED COST FOR GENERAL CONDITIONS WORK: DB shall be paid a fixed sum stated in Exhibit C as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. To the extent any GC Work is listed in the GMP Supporting Documents and also otherwise described above in this Article 9, DB's compensation for the same is included in the Fixed Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Fixed Cost for GC Work, less 5% retainage thereon, shall be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the scheduled Construction Phase.

ARTICLE 10 **COSTS EXCLUDED FROM COST OF THE WORK**

10.1 COSTS EXCLUDED FROM COST OF THE WORK (Not To Be Reimbursed): The following shall not be included in the Cost of the Work:

- 10.1.1 Salaries and other compensation of the DB's personnel stationed at the DB's principal office or offices other than the site office except as allowed under Articles 9.2.2 and 9.2.3.
- 10.1.2 Expenses of the DB's principal office and offices other than the site office.
- 10.1.3 Any overhead and general expenses, except as may be expressly included in Article 9.
- 10.1.4 DB's capital expenses, including interest on the DB's capital employed for the Work.
- 10.1.5 Rental cost of machinery and equipment, except as provided in Article 9.5.2
- 10.1.6 Any cost associated with the Project not specifically and expressly described in Article 9.
- 10.1.7 Costs due to the fault or negligence of the DB, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 10.1.8 The cost of correction of any repair work, nonconforming or defective work, or warranty work.
- 10.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith.
- 10.1.10 Fines and penalties.
- 10.1.11 Except for Early Work, the cost of Preconstruction Phase Services.
- 10.1.12 The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.

10.1.13 Any costs in excess of the GMP.

ARTICLE 11
DISCOUNTS, REBATES AND REFUNDS

- 11.1 Discounts, Rebates and Refunds.** Cash discounts obtained on payments made by the DB shall accrue to the School District. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to the School District, and the DB shall make provisions so that they can be secured.
- 11.2 Amounts Credited to School District.** Amounts which accrue to the School District in accordance with the provisions of Article 11.1 shall be credited to School District as a deduction from the Cost of the Work.

ARTICLE 12
SUBCONTRACTS AND OTHER CONTRACTS

12.1 GENERAL SUBCONTRACTING REQUIREMENTS:

- 12.1.1 Other than Work performed pursuant to Articles 12.4 or 12.5 of this Contract, DB shall subcontract the Work to Subcontractors other than the DB and its Affiliates.
- 12.1.2 The DB shall comply with Oregon Administrative Rules ("OAR") 580-050-0040, OAR 580-050-0041, and OAR 580-050-0042 in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises. Compliance shall include pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontract Offer packages, for which set goals shall not be utilized.
- 12.1.3 The DB shall report to the School District on the results of the good faith efforts of compliance required in Article 12.1.2 following award of all subcontracts. The DB shall also submit quarterly reports to the School District listing Work contracted to date with Minority, Women and Emerging Small Business Enterprises.

12.2 DB'S OBLIGATIONS UNDER SUBCONTRACTS:

- 12.2.1 No use of a Subcontractor or supplier shall relieve the DB of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the DB shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The DB shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the DB and any such Subcontractor or supplier.
- 12.2.2 The DB shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents fully effective as applied to Subcontractors. DB shall indemnify the School District for any additional cost based on a subcontractor claim which results from the failure of DB to incorporate the provisions of this DB Contract in each subcontract. The DB shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.
- 12.2.3 **Retainage from Subcontractors.** Except with the School District's prior approval, payments to Subcontractors shall be subject to retainage of no more than 5%. The

School District and the DB shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

12.2.4 The Contractor's relations with subcontractors shall comply with Oregon Public Contracting Law.

12.3 SUBCONTRACTOR SELECTION:

12.3.1 Unless otherwise provided under this Article 12, the selection of all Subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

12.3.2 DB shall submit to the School District's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. DB shall consider and respond to all the School District's comments regarding any proposed Offer packages. As Offers are received, DB shall submit to the School District an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by the School District. The competitive process used to award subcontracts by the DB may be monitored by the School District's Authorized Representative; provided that such monitoring shall not excuse DB from compliance with the subcontracting requirements of this Contract. DB shall cooperate in all respects with School District's monitoring. The School District's Authorized Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and DB shall provide him or her with a summary or abstract of all Offers in a form acceptable to the School District's Authorized Representative, and copies of particular Offers if requested, prior to DB's selection of Offerors. Prior to opening Offers, the DB agrees to disclose in writing to the School District any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of DB.

12.3.3 The following minimum requirements apply to the Subcontract solicitation process:

- (a) Solicitations will be advertised at least 10 Days prior to opening in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the DB may determine.
- (b) Unless specific other prior arrangement has been made with the School District, all Offers will be written, and submitted to a specific location at a specific time. DB shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- (c) If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by DB), prior written approval by the School District shall be required to accept an Offer.
- (d) DB may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that DB determines meet the prequalification standards, with the School District's prior written approval of such prequalification process.

- (e) DB shall comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries (BOLI) prevailing wage rates as specified in the RFP.
- (f) School District may at its sole discretion, require DB to re-solicit for Offers based on the same or modified documents.
- (g) DB shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- (h) The DB will document any and all discussions, questions and answers, modifications and responses to/from any Offeror and ensure that the same are distributed to all Offerors, and School District shall be entitled to inspect such documentation on request.
- (i) DB shall determine the lowest Offer for each solicitation that meets DB's reasonable performance standards for the components of the Work at issue; provided that if DB determines it is unable to execute a suitable subcontract with such Offeror, DB may, with the School District's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 12.3.4 below.

12.3.4 Under special circumstances and only with prior written authorization by School District, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, School District may require DB's agreement to establish and implement qualification and performance criteria for Offerors, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit School District.

12.3.5 DB shall notify the School District in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to the School District of all Offers received for the Subcontract at issue. The School District reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. The School District shall not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to the School District's disapproval shall be cause for an increase in the GMP.

12.3.6 DB's subcontracting records shall not be considered public records; provided, however, that the School District and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the School District's interests.

12.4 DB FIELD WORK:

12.4.1 The DB or its Affiliate may provide DB Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.

12.4.2 Except as provided in Article 12.4.1, any other portion of the Work proposed to be performed by DB or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of Article 12.5.

12.5 SUBCONTRACTING BY DB:

12.5.1 Except to the extent otherwise approved in advance in writing by the School District's Authorized Representative, the DB or its Affiliates may submit an Offer in accordance with Article 12.3 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the DB or such Affiliate.

12.5.2 For those items for which the DB or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Article 12.3.1, and the School District notified in writing. All Offers for this work shall be delivered to the School District and publicly opened by the School District at an announced time, date, and place.

12.6 PROTESTS: DB, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process shall comply with OAR 137-049-0690(n)(A)(B). DB shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. DB shall indemnify, defend, protect and hold harmless the School District from and against any such procurement protests and resulting claims or litigation. DB shall act as an independent contractor, and not an agent of the School District, in connection with any procurement protest. The provisions of this Article 12 are solely for the benefit of School District, and do not grant any rights or remedies (including third party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

12.7 NOTICE OF CLAIM: Persons claiming to have supplied labor or materials for the performance of the work provided for in a public contract and claiming a right of action on the Contractor's payment bond must provide notice pursuant to ORS 279C.605.

ARTICLE 13
ACCOUNTING RECORDS

13.1 ACCOUNTING: AUDIT ACCESS: The DB shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to the School District. The School District and the School District's representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to the DB's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the DB shall preserve these for a period of six (6) years after final payment, or for such longer period as may be required by law.

13.2 PERIODIC AND FINAL AUDITS: The School District may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. The School District intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The DB shall cooperate fully with the School District in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 15.4.

ARTICLE 14
PROGRESS PAYMENTS

14.1 CONTRACT AMOUNT: The School District will pay the DB the Contract Amount for the performance of the Preconstruction Phase Services and Construction Phase Services. The Contract Amount is guaranteed by the DB not to exceed the GMP as adjusted by Change Orders. Costs incurred by the DB in performing the Preconstruction Phase Services and

Construction Phase Services that would cause the GMP to be exceeded shall be paid by the DB without reimbursement by the School District. In the event that the Contract Amount is less than the GMP, the savings shall accrue to the School District. The School District will pay the DB for the Preconstruction Phase Services and Construction Phase Services in accordance with the following.

14.1.1 Preconstruction Phase Services: The School District will pay the DB for all Preconstruction Phase Services performed under the Contract based on (a) the reasonable and actual number of hours expended multiplied by the hourly rate for those items compensated on an hourly basis, plus (b) the reasonable and actual number of months or portion thereof multiplied by the monthly rate for those items compensated on a monthly basis, plus (c) the lump sum amounts for any items compensated on a lump sum basis. The amount of the Preconstruction Costs represents the entire cost of completing the Preconstruction Phase Services in accordance with all Contract requirements and further includes all DB mark-up, including but not limited to overhead and profit. The DB Fee percentage is inapplicable to Preconstruction Phase Services. Costs incurred by the DB in performing the Preconstruction Phase Services that would cause the maximum not-to-exceed amount of Preconstruction Costs to be exceeded shall be paid by the DB without reimbursement by the School District. In the event that the total amount payable to the DB for Preconstruction Phase Services is less than the Preconstruction Costs not-to-exceed amount, the savings shall accrue to the School District. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no additional compensation for Preconstruction Phase Services shall be payable to the DB for Preconstruction Services performed after execution of the GMP Amendment.

14.1.2 Construction Phase Services: The School District will pay the DB for all Construction Phase Services performed under the Contract based on (a) the Cost of the Work, plus (b) the reasonable and actual costs of Bonds and Insurance, plus (c) the DB Fee as adjusted in accordance with Article 8. In the event that the Cost of the Work includes Pay Items for which the DB will be compensated on a cost reimbursable basis, the amount payable shall be determined pursuant to provisions in this Contract, subject to any restrictions or limitations the School District places on such Pay Items, including but not limited to "not-to-exceed" amounts for discrete Pay Items. The DB will provide Lien Waivers from the DB and any applicable subcontractor covering the work performed in connection with each application of payments.

14.2 PROGRESS PAYMENTS: Progress payments shall be made in accordance with Article 14.1.1 for Preconstruction Phase Services and Article 14.1.2 for Construction Phase Services. A progress payment shall not be considered as acceptance or approval of any Work or waiver of defects therein.

14.3 CALCULATION OF PRECONSTRUCTION PHASE SERVICES WORK COMPLETED: Applications for payment for Preconstruction Phase Services Work shall show the total hours worked for services that are paid on an hourly basis. Lump sum unit prices shall be paid based upon receipt of the required deliverables.

14.4 CALCULATION OF CONSTRUCTION PHASE SERVICES WORK COMPLETED:

(a) **Lump Sum Work:** Applications for payment for lump sum unit priced Work shall show the percentage of completion of each portion of the Work at the end of the period covered by the application for payment. The percentage of completion shall be the share of the Early Work Price (for Early Work) or GMP allocated to that portion of the Work in the School District-approved Schedule of Values. The amounts to be allowed for lump sum Pay Items in progress payments shall not exceed the reasonable value of the Work, as determined by the School District.

- (b) **Unit Priced Work:** Payment for all unit priced Work shall be measured according to agreed-upon provisions in either the Early Work or GMP Amendments.
- (c) **Cost Reimbursable Work:** Payment for all Work compensated on a cost reimbursable basis shall be based on the reasonable and actual costs incurred by the DB, subject to any restrictions or limitations the School District places on such Pay Items, including but not limited to not-to-exceed amounts for discrete Pay Items.
- (d) **Extra Work and Force Account Work:** The School District will make payments for Extra Work and Force Account Work similar to Cost Reimbursable Work as outlined in Article 14.4(c).

14.4.1 **Calculation of Monthly Payment:** Subject to other provisions of the Contract Documents, the amount of each progress payment for Construction Phase Services Work shall be computed by the School District as follows:

- (a) Take that portion of the Early Work Price or GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the Early Work Amendment or GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the School District of changes in the Work, amounts not in dispute shall be included.
- (b) Add that portion of the Early Work Amendment or GMP properly allocable to Materials and Equipment delivered and suitably stored.
- (c) Add the DB Fee. The portion of the DB Fee payable shall be an amount that bears the same ratio to DB Fee as sum of the amounts in the two preceding Clauses bears to the lump sum total for each Early Work Amendment and GMP Amendment, but in no event causing the total DB Fee payments to exceed the total, previously fixed DB Fee identified in the Early Work Amendment or GMP Amendment.
- (d) Add that portion of the actual, reimbursable bonds and insurance costs.
- (e) Subtract the aggregate of previous payments made by and retained by the School District.
- (f) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or, resulting from errors subsequently discovered by the School District in such documentation.
- (g) Subtract any amount for which the School District has withheld or denied payment as provided in the Contract Documents.
- (h) Subtract 5% retainage on the entire progress payment.

14.5 **DEDUCTIONS FROM MONIES DUE:** Without limiting the School District's rights to withhold payment as set forth elsewhere in this DB Contract, the School District may deduct from monies due or to become due the DB for: (a) amounts representing price adjustments authorized under the commodity escalation/de-escalation provisions; (b) amounts representing recoupment of damages, including but not limited to liquidated damages; (c) amounts assessed by Authorities (e.g., fines and penalties) for which the DB is responsible under the terms of the Contract or by Law; (d) amounts the School District is compelled by court order or other legal

mandate to withhold and/or tender to Authorities or third parties; (e) amounts as reimbursement for School District payments made on behalf of the DB or to meet the DB's obligation, as authorized under terms of the Contract; and (f) any other amounts authorized under the Contract or by Law to be deducted or withheld.

- 14.6 **PROMPT PAYMENT, CONTRIBUTIONS, LIENS, and WITHHOLDING TAXES:** Pursuant to ORS 279C.505(1), DB shall (a) make payment promptly, as due, to all persons supplying to DB labor or material for the performance of the Work provided for in the Contract; (b) pay all contributions or amounts due the Industrial Accident Fund from a contractor or subcontractor incurred in the performance of the Contract; and (c) not permit any lien or claim to be filed or prosecuted against the School District or the State or a county, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished.

ARTICLE 15 FINAL PAYMENT

- 15.1 **FINAL PAYMENT ACCOUNTING:** DB shall submit to School District a final detailed accounting of the Cost of the Work together with DB's final application for payment. Final Payment will be made once Lien Waivers from the DB and any applicable subcontractor covering the work performed have been received.
- 15.2 **CALCULATION OF FINAL PAYMENT:** The amount of the final payment shall be calculated as follows:
- 15.2.1 Take the sum of the DB Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by the DB's final accounting. Said sum shall not exceed the GMP.
 - 15.2.2 Subtract amounts, if any, for which the School District's Authorized Representative withholds, in whole or in part, for approval of payment.
 - 15.2.3 Subtract the aggregate of previous payments made by School District to DB. If the aggregate of previous payments made by School District exceeds the amount due the DB, the DB shall reimburse the difference to the School District within 30 Days with interest at the rate applicable to the School District payments.
- 15.3 **FINAL PAYMENT REVIEW:** The School District or its accountants will review and report in writing on the DB's final accounting within 30 Days after delivery of the final accounting by the DB. Based upon such Cost of the Work as the School District or the School District's accountants report to be substantiated by the DB's final accounting, and provided the other conditions of the Contract have been met, the School District's Authorized Representative will,

within 10 Days after receipt of the written report of the School District's accountants, either issue to the School District an approval of DB's final application for payment with a copy to the DB or notify the DB and the School District in writing of the School District's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include the School District's Authorized Representative's estimate of the amount that is due the DB under the application for payment.

- 15.4 PAYMENT DISPUTES:** If the School District's accountants report the Cost of the Work as substantiated by the DB's final accounting to be less than claimed by the DB or if the School District's Authorized Representative declines to approve any duly submitted payment request by DB, the DB shall be entitled to demand a review by the School District's highest contracting authority of the disputed amount. Such demand shall be made by the DB within 30 Days after the DB's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-Day period shall result in the substantiated amount reported by the School District's accountants becoming binding on the DB. In addition, if the School District or any other state agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that DB was otherwise overpaid, DB shall have 30 Days after delivery of request for reimbursement by the School District to demand additional review by the School District's highest contracting authority; failure to make such demand within this 30 Day period shall result in the requested reimbursement becoming unconditionally due and payable by DB. Pending a final resolution, the School District shall pay the DB the amount of the application for payment approved by the School District's Authorized Representative.
- 15.5 EFFECT OF PAYMENT:** Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the School District shall constitute acceptance of work not conforming to the Contract Documents, or waiver of the right to assert overpayment.
- 15.6 PROMPT PAYMENT POLICY. PROGRESS PAYMENTS. RATE OF INTEREST:** In accordance with ORS 279C.570, all payments due on a public improvement contract and owed by the Contracting Agency shall be paid promptly.
- 15.7 RETAINAGE:** The withholding of retainage by a Contractor or subcontractor shall be in accordance with ORS 279C.550 to 270C.570:
- 15.7.1 If a Prime Contractor does not file certified payroll as required (at least once per month), the Contracting Agency MUST withhold 25% of amounts due the Prime Contractor; in addition to any other required retainage.
- 15.7.2 If a first-tier subcontractor does not file certified payroll reports as required, the Prime Contractor MUST withhold 25% of amounts due the first-tier subcontractor.
- 15.7.3 Once certified payroll reports are submitted, the Contracting Agency or Prime Contractor must pay amounts withheld per this statute within 14 days.

ARTICLE 16 **TERMINATION OR SUSPENSION**

- 16.1 SCHOOL DISTRICT'S RIGHT TO TERMINATE PRIOR TO EXECUTION OF GMP AMENDMENT:** Prior to execution by both parties of the GMP Amendment, the School District may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the DB shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If the School District terminates prior to the execution of the GMP Amendment, School District

shall be entitled to copies of, and shall have the right to use, all work product of DB and its Subcontractors performed to the date of termination, and DB shall deliver copies of the same to the School District on request.

16.2 SCHOOL DISTRICT'S TERMINATION FOR CONVENIENCE AFTER GMP AMENDMENT:

After the GMP Amendment is executed by both parties, the Contract may be terminated by the School District without penalty for convenience in which case DB shall be entitled to payment of the amount stated in Article 16.1, together with the actual Cost of the Work completed, plus the DB's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, but in any event not in excess of the GMP. If the School District terminates after the execution of the GMP Amendment, School District shall be entitled to copies of and shall have the right to use all work product of DB and its Subcontractors performed to the date of termination, and DB shall deliver copies of the same to the School District on request.

16.3 SCHOOL DISTRICT'S TERMINATION FOR CAUSE: In the event of termination of this Contract by School District for cause, the amount, if any, to be paid to the DB after application of the School District's rights at law shall not exceed the amount the DB would be entitled to receive under Article 16.2.

16.4 ADDITIONAL DEFAULTS: The following shall also be considered defaults for which the Contract may be terminated.

16.4.1 The DB no longer holds the licenses or certificates required to perform the Work or any portion thereof.

16.4.2 The DB also fails to perform any agreed-upon portion of the Work as to endanger the DB's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 30 days after written notice.

16.4.3 The DB made knowing, reckless, or negligent misrepresentations, concealed facts, or failed to disclose information in the DB's proposal. Such actions shall constitute fraudulent inducements, and shall entitle the School District to recover reliance damages, in addition to any other available remedies to which it may show itself entitled.

16.5 NON-AVAILABILITY OF FUNDS: The School District may terminate the Contract, in whole or in part, immediately upon notice to the DB, or at such later date as the School District may establish in such notice, upon the occurrence of any of the following events:

16.5.1 The School District fails to receive funding, or appropriations, allotments, limitations or other expenditure authority at levels sufficient to pay for the DB's Work; or

16.5.2 Federal or State laws are modified or interpreted in such a way that either the Preconstruction Phase Services or Construction Phase Services is prohibited, or the School District is prohibited from paying for such services from the planned funding source.

16.5.3 The School District reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder, and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds, and will use its best efforts to have such budget approved. It is the School District's intention to make all payments due hereunder if funds are legally available for such purpose.

16.5.4 If, despite the above, the School District is not allotted sufficient funds for the next succeeding fiscal period by appropriation, limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, the School District may terminate the Contract, by notice to the DB, without penalty, effective upon exhaustion of allocated funds, and such termination shall not constitute an event of default under any provision of the Contract. The School District will give the DB notice of such non-availability of funds within 30 Calendar Days after it receives notice. The Parties shall perform their respective remaining obligations incurred through the date of termination.

16.6 DB TERMINATION FOR CAUSE: DB acknowledges that disputes regarding payments and Change Orders may occur as part of the DB process, and that the School District's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by DB. If DB terminates this Contract for the School District's material breach, the amount to be paid to DB shall not exceed the amount DB would have been entitled to receive under Article 16.2 above through termination and demobilization from the Project, with the DB Fee prorated based on the actual Cost of the Work through the date of termination.

16.7 ASSIGNMENT OF SUBCONTRACTS: Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the DB to the School District, provided that such assignment is effective only after termination of the Contract by the School District, and only for those subcontracts and supply contracts which the School District accepts by notifying the Subcontractor/supplier and DB in writing. For those subcontracts and supply contracts accepted by School District, if the Work has been suspended for more than 30 Days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. DB shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges the School District's rights under this Article 16.6.

16.8 QUALITY OF WORK: In the event of the School District's termination of the Contract, regardless of the reason, the DB shall remain responsible for the quality of the Work performed through the date of termination.

ARTICLE 17 **REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS**

17.1 REPRESENTATIONS AND WARRANTIES: DB represents and warrants to the School District as of the effective date of this Contract:

17.1.1 It is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;

17.1.2 It has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; DB has duly and validly executed and delivered the Contract to the School District and that the Contract constitutes the legal, valid and binding obligation of DB, enforceable against DB in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

17.1.3 DB's execution and delivery of the Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) DB's Articles of

Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which DB is a party or by which DB may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to DB;

17.1.4 No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by DB or its consummation of the transactions contemplated hereby;

17.1.5 There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and

17.1.6 The DB's Project Principal and Project Manager identified in Article 5.5 are duly appointed representatives and each has the authority to bind the DB to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

17.1.7 The DB certifies that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

17.2 TAX COMPLIANCE CERTIFICATION: The individual signing on behalf of the DB hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of the DB, s/he has authority and knowledge regarding the DB's payment of taxes, and to the best of her/his knowledge, the DB is not in violation of any Oregon tax laws. For purposes of this certification, "Oregon Tax Laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 553, 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 taxes administered by the Oregon Department of Revenue under ORS 305.620.

ARTICLE 18 **MISCELLANEOUS; PUBLIC CONTRACTING PROVISIONS**

18.1 HEADINGS: The headings used in the Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

18.2 MERGER: The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the 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 the Contract. DB, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

18.3 EXEMPTION FROM COMPETITIVE BIDDING: The parties acknowledge that the Contract has been awarded under an exemption from competitive bidding requirements pursuant to ORS 279C.335.

18.4 EMPLOYEE DRUG TESTING PROGRAM: The DB certifies that:

18.4.1 It has an employee drug-testing program complying with the requirements of ORS

279C.505 in place and shall maintain such program for the duration of the Contract.

18.4.2 It shall include in each of its subcontracts a requirement that the Subcontractor either maintain such a program or participate in the DB's program for the duration of the subcontract.

18.5 NONDISCRIMINATION: The DB certifies that:

18.5.1 In compliance with ORS 279A.110, the DB will not discriminate against Minority, Women or Emerging Small Business Enterprises in obtaining any subcontracts.

18.5.2 It shall not discriminate on the basis of race, color, nation origin or sex in the performance of the Contract and in the award of subcontracts.

18.6 JOINT VENTURES AND PARTNERSHIPS: If the DB is a joint venture or partnership, each joint venture member or partner is executing this DB Contract on behalf of and thereby binds both itself and the DB, and each joint venture member or partner and the DB shall be jointly and severally liable under this DB Contract.

18.7 NOTICES: Notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the DB or the School District at the addresses or numbers set forth in Articles 5.6 and 5.8, or as either Party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be received five (5) Calendar days after the date of the mailing. Any notice delivered by facsimile shall be deemed to be received when confirmation of successful transmission is generated by the transmitting machine. To be effective against the School District, such facsimile transmission must be confirmed by telephone notice to the School District for the Project. Any notice by personal delivery shall be effective as to the DB upon the delivery into the possession of one of the DB's designated personnel, and as to the School District, upon delivery to the School District's designated Project Manager. Regular, day-to-day communications may be transmitted through one of the methods set forth above, in person, by e-mail, or by other similar electronic transmission.

18.8 DISCLOSURE OF TAX IDENTIFICATION NUMBER: The DB shall provide its federal tax ID number to the School District. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of State, federal and local tax laws.

18.9 SEVERABILITY: The parties agree that if any term or provision of the DB Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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.

18.10 NO WAIVER: The failure of the School District to enforce any provision of the Contract shall not constitute a waiver by the School District of the Provision or any other provision of the Contract.

18.11 MEDIA CONTACTS: CONFIDENTIALITY: Unless otherwise specifically authorized in writing, the DB shall provide no news release, press release, or any other statement to a member of the news media regarding this Project without the School District's prior written authorization. Furthermore, except in the case where the School District specially authorizes disclosure of the School District's confidential information in writing, the DB shall maintain the confidentiality of the School District's information pertaining to the Project, unless withholding or such information would violate the law, create risk of significant harm to the public or prevent the DB from

establishing a claim to defense in an adjudicatory proceeding. The DB shall require of its Subcontractors similar agreements to maintain confidentiality of the School District's information.

- 18.12 **CONFLICT OF INTEREST**: The DB shall not engage in any activity that would create a "Conflict of Interest" for or on behalf of the School District, as a "Conflict of Interest" is contemplated under School District policy.
- 18.13 **SCHOOL DISTRICT OWNERSHIP OF WORK PRODUCT**: All Work products of the DB arising from performance of the Contract shall be exclusive property of the School District.
- 18.14 **DEMOLITION: SALVAGE: RECYCLE**: If the Contract calls for demolition work described in ORS 279C.510(1), the DB must be must salvage or recycle construction and demolition debris, if feasible and cost-effective.
- 18.15 **PREVAILING WAGE**: The DB must pay prevailing wage rates; every contract and subcontract must contain a provision that the workers will be paid not less than the applicable prevailing wage for the type of work being performed (ORS 279C.800 to 279C.870).

The prevailing wage rate publication applicable to this Project is ***Prevailing Wage Rates for Public Works Contracts in Oregon, Effective: January 1, 2023***, and is hereby incorporated by reference into this DB Contract

- 18.16 **WEEKLY CERTIFIED PAYROLL**: When self-performing any work subject to Oregon's prevailing wage laws, the DB must prepare **weekly** certified payroll reports and statements and submit them to the Contracting Agency by the fifth business day of the following month, and make sure all Subcontractors do the same (ORS 279C.845).

The School District's Authorized Representative will be reviewing the DB's and Subcontractors' weekly certified payrolls for compliance with BOLI requirements, including but not limited to, prevailing wage rates, fringe benefits, hours, overtime, job classifications, apprentices, etc., as well as other statutory provisions applicable to Oregon public improvement projects.

- 18.17 **POSTING APPLICABLE WAGE RATES**: The DB shall post in an accessible and conspicuous place on the work site the applicable rates for the project and fringe benefit plan information; and ensure all employees know they are working on a Prevailing Wage Rate (PWR) project (ORS 279C.840(4) & (5)).
- 18.18 **MAXIMUM HOURS, HOLIDAYS AND OVERTIME: OVERTIME PAY**: Pursuant to public contracting laws, all employers, including the DB, shall comply with laws regulating hours of labor and time limitations on claims for overtime. The DB and its Subcontractors shall pay daily, weekly, weekend and holiday overtime as required in ORS 279C.540.
- 18.19 **PAYMENT FOR MEDICAL CARE**: Pursuant to ORS 279C.530(1), Contractor shall promptly, as due, make payments 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 contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that contractor collected or deducted from wages of employees under any law, contract or agreement for the purpose of providing or paying for services.
- 18.20 **HOURS OF LABOR**: Pursuant to ORS 279C.520, a person employed under this Contract may not be employed more than 10 hours in any one day, or 40 hours in any one week except when the law allows otherwise.

- 18.21 LATE PAYMENT:** Pursuant to ORS 279C.515(2), if the Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection the Contract within thirty (30) days after receipt of payment from the contracting agency or a contractor, then the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 18.22 CLAIMS:** Pursuant to ORS 279C.515(1), if the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, then the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.
- 18.23 CATCH-ALL:** All contract clauses required by Oregon law listed under OAR 137-049-0200(1)(c) are hereby incorporated into this contract.

ARTICLE 19 **BONDING AND INSURANCE**

- 19.1 INSURANCE REQUIREMENTS:** During the term of the Contract, the DB shall maintain in full force from insurers (a) having at least either an AA/A-3 rating by two (2) nationally recognized rating agencies or an A-VII rating by A.M. Best and Company, and (b) holding a current certificate of authority to transact business of insurance in the State of Oregon, all of the insurance required in this DB Contract.

19.1.1 Pre-Construction Phase Services: Insurance types and amounts as follows:

- (a) Prior to the start of any work covered by this Contract, DB shall procure and maintain in force, for the entire duration of this Contract, insurance providing coverage for bodily injury and property damage which may arise out of the operations of the DB or its subcontractors, employees, agents, assigns or for anyone whose acts any of them may be liable. Such insurance shall have coverage limits equal to or greater than the minimums limits specified by this Contract document.
- (b) DB shall furnish to Rogue River School District an Accord 25-S certificate of insurance evidencing the existence of all insurance coverages required under Article 19 of this Contract prior to the commencement of any work. All insurance policies must contain a provision that states that no coverage will be cancelled, non-renewed, or restrictive endorsements added without written notice to Rogue River School District.
- (c) Commercial General Liability Insurance (CGL) shall be provided on an Occurrence Form with coverage limits as shown in this section below. Claims-made coverage and modified occurrence forms are unacceptable.

Each Occurrence Limit: \$2,000,000

General Aggregate Limit: \$4,000,000

Products/Completed Operations Limit: \$2,000,000

Personal and Advertising Injury Limit: \$2,000,000

DB shall endorse the CGL to include the Rogue River School District as an "additional insured", including coverage for products and completed operations, and a copy of this endorsement shall accompany each certificate. The additional insured endorsement shall be a CG2010 11/85 edition or its equivalent.

DB's insurance shall be primary and not excess to, or contributory with any insurance coverage provided by Rogue River School District. DB's insurance shall be endorsed to provide project specific aggregate limits with respect to the project covered by this contract.

CGL coverage, including products and completed operations coverage, shall be maintained from the date work commences until two years after the work has been completed.

- (d) Commercial Automobile Liability Coverage shall be provided at the following limits: Combined Single Limit: \$2,000,000 Automobile Liability coverage shall include coverage for owned, non-owned and hired automobiles and be endorsed naming Rogue River School District as an "additional insured" and a copy of the Endorsement shall accompany all certificates provided to the School District.
- (e) Worker's Compensation / Employers Liability Insurance: Pursuant to ORS 279C.530(2), all employers, including DB, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. DB shall ensure that each of its subcontractors complies with these requirements. All contractors and subcontractors are required to purchase and maintain in force Workers' Compensation coverage and employer's liability coverage at the following limits:

Worker's Compensation Coverage: Statutory Limits

Federal Acts Coverage (if applicable): Statutory Limits

Employer's Liability Insurance

Each Occurrence Limit: \$1,000,000

Disease-Each Employee: \$1,000,000

Disease-Policy Limit: \$1,000,000

If the work required by this contract or the location of the work specified in this contract constitutes an exposure to the employees of the contractor or his subcontractors under the U.S. Longshoremen and Harbor Workers Act, the Jones Act, or under any laws, regulations or statutes that apply to maritime workers, the DB shall ensure that proper coverage is purchased and maintained.

DB and all Subcontractors shall endorse the Workers' Compensation coverage to provide a "waiver of subrogation" in favor of Rogue River School District.

- (f) Commercial Pollution Liability Coverage: (CPL), Contractor and any Subcontractors whose work involves hazardous substance or pollutant remediation work shall provide CPL coverage. CPL coverage is required for abatement work involving, but not limited to, lead, asbestos, PCB's and other hazardous materials.

- (g) CPL per occurrence limit: \$2,000,000.
- (h) CPL will be endorsed to name Rogue River School District as an "Additional Insured" and coverage shall be provided on an Occurrence Form. Claims Made coverage is unacceptable.
- (i) Builder's Risk Coverage: DB shall provide a special form builder's risk property insurance coverage, to include earthquake and flood, in the full amount of the project. This coverage shall include Rogue River School District as a named insured. Builder's risk coverage shall have a deductible no greater than \$5,000 with the exception of earthquake and flood on which the deductible shall not exceed 2% of the value of the project. Builder's risk coverage shall be maintained for the entire duration of the project until occupancy. DB agrees to waive rights of subrogation against the Rogue River School District on all property coverage issues.
- (j) Professional Liability Coverage: If the DB is providing services, DB shall obtain at its own expense and keep in effect during the term of this Contract and two years after completion of this project, Professional Liability Insurance covering damages caused by an error, omission or any negligent acts. Coverage per occurrence shall not be less than a Combined Single limit of \$2,000,000 and an Annual Aggregate of not less than \$4,000,000.

Any other specific liability exposures presented by activities of the DB under this DB Contract that may require specific insurance coverages to adequately protect the Rogue River School District, shall be the responsibility of the Construction Manager/General Contractor.

19.1.2 Construction Phase Services: For Early Work Amendments and GMP Amendment, in addition to the coverage of 19.1.1, insurance types and amounts will be negotiated with each Construction Amendment.

19.2 BONDING REQUIREMENTS: Prior to the commencement of Construction Phase Services and in any event not later than execution of the GMP Amendment, the DB shall provide to the School District Full Performance and Payment Bonds in the amount of the GMP Amendment.

If any Early Work Amendment is executed, the DB shall provide Performance and Payment Bonds in the amount of the Early Work Amendment. The DB shall provide to the School District additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of labor or Materials for the prosecution of the Work covered by the Amendment, and in each case a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of the scope change that increased the GMP, the DB shall provide to the School District an additional or supplemental bond in the amount of such increase prior to the performance of the additional work.

The DB shall maintain the Performance and Payment Bonds in full force from Sureties licensed to do business in Oregon. The Parties understand and agree that the obligation of the DB's surety for the faithful performance of the Contract pursuant to the requirements of ORS 279C.375.

In accordance with ORS 279C.830(2), the DB and every subcontractor shall have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

ARTICLE 20
RESPONSIBILITY FOR DAMAGES AND INDEMNITY

- 20.1** DB shall be responsible for all damage to property, injury to persons, loss, expense, inconvenience and delay that may be caused by, or result from, the carrying out of the Work to be performed under this Contract; or from any act, omission or neglect of the DB, its subcontractors, personnel or agents.
- 20.2** To the fullest extent permitted by law, DB shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Authorized Representative, and their respective, officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against:
- (a) all liabilities, damages, losses, claims, expenses (including reasonable attorney fees and expert fees), demands and actions of any nature whatsoever that arise out of, result from, or are related to any damage, injury, loss, expense, inconvenience or delay described in Section 20.1;
 - (b) any accident or occurrence that happens, or is alleged to have happened, in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects;
 - (c) any failure of the DB to observe or perform any duty or obligation under the Contract documents that is to be observed or performed by the DB, or any breach of any agreement, representation or warranty of the DB contained in the Contract documents or in any subcontract;
 - (d) the negligent acts or omissions of the DB, a subcontractor or anyone directly or indirectly employed by them, or any one of them, or anyone for whose acts the DB or subcontractor may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and
 - (e) any lien filed upon the Project, or a bond claim in connection with the work. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that otherwise would exist as to a party or persons described in Section 20.2.
- 20.3** In any claims against any person or entity indemnified under Section 20.2 by an employee of the DB, a subcontractor, anyone directly or indirectly employed by the DB or subcontractor, or anyone for whose acts they may be liable, the indemnification obligation under Section 20.2 shall not be limited by a limitation on an amount or type of damage, compensation or benefits payable by or for the DB or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

THIS CONTRACT is executed in three original copies of which one is to be delivered to the DB, and the remainder to the School District.

DB:

Name of Firm: **Construction Company, Inc.**

Address:

DB's Federal I.D. #:

Construction Contractor's Board Registration No.:

Signature of DB's Authorized Representative

Title:

Date _____

SCHOOL DISTRICT:

Rogue River School District #35

Signature of School District's Authorized Representative

Title: **Superintendent**

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

EXHIBITS:

Exhibit A – GMP Amendment to DB Contract

Exhibit B – Construction Co. Inc. DB Proposal – Response to RFP No.

Exhibit C – Rogue River School District #35 – RFP No.
FOR DESIGN-BUILD PROJECT FOR DESIGN AND
CONSTRUCTION SERVICES FOR A PRE-
KINDERGARTEN EARLY LEARNING CENTER AND
SCHOOL BASED HEALTH CENTER
Request for DB Proposals

EXHIBIT A
GMP Amendment to DB Contract

THIS AMENDMENT IS BETWEEN:

SCHOOL DISTRICT:

ROGUE RIVER SCHOOL DISTRICT #35

And

**CONSTRUCTION COMPANY, INC.
CONSTRUCTION MANAGER/
GENERAL CONTRACTOR ("the DB"):**

The Project is:

Date of Original DB Contract ("Contract"):

Date of this Amendment:

The School District and DB hereby amend the Contract as set forth below. Capitalized terms not otherwise used herein shall have the meanings given in the Contract. Except as amended hereby, the Contract remains in full force and effect.

1. **GMP.** The parties agree that the GMP for the Project is \$_____, consisting of the, Estimated Cost of the Work and the DB Fee (stated as a fixed dollar lump sum amount), as follows:

Estimated Cost of Work (Est. COW): \$_____ **DB**

Fee (X.XX% of Est. COW): \$_____

GMP (Total of above categories): \$_____

For purposes of determining the GMP, the Estimated Cost of the Work includes the DB's Contingency, the Fixed Cost for GC Work, and the costs of all components and systems required for a complete, fully functional facility.

2. **Basis of GMP.** The GMP is based on the GMP Supporting Documents attached as Attachments A-C including the assumptions and exclusions.
3. **Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. DB shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.
4. **Substantial Completion Date.** Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion shall be **August 30, 2024.**
5. **Liquidated Damages:** Liquidated Damages for failure to complete all Work by the Contract Completion Date specified in Article 6.2 shall equal \$150.00 per Calendar Day.

THIS CONTRACT is executed in three original copies of which one is to be delivered to the DB, and the remainder to the School District.

DB:

Name of Firm: **Construction Company, Inc.**

Address:

DB's Federal I.D. #:

Construction Contractor's Board Registration No.:

Signature of Authorized Representative of DB

Title:

Date _____

SCHOOL DISTRICT:

Rogue River School District #35

Signature of School District's Authorized Representative

Title: **Superintendent**

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

Attachments:

