



INVITATION TO BID #19-002
CESD SUNNYBROOK CAMPUS RENOVATION

Bids Due
2:00 PM
May 22, 2019

Issuing Office

FISCAL SERVICES DEPARTMENT
CLACKAMAS EDUCATION SERVICE DISTRICT
13455 SE 97th Avenue
Clackamas, OR
(503) 675-4035

Tim Witcher, Chief Financial Officer
Date of Issue: May 8, 2019
Daily Journal of Commerce (DJC)

NOTE

Clackamas ESD (District) will guarantee that we will send by email or by FIRST CLASS U.S. MAIL (upon request), Official Addenda to all known Plan/Specification holders of record at the PURCHASING DEPARTMENT.

Clackamas ESD will guarantee that no Addenda will be issued less than THREE (3) WORKING DAYS prior to Bid Opening. It shall be the SOLE RESPONSIBILITY of the Bidder/Contractor/Vendor to be certain that he or she has received all such Addenda.

Results will not be provided by telephone. No information, other than the names of those submitting proposals will be provided prior to award.

Due to the nature of an RFP, spreadsheets do not provide adequate information for those wishing to review the results. It is recommended that anyone interested in reviewing the proposals contact the Purchasing Department, after the award. The actual proposals of each will be available for review by appointment, as well as the basis for award.

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NOTE: Section numbers listed are merely for identification and may not be consecutive. Users of this Project Manual shall check the specification with the Table of Contents to be sure each Section is included and shall check each Section to be sure each consecutively numbered pages within each Section is included. The last page of each Section has the statement "END OF SECTION".

DIVISIONS AND SECTIONS

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ADVERTISEMENT FOR BIDS

Clackamas Education Service District, Clackamas County, Clackamas, Oregon will receive sealed bids for Clackamas ESD Sunnybrook Campus Renovation, 13455 SE 97th Avenue, Clackamas, Oregon 97015, in writing from Contractors until 2:00 PM., Pacific Time, Wednesday, May 22, 2019. All interested persons are entitled to attend the bid opening held at the Administration Office, 13455 SE 97th Avenue, Clackamas, Oregon 97015 at 2:00 PM., Pacific Time, Wednesday, May 22, 2019.

The work consists of interior remodeling to create new workspaces along with installing electrical and data wiring and other infrastructure to support the newly created spaces. There will be drywall to patch and paint, along with the need to coordinate activity with other trades.

The Contract Documents may be examined at the District Administration Office, 13455 SE 97th Avenue, Clackamas, Oregon 97015 and at the office of BBL Architects, 200 North State Street, Lake Oswego, Oregon 97034, (503) 635-4425. Contract Documents are available digitally upon request to Laurel Roth at lroth@clackesd.org.

This contract is for a public works subject to ORS 279C.800 to 279C.870 (Prevailing Rate of Wage).

All bids shall comply with the requirements of Oregon Revised Statutes and the District's local Public Contract Rules, latest editions.

Bids must be fully completed upon the Bid Proposal provided herein in the manner provided in the "Instructions to Bidders".

Bids will not be considered unless accompanied by certified check, cashier's check, or surety bond made payable to Clackamas Education Service District in an amount equal to 10% of the Base Bid. Interest will not be allowed on bid security.

Clackamas Education Service District reserves the right to reject all and any bids not in compliance with all prescribed public procedures and requirements and to waive informalities in this bid.

END OF SECTION

INSTRUCTIONS TO BIDDERS**ARTICLE 1 DEFINITIONS**

- 1.1 Addenda: Written or graphic instructions issued prior to the execution of the Contract which modify or interpret the Bidding Documents including Drawings and Specifications, by additions, deletions, corrections, or clarifications. Addenda will become part of the Contract Documents when the Construction Contract is executed.
- 1.2 Architect: BBL Architects.
- 1.3 Bidder: One who submits a Bid for a Contract with the Owner for the Work described in the proposed Contract Documents.
- 1.4 Bidding Documents: Include the Advertisement for Bids, Instructions to Bidders, the Bid Proposal, and the proposed Contract Documents including Addenda issued prior to the receipt of Bids.
- 1.5 Definitions: Includes all definitions set forth in Section 00 72 00, Conditions of the Contract, or in other Contract Documents are applicable to the Bidding Documents.
- 1.6 Owner: Clackamas Education Service District, Clackamas County, Oregon.
- 1.7 Project: Clackamas ESD Sunnybrook Campus Renovation, interior remodeling to create new workspaces along with installing electrical and data wiring and other infrastructure to support the newly created spaces. There will be drywall to patch and paint, along with the need to coordinate activity with other trades.
- 1.8 Perform all work indicated on Drawings.

ARTICLE 2 BIDDER'S REPRESENTATION

- 2.1 Each Bidder, by making their Bid, represents the following:
 - A. Has read and understands the Bidding Documents and his/her Bid is made in accordance therewith.
 - B. Has visited the site and familiarized themselves with the local conditions under which the Work is to be performed. See Article 5.1
 - C. Their Bid is based upon the products and systems described in the Bidding Documents without exceptions.

ARTICLE 3 OBTAINING CONTRACT DOCUMENTS

- 3.1 Contract Documents are available digitally upon request to Laurel Roth at lroth@clackesd.org.

INSTRUCTIONS TO BIDDERS**ARTICLE 4 EXAMINATION OF BIDDING DOCUMENTS**

- 4.1 Sets of Contract Documents may be examined at the following.
- A. Clackamas Education Service District
Administration Office 13455 SE 97th
Avenue, Clackamas Oregon 97015
(503) 675-4035
 - B. BBL Architects
200 North State Street
Lake Oswego, Oregon 97034
(503) 635-4425
- 4.2 Complete sets of Bidding Documents are to be used in preparing Bids; neither the Owner nor the Architect assume any responsibility for misinterpretations or errors resulting from the use of incomplete sets of Bidding Documents.
- 4.3 Requests for Clarification / Protest of Bidding Documents. Each Bidder shall examine the Bidding Documents carefully. Not later than 10 days prior to the date for receipt of Bids, shall make written request to the Architect for interpretation or correction of any ambiguity, inconsistency, or error therein which may have been discovered. Interpretations and corrections will be issued in the form of an Addendum by the Architect. Only interpretations and corrections by Addendum shall be binding. No Bidder shall rely upon any correction or interpretation given by any other method. Failure to raise any issue with the Bidding Documents that could have been raised pursuant to this Section will preclude protest of award based upon that issue.
- 4.4 All inquiries related to procedure or the actual Bid proposal should be directed to Tim Witcher, Chief Financial Officer, (503) 675-4035.
- 4.5 All inquiries regarding construction drawings and technical specifications in this Bid should be directed to Lisa Murphy, Principal, (503) 635-4425.

ARTICLE 5 BIDDING PROCEDURE

- 5.1 Pre-Bid Conference: There will be no formal pre-bid conference for this project. Interested parties should contact BBL Architects, (503) 635-4425 to arrange a time for a walkthrough of the facility. Statements made by the District's representatives at the informal conferences are not binding on the District unless confirmed by written addendum.
- 5.2 Each Bid shall be made in accordance with the Bid Proposal, Section 00 41 00, and all blank spaces on the Proposal shall be filled.
- 5.3 If Bid is made by a partnership, it shall contain names of each partner and shall be signed in the firm name followed by signature of partner signing for firm. If Bid is made by a corporation, the corporate seal shall be affixed there to, and it shall be signed in the name of the corporation, followed by signature of officer authorized to sign for corporation and printed or type written designation of office held in corporation, and signature shall be properly attested to by secretary of corporation. Address of the Bidder, street number (or post office box number), city and state, shall be typed or printed on the Bid Proposal.

INSTRUCTIONS TO BIDDERS

- 5.4 The Bid Proposal invites Bids on definite Drawings and Specifications. Only amounts and information asked for on the Bid Proposal will be considered as the Bid. Each Bidder shall Bid upon the work as specified and provided in the Bid Proposal
- 5.5 Addenda: The Architect will issue any District approved interpretation or correction as an Addendum prior to receipt of Bids. Addenda will be numbered consecutively. Addenda will be mailed or delivered to each plan center, person, or firm recorded as having received Bidding Documents. Contractors submitting a Bid shall acknowledge receipt of each Addendum in the Bid Proposal, Section 00 41 00, and be responsible for determining that all subcontractors, material suppliers, etc., have knowledge of said Addenda and that their Bid to the Contractor includes same. No Addenda will be issued later than five days prior to the date for receipt of Bids except an Addendum, if necessary, postponing the date for receipt of Bids or withdrawing the request for Bids.
- 5.6 Bid Security Required: Each Bid shall be accompanied by a Bid Surety Bond, cashier's check, or certified check, executed in favor of Clackamas Education Service District (the District), in an amount not less than 10 percent of the total Bid, based on the total Base Bid amount for those items Bid upon. The amount of the Bid security shall be forfeited to the District as liquidated damages, not as a penalty, pursuant to ORS 279C.385, should the Bidder refuse to enter into such contract or fail to furnish Performance Labor and Materials Payment Bonds and Certificates of Insurance as required by the General Conditions within 15 working days after the contract forms are provided to the Bidder. The Surety Bond shall be written by a bonding company authorized and licensed by the Oregon Insurance Commissioner. The bonding company must be listed on the most current U.S. Government Treasury List, Department Circular 750, or approved prior to Bid submission by the District. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified copy of their power of attorney. The Certified Check or Bid Bond of the Bidder with whom the contract is entered into will be returned when said contract has been properly executed, has been delivered to and accepted by the School District. The Certified Check or Bid Bond of each Bidder, who was not awarded the contract, will be returned immediately thereafter.
- 5.7 Bid Submittal: Each Bid shall be sealed in an opaque envelope containing the Bid Proposal. The outside, front face of the envelope shall show the following information. In addition, the name and address of the Bidder MUST appear on the outside of the envelope. If forwarded by mail, the envelope containing the Bid must be enclosed in another envelope addressed as specified in the Bid Proposal with the notation, "BID ENCLOSED" on the face.
- CLACKAMAS EDUCATION SERVICE DISTRICT
Clackamas ESD Sunnybrook Campus Renovation
Attention: Tim Witcher, Chief Financial Officer
13455 SE 97th Avenue
Clackamas, Oregon 97015
- 5.8 Bid Deadline / Opening: Bids must be received by the District at the address set forth in Section 5.7 no later than 2:00 p.m., Pacific Time, on Wednesday, May 22, 2019. Late Bids will not be accepted. Bids will be publicly opened at 2:00 p.m., Pacific Time, on Wednesday, May 22, 2019, at the address set forth in Section 5.7.
- 5.9 First-Tier Subcontractor Disclosure: First-Tier Subcontractor Disclosure Forms must be submitted by 4:00 p.m., Pacific Time, Wednesday, May 22, 2019 in the same manner and at the same location where Bids were submitted. Disclosure Forms submitted after 4:00 p.m., Pacific Time, Wednesday, May 22, 2019 will not be accepted. The Disclosure Form and Instruction is in Section 00 41 13

INSTRUCTIONS TO BIDDERS

- 5.10 Withdrawal. Any Bidder may withdraw their Bid, either personally or by written request, at any time prior to the opening of the Bid. After opening, a Bid is a firm Bid, and is irrevocable, valid and binding on the Bidder for 45 days, and for any extension beyond 45 days as may be agreed to by the Bidder and the District.
- 5.11 Amendment: A Bid may be modified, amended or supplemented until the deadline for submission. No material changes may be made to a Bid after the deadline for its submission. The District reserves the right to seek clarifications of each Bid, in clarifying or elaborating on an Bid, a Bidder explains or amplifies what is already there; a Bidder may not supplement, change, alter, or correct its Bid.
- 5.12 Bid Development Costs: Submission of a Bid to the District does not obligate the District to pay any expenses incurred by the Bidder in preparation of its bid, nor does it obligate the District in any other respect. The District will not reimburse the cost of a successful protest. It is a condition of submission that costs of submitting a Bid are solely the cost of the Bidder.
- 5.13 Bid Ownership: All Bids become the property of the District and will not be returned to the Bidder. Bids that are not opened may be returned to the Bidder or disposed of by the District at the District's discretion once the time to protest the refusal to consider the Bid has passed and Bid bonds are returned.
- 5.14 Public Record:
- A. At the conclusion of the selection process, the contents of all Bids received and opened will be made available for public inspection (ORS 192.410 to 192.505). Trade secrets or proprietary information that are recognized as such and are protected by law (ORS 646.461 to 646.475) may be withheld, if clearly identified as such in the Bid submitted. If an Bid contains any proprietary information that the Bidder does not want disclosed to the public or to be used by the District for any purpose other than evaluation of their Bid, each sheet of such information shall be readily separable from the remainder of the Bid and must be marked with the legend:
- "CONFIDENTIAL," "PROPRIETARY" or "TRADE SECRET"
- B. The legend shall be red in color on original documents and shall appear on each page of the original and any copy in which the information to be protected appears and shall be in block capital letters at least 0.5" in height. Pages shall be marked to indicate the information for which the claim of protection from disclosure is made and to separate the material to be protected from other information appearing on that page. Bidders are cautioned that the information sought to be exempt from disclosure must qualify for exemption under ORS 192.501, ORS 192.502 or another provision of law. The District reserves the right to waive the exemption from disclosure if the exemption is waivable and it is in the public interest to do so. Bidders are further informed that final determinations concerning the withholding of information from public disclosure rest with the District Attorney, the Attorney General or the Courts and not with the District. The District may not disclose information that the law forbids it to disclose and may not withhold information the law requires it to provide. Failure to mark information, documents or data shall be conclusive proof that the Bidder claims no exemption for it.
- C. Prices, makes, model or catalog numbers of items Bided, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary. Any response marked as a trade secret in its entirety shall be considered non-responsive and shall be rejected.
- D. All submissions and additional information, if any, shall become public record after award of contract.

INSTRUCTIONS TO BIDDERS

- 5.15 Proof of Insurance / Performance and Payment Bonds: The successful Bidder shall within 15 calendar days furnish insurance certificates as specified in the Contract and a Performance Labor and Materials Payment Bonds in compliance with ORS 279C.380, Oregon Revised Statutes. Work shall not commence until all insurance and bonding requirements have been met and bonds and certificates have been filed with Tim Witcher, Chief Financial Officer.

ARTICLE 6 REQUIRED CERTIFICATIONS / LICENSES

- 6.1 Nondiscrimination: Each Bidder must certify that the Bidder has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.
- 6.2 Resident Bidder: Each Bidder must identify whether the Bidder is a resident Bidder, as defined in ORS 279A.110 (4) and ORS 279C.375.
- 6.3 Construction Contractors / Landscape Contractors Board: The District will not receive or consider Bids unless the Bidder is licensed with the Construction Contractors Board or the State Landscape Contractors Board, as applicable.
- 6.4 Only "General Contractor - All Structures" or "Specialty Contractor - All Structures" classifications are allowed on District public works projects.
- 6.5 Public Works Bond: The contractor and every subcontractor must have a Public Works Bond pursuant to ORS 279C.936 filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836 (7) or (8).
- 6.6 Asbestos Abatement: The Contractor or a subcontractor is not required to be licensed under ORS 468A.720 regarding asbestos abatement projects.
- 6.7 The successful bidder will be required to comply with all applicable laws and rules applicable to public contract as set forth in the form of Agreement.

ARTICLE 7 SUBSTITUTIONS

- 7.1 The materials, products, installers, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution.
- 7.2 Each Bidder represents that his/her Bid is based upon the materials and equipment described in the Bidding Documents.
- 7.3 No substitution will be considered unless written request has been received by the Architect for acceptance no later than 3:00 pm Pacific Time, Tuesday, May 14, 2019. Each such request shall include the name of the material, installer, or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data, and any other information necessary for an evaluation. A Statement setting forth any changes in other materials, installer, equipment, or work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the proposer. The Architect's decision of acceptance or disapproval of a proposed substitution shall be final. The use of the CSI Substitution Request Form is encouraged.

INSTRUCTIONS TO BIDDERS

- 7.4 Electronic email form of substitutions is acceptable. Literature sent with the substitution request is to be specific to the product being substituted. Facsimile transmissions will not be accepted.
- 7.5 If the Architect accepts any proposed substitution, such acceptance will be set forth in Addenda listing manufacturers, materials, installers, and equipment accepted for substitution. Bidders shall not rely upon any acceptances made in any other manner.

ARTICLE 8 ACCEPTANCE OR REJECTION OF BIDS

- 8.1 The Owner will review the Bids and shall award a Contract for the Work to the responsible Bidder submitting the lowest responsive Bid.
- 8.2 The Bidder acknowledges the following rights of the District to:
- A. Reject any Bid that does not comply with prescribed public contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and to reject all Bids for good cause after finding that doing so is in the public interest.
 - B. Postpone award of the contract for a period not to exceed 45 days from the date of the Bid opening.
 - C. Waive informalities in the Bids.
 - D. Exercise additive or deductive alternates to adjust the accepted Bid amount.
 - E. To reject a Bid if a Bidder failed to submit data required by the Bidding Documents or if a Bid is in any way incomplete or irregular.
- 8.3 The District may award a contract by drawing of lots between the Bidders involved if two or more Bids shall be for the same amount for the same Work, and to return Bid unopened if only one Bid is received.
- 8.4 If the lowest responsive Bid exceeds Clackamas Education Service District's estimate of the cost of the project and the District's budget therefore (the "available funds" as determined by the District in its sole discretion), the District and the lowest Bidder may enter into negotiations as to value engineering and other options to reduce the contract price to an amount within available funds pursuant to ORS 279C.340.
- 8.5 Notice of Award / Protest of Award:
- A. The District shall mail a written notice of intent to award to all Bidders. The written notice of award of the contract shall constitute a final decision of the District to award the contract if no written protest of the notice of award is within seven (7) calendar days of the notice of award is mailed. If a protest is timely filed, the notice of award is a final decision of the District only upon issuance of a written decision denying the protest and affirming the award. The notice of award and any written decision denying or approving a protest shall be sent to every Bidder.

INSTRUCTIONS TO BIDDERS

- B. Protest of Award: Any actual Bidder who is adversely affected or aggrieved by the District's notice of award of the contract to another Bidder on the same solicitation shall have seven (7) calendar days after the date of notice of award to submit to the District a written protest of the notice of award. The District shall not entertain a protest submitted after the time period established in this provision. A Bidder is "adversely affected or aggrieved" only if the Bidder is eligible for award of the contract as the responsible Bidder submitting the lowest responsive Bid and is next in line for award, i.e., the protester must claim that all lower Bidders are ineligible for award because the Bids are nonresponsive; or because The District committed a substantial violation of a provision in the Bidding Documents or of an applicable procurement statute or rule, and the protesting Bidder was unfairly evaluated and would have, but for such substantial violation, been the responsible Bidder Bidding the lowest Bid. Bidders must submit written protest of award to Tim Witcher in the address set forth in Section 5.7 above of this Agreement. The written protest must specify the grounds upon which the protest is based. An issue that could have been, but was not, raised as a request for clarification or protest of a specification pursuant to these instructions shall not be grounds for a protest of award.

ARTICLE 9 FORM OF AGREEMENT

- 9.1 The Form of Agreement will be the Clackamas Education Service District Small Construction Projects Contract attached as Section 00 52 00.

ARTICLE 10 PREVAILING WAGES

- 10.1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker the Contractor, subcontractor or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled *Definitions of Covered Occupations for Public Works Contracts in Oregon*. The prevailing wage rates for public works contracts in Oregon are contained in the following publications: The January 1, 2019, Prevailing Wage Rates for Public Works Projects in Oregon and the January PWR Apprenticeship Rates. Such publications can be reviewed electronically at <https://www.oregon.gov/boli/WHD/PWR/Pages/index.aspx> and are hereby incorporated as part of the Contract Documents.
- 10.2 Payment of Prevailing Wages: No Bid will be received or considered by the District unless the Bid contains a statement by the Bidder that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 27a.

ARTICLE 11 EQUAL EMPLOYMENT COMPLIANCE REQUIREMENTS

- 11.1 By submitting this Bid, the Bidder certifies conformance to the applicable Federal Acts, Executive Orders and Oregon Statutes and Regulations concerning Affirmative Action toward equal employment opportunities.
- 11.2 All information and reports that are required by the Federal or Oregon Governments having responsibilities for the enforcement of such laws shall be supplied to the District upon request, for purposes of investigation to ascertain compliance with such acts, regulations and orders.

INSTRUCTIONS TO BIDDERS**ARTICLE 12 TIME OF COMPLETION**

- 12.1 The Bidder must agree to commence Work on or before the date specified below, and to substantially complete the Project within the time period stated. On this date, the Contractor shall have all systems in operation so as to render the building usable for "its intended use" by the District. Attention is directed to the Contract stipulating conditions for withholding payments in relation to Contract time.

Commencement of Work on Site: June 3, 2019 or June 10, 2019

Substantial Completion: August 10, 2019

Final Completion and Submission of Closeout Submittals: August 30, 2019

ARTICLE 13 SUBCONTRACTS

- 13.1 The Bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a Contract under this Contract, must be acceptable to the District.
- 13.2 Change of Subcontractor requested by District or Architect shall be on demand. Contract financial adjustment shall be negotiated through the General Contractor.

ARTICLE 14 CRIMINAL BACKGROUND CHECK, DRUG TESTING, TOBACCO / ALCOHOL POLICIES

- 14.1 The District is committed to maintaining a drug-free work place and strictly complies with the Drug Free Work Place Act of 1988 and the Drug-Free Schools and Communities Act amendments of 1989. No alcohol, drugs, firearms or weapons are allowed on any District property. In accordance with District policy, smoking and the use of all tobacco products are prohibited on all District property.
- 14.2 In order to comply with ORS 279C.505 (2) and to enable the District to determine that a Bidder will comply with the District's above noted policies, **Bidders shall submit copies of their Employee Criminal Background Check and Drug/Alcohol Testing Programs/Policies with their proposals.** Describe the Criminal Background Check performed of employees who will work at the school site with students. Define the criteria for qualification / disqualification of employment of an employee with the above policies.

ARTICLE 15 DATA SECURITY

- 15.1 The Contractor needs to provide a Statement of Data Security. This statement will document procedures and protocols used by the Contractor to secure and safeguard confidential District information. The Contractor will also certify the information provided from the District will not be released or shared in any manner without the written permission of the District. The Contractor will also specify the information life cycle including how and when confidential District information will be destroyed or archived following use. Statement of Data Security must be approved by the District.

ARTICLE 16 HOLD HARMLESS

- 16.1 The Contractor shall hold harmless, indemnify, and defend the District, its officers, agents, and employees for all claims, suites or actions of any nature arising out of any act, error, or omission of the Contractor, its officers, subcontractors, agents or employees whether actual or alleged, and resulting in bodily injury, property damage, or personal injury, during or resulting from the work described under this contract except liability arising out of the sole negligence of the District.

INSTRUCTIONS TO BIDDERS

ARTICLE 17 ANTITRUST CLAIMS

17.1 The Contractor hereby assigns to the Clackamas Education Service District fully, finally, and in their entirety, any and all federal and/or state antitrust claims that the Contractor now has or may here after acquire as a result of or in connection with any and all goods and services in the contract. Further, the Contractor shall cause similar working in favor of the District to be made a part of any and all contracts entered into with subcontractors or suppliers as a result of the primary contract.

17.2 Claims shall include price-fixing, monopolization, and any other violation of state or federal antitrust law.

ARTICLE 18 TRANSFER OR ASSIGNMENT

18.1 Neither the Contract, nor any interest herein shall be transferred to any other party or parties, without the District's prior written consent.

END OF SECTION

BID PROPOSAL

**PROPOSAL TO CLACKAMAS EDUCATION SERVICE DISTRICT
DISTRICT ADMINISTRATION OFFICE
13455 SE 97th Avenue
Clackamas, Oregon 97015**

The undersigned hereby proposes to furnish all necessary materials, superintendence, labor, plant, equipment, tools, and accessories to perform and complete the renovation project at Clackamas ESD Sunnybrook Campus in all respects and in full conformity with Contract Documents as prepared by BBL Architects, 200 North State Street, Lake Oswego, Oregon 97034.

Per the Contract Documents associated with this project, the District reserves the right to award contracts, or to reject all bids as may be determined to be in the best interest of the District.

Base Bid \$ _____ Dollars

The undersigned also proposes to furnish all labor and materials, and perform all work relating to the following Alternate, as more fully described on the Drawings. Indicate whether the following alternate items are additive or deductive by the use of the + or – signs.

1. ALTERNATE NO. ONE (1) \$ _____ Dollars
(Additional Work at Second Floor as indicated on Drawings)

Bidder's Name: _____

BID PROPOSAL

The undersigned has attached the required 10% Bid Security to this Bid.

If awarded the Contract, the undersigned agrees to be bound by the Agreement with the Owner, to present the required performance and payment bonds within 15 days of Notification to Proceed and to substantially complete the work within the time stipulated in Section 01 11 00, Summary of Work.

Addenda: Receipt is hereby acknowledged of Addendum _____ through _____.

The Undersigned certifies that: (1) This Bid has been arrived at independently and is being submitted without collusion with and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment or services described in the invitation to bid designed to limit independent bidding or competition; and (2) The contents of the 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.

Insurance: Is your insurance equal to or greater than required?

Liability & Property Damage	_____ Yes	_____ No	Company: _____
Vehicle Liability	_____ Yes	_____ No	Company: _____
Worker's Compensation	_____ Yes	_____ No	Company: _____

Representations and Certifications:

1. It is understood that the Bidder, before signing his/her proposal, has made a careful examination of the plans, specifications, and character of work required; that he/she has made a careful examination of the location and condition of the work, verified all measurements at the job site, and sources of supply of materials.

2. Oregon Business Registration: To transact business in the State of Oregon, a Bidder must be registered with the State of Oregon Corporations Division. Please indicate your business' current registration type with an "X" in the appropriate space:

Corporate Registration _____
 Assumed Business Name Registration _____

3. Oregon Reciprocal Preference Law (ORS 279.029): In compliance with ORS 279.029, each Bidder must state in its proposal whether it is a resident or non-resident bidder. **Bids that fail to provide this information will be considered nonresponsive and will be rejected.**

DEFINITION - RESIDENT BIDDER: A bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder."

DEFINITION – NON-RESIDENT BIDDER: A bidder who is not a resident bidder as defined above.

Indicate by an "X" in the appropriate space whether you are an Oregon resident bidder or non-resident bidder:

Oregon Resident Bidder _____ Non-Resident Bidder _____

4. The Undersigned agrees to be bound by and will comply with the provisions of ORS 279C.838 and 279C.840 pertaining to the payment of the prevailing rates of wage.

BID PROPOSAL

- 5. The Undersigned's CCB registration number is_____. If applicable, the Undersigned's State Landscape Contractors Board licensed number is_____. As a condition to submitting a bid, a Contractor must be registered with the Oregon Construction Contractors Board in accordance with ORS 701.035 to 701.055 and/or the State Landscape Contractors Board licensed number, and disclose the appropriate numbers. Failure to register and disclose the numbers, as applicable, will make the bid unresponsive and it will be rejected.
- 6. The Undersigned hereby certifies that all subcontractors who will perform construction work as described in ORS 701.005 are or will be registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 or State Landscape Contractors Board, as applicable, at the time the subcontractor(s) made a bid to work under the contract.
- 7. The Undersigned certifies that it has not discriminated against minority, women, or emerging small businesses in obtaining any subcontracts for this project as required by ORS 279A.110(4).

By signature below, Contractor agrees to be bound by this Bid.

NAME OF FIRM _____

ADDRESS _____

FEDERAL TAX ID _____

TELEPHONE NO. _____

FAX NO. _____

SIGNATURE 1) _____
Sole Individual – Signature

2) _____
Sole Individual – Printed Name

or 2) _____
Partner

or 3) _____
Authorized Officer of Corporation – Signature

Authorized Officer of Corporation – Printed Name

(SEAL)

Attested: Secretary of Corporation

Payment information will be reported to the IRS under the name and taxpayer ID # provided above. Information not matching IRS records could subject Contractor to 31 percent backup withholding.

Required Attachments:

1-Bid Security

2-Power of Attorney as required

3-Employee Criminal Background Check and Drug / Alcohol Testing Programs / Policies

END OF BID PROPOSAL

INSTRUCTIONS FOR FIRST-TIER SUBCONTRACTOR DISCLOSURE

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor (those entities that would be contracting directly with the prime contractor), is greater than or equal to: (i) 5% of the project bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, you must disclose the following information about that subcontract within two (2) hours of bid closing:

- 1) The subcontractor's name;
- 2) The category of the work; and
- 3) The subcontract dollar value.

If you will not be using any subcontractors that are subject to the above disclosure requirements, you are required to indicate "NONE" on the accompanying form.

THE DISTRICT MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (OAR 137-047-0460).

To determine disclosure requirements, the District recommends that you disclose subcontract information for any subcontractor as follows:

Determine the lowest possible contract price as follows:

- (1) Invitation to Bid (ITB) solicitation document issued by Clackamas Education Service District for the renovation of Clackamas ESD Sunnybrook Campus will include a base bid amount and additional bid amounts referred to as an alternative bids.
- (2) The alternative bid amounts will be considered as part of the overall bid only if the base bid amount is below construction budget amounts and the possibility of completing the construction work of both bid amounts is assured and financially feasible.
- (3) Should the base bid amount submitted by the bidding general contractor allow for the completion of the alternative projects, the base bid and alternative bids will be considered together as one bid submission by the general contractor.

Provide the required disclosure information for any first-tier subcontractor whose potential contract services (subcontractor base bid amount plus all additive alternate bid amounts, exclusive of any options that can only be exercised after contract award, if any) are greater than or equal to:

- (1) 5% of that lowest contract price, but at least \$15,000, or
- (2) \$350,000 regardless of the percentage.

Total all possible work for each subcontractor in making this determination (e.g., if a subcontractor will provide \$15,000 worth of services on the base bid and \$40,000 on an additive alternate, then the potential amount of subcontractor's services is \$55,000. Assuming that \$55,000 exceeds 5% of the lowest contract price, provide the disclosure for both the \$15,000 services and the \$40,000 services).

- (3) **SUBMISSION.** A Bidder shall submit the disclosure form required by OAR 137-049-0360 within two (2) working hours of Bid Closing in the manner specified by the Invitation to Bid (ITB). See highlighted ITB instructions on the accompanying **FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM**.
- (4) **RESPONSIVENESS.** Compliance with the disclosure and submittal requirements of ORS 279C.365(2) and this rule is a matter of Responsiveness. Bids which are submitted by Bid Closing, but for which the separate disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract award.

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM
(OAR 137-049-0360)**

PROJECT NAME:	Renovation of Clackamas ESD Sunnybrook Campus			
BID #:	BID CLOSING DATE: May 22, 2019	BID CLOSING TIME: 2:00 p.m., Pacific Time	AM	PM X
DISCLOSURE DEADLINE DATE: May 22, 2019	DISCLOSURE DEADLINE TIME: 4:00 PM, Pacific Time		AM	PM X

This form must be submitted at the location specified in the Invitation to Bid, within two (2) working hours after the advertised bid closing date and time.

List below the name of each subcontractor that will be furnishing labor or furnishing labor and materials and is required to be disclosed, the category of work that the subcontractor will be performing, and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

Name	Dollar Value of Work	Category	CCB#

The above listed first-tier subcontractor(s) are providing labor or labor and materials with a Dollar Value equal to or greater than:

- a) 5% of the total Contract Price, but at least \$15,000 (including all alternates). If the Dollar Value is less than \$15,000, do not list the subcontractor above; or
- b) \$350,000 regardless of the percentage of the total Contract Price.

FAILURE TO SUBMIT THIS FORM BY THE DISCLOSURE DEADLINE WILL RESULT IN A NONRESPONSIVE BID. A NONRESPONSIVE BID WILL NOT BE CONSIDERED FOR AWARD.

Form Submitted By (Bidder Name): _____

Contact Name: _____ Phone : _____

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM
(OAR 137-049-0360)**

Deliver Form to:

CLACKAMAS EDUCATION SERVICE DISTRICT
Clackamas ESD Sunnybrook Campus Renovation
Attention: Tim Witcher, Chief Financial Officer
13455 SE 97th Avenue
Clackamas, Oregon 97015

UNLESS OTHERWISE STATED IN THE ORIGINAL SOLICITATION, THIS DOCUMENT SHALL NOT BE FAXED. IT IS THE RESPONSIBILITY OF BIDDERS TO SUBMIT THIS DISCLOSURE FORM AND ANY ADDITIONAL SHEETS, WITH THE BID NUMBER, (if applicable), AND PROJECT NAME CLEARLY MARKED, AT THE LOCATION INDICATED BY THE SPECIFIED DISCLOSURE DEADLINE. SEE INSTRUCTIONS TO BIDDERS.

BID SURETY BOND

A Bid Surety Bond must be accompanied with each bid as indicated in Articles 5, Bidding Procedure, Item 5.6, of Section 00 20 13, Instructions to Bidders, for not less than 10% of the total bid, based on the total Base Bid amount for those items bid upon. The Bid Surety Bond does not include any Alternates or Unit Prices.

END OF SECTION

WAGE RATES

This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker the Contractor, subcontractor or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled *Definitions of Covered Occupations for Public Works Contracts in Oregon*. The prevailing wage rates for public works contracts in Oregon are contained in the following publications: The January 1, 2019, Prevailing Wage Rates for Public Works Projects in Oregon and the January PWR Apprenticeship Rates. Such publications can be reviewed electronically at <https://www.oregon.gov/BOLI/pages/index.aspx> and are hereby incorporated as part of the Contract Documents.

END OF SECTION

OWNER-CONTRACTOR AGREEMENT

The "Clackamas Education Service District Small Construction Projects Contract" will be used in executing this Contract. A sample of this contract has been herein attached to these Specifications as follows.



CESD Contract ID#	
Contractor Contract ID#	

**CLACKAMAS EDUCATION SERVICE DISTRICT
SMALL CONSTRUCTION PROJECTS CONTRACT**

This Contract is between CLACKAMAS EDUCATION SERVICE DISTRICT, Clackamas, Oregon ("District") and _____ ("Contractor").

Project: _____

The parties agree as follows:

Date of Commencement and Substantial Completion. The date of commencement of the Work shall be _____ or the date on which each party has signed this Contract, whichever is later.

The Contract Time shall be measured from the date of commencement. Contractor shall achieve Substantial Completion of the entire Work no later than _____, with final completion no later than _____.

Contractor's Agreement to Perform Work. Contractor agrees to perform the Work described in Exhibit 2.

Statement of Work. Contractor shall perform the Work described in Exhibit 2.

Payment for Work. District agrees to pay Contractor in accordance with Exhibit 2 and this Contract.

Contract Documents. The Contract Documents consist of the following documents, which are listed in descending order of precedence: this Contract; exhibits to this Contract, including Exhibit 1 (District's Solicitation Document and attachments); Exhibit 2 (Statement of Work, Compensation, Payment and Renewal Terms); Exhibit 3 (Certification Statement for Corporation or Independent Contractor); Exhibit 4 (Contractor's Solicitation Response).

A conflict in the Contract Documents shall be resolved in the priority listed above with this Contract taking precedence over all other documents. The Contract Documents are the entire Contract between the parties and shall supersede any prior representation, written or oral.

STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract
2. **Subcontracts.** District reserves the right to reject in writing any proposed subcontractor, without cause, in which case Contractor shall promptly propose a substitute subcontractor. Any difference in price arising out of such substitution shall be reflected in a Change Order. In addition to any other provisions District may require, Contractor shall require of any permitted subcontractor under this Contract that subcontractor be bound by all the same terms and conditions of this Contract. Such subcontracts are solely between Contractor and subcontractor and shall not have any binding effect on District.
3. **Assignment.** This Contract is not assignable by Contractor, either whole or in part, unless Contractor has obtained the prior written consent of District.
4. **Other Contractors.** District may undertake or award other contracts for additional or related work, and Contractor shall fully cooperate with such other contractors and with any District employees concerned with such additional or related work, and shall coordinate its performance under this Contract with such additional or related work. Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by District employees.
5. **Independent Contractor Status.** Contractor shall certify status in accordance with Exhibit 4.
6. **No Third-Party Beneficiaries.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
7. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
8. **Nonperformance.** In the event of nonperformance under this Contract, District, after seven (7) days' written notice, shall have the right to obtain from other sources such services as may be required to accomplish the Work not performed, and it is agreed that the difference in cost, if any, for said Work or goods shall be borne by Contractor. For purposes of this section, nonperformance shall be defined as failure to appear and perform Work as specified and scheduled.
9. **Early Termination.** This Contract may be terminated as follows:
 - a. **Termination by Mutual Agreement:** District and Contractor, by mutual written agreement, may terminate this Contract at any time.
 - b. **Termination for Convenience:** District in its sole discretion may terminate this Contract for any reason on 30 days' written notice to Contractor.
 - c. **Termination for Breach:** Either District or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
 - d. **Termination for Failure to Maintain Qualifications:** Notwithstanding Section 9(c), District may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.
 - e. **Payment on Early Termination:** Upon termination pursuant to Section 9, payment shall be made as follows:
 - i. If terminated under 9(a) or 9(b) for the convenience of District, District shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. District shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim that District may have against Contractor.

- ii. If terminated under 9(c) by Contractor due to a breach by District, then District shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.
- iii. If terminated under 9(c) or 9(d) by District due to a breach by Contractor, then District shall pay Contractor for Work performed prior to the termination date, provided such Work was performed in accordance with the Contract, less any setoff to which District is entitled.

10. Payment of Invoices. Unless otherwise provided in Exhibit 2, the payment period shall be one calendar month. Payments are due and payable thirty (30) days from receipt of Contractor's complete invoice or fifteen (15) days after payment is approved by District, whichever is earlier. District may withhold 5% of each payment as retainage pursuant to ORS 279C.570. Retainage will be paid within 30 days of final completion and acceptance by District.

11. Changes in the Work. District reserves the right to adjust the scope of the Work by written Change Order. No Change Order will be effective unless approved in writing by District and signed by Contractor. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. The following terms apply to any Change Order:

- a. **Prices.** Every price stated in a Change Order must be inclusive of all costs to complete the work associated with that price.
- b. **Costs.** The prices in a Change Order may consist only of the following costs as they relate to the Work required by the Change Order:
 - i. **Direct Labor Costs.** The labor-related costs may include only (1) the hourly wage (without markup or labor burden) and fringe benefits paid by Contractor to employees, based on actual payroll receipts, and (2) direct contributions for employee-related insurance, including industrial and medical insurance and supplemental pension, FICA, FUTA, and state unemployment-compensation-act payments. Overtime wages may only be included if preapproved in writing by District.
 - ii. **Direct Materials Costs.** The cost for materials may include only the net cost of materials, including freight costs, after applying all applicable discounts or rebates. No lump-sum costs are allowed unless preapproved in writing by District.
 - iii. **Construction Equipment Costs.** The cost of equipment rentals must be based on the lower of the local prevailing rate published in the Rental Rate Blue Book by Dataquest (the "Blue Book") or the actual rate paid to unrelated third parties for such equipment, as evidenced by rental receipts. If equipment is required for which there is no rental rate published in the Blue Book, the rate must be approved by District before renting the equipment. If more than one rate may apply, the lower rate must be used. Any equipment-rental rate or quantity exceeding the local fair-market rental value must be approved in writing by District. The rate for equipment that is necessarily standing by for use may not exceed 50% of the rate established by the foregoing terms, and the rental charge for any equipment may not exceed 75% of the fair-market purchase price of that equipment. The rental cost may include reasonable mobilization costs only if the equipment is delivered to the worksite solely because of changes in the Work required by a Change Order.
 - iv. **Insurance or Bond Premium Costs.** The cost of a change in an insurance or bond premium may be only the actual cost of any change in Contractor's liability insurance arising directly from changes in the Work required by a Change Order.

- v. **Subcontractor Costs.** The costs of or incurred by any subcontractor in connection with a Change Order will be calculated in accordance with the foregoing terms of this Section 11b. For avoidance of doubt, no costs under this Section 11b may include fees for consultants, attorneys, or claim preparation.
- vi. **Fees.** The maximum amount that may be charged for the overhead, profit, or any other cost of Contractor or any subcontractor is as follows, reflected as percentages of the amounts that may be charged in accordance with the foregoing under this Section 11b:
 1. Contractor may charge up to 15% of the cost of any materials that it supplies or work that it properly performs using its own forces.
 2. Contractor may charge up to 8% of the cost that it directly owes to a subcontractor or supplier for materials supplied or work properly performed by that subcontractor or supplier.
 3. Each subcontractor may charge up to 12% of the cost of any materials that it supplies or work that it properly performs using its own forces.
 4. Each subcontractor may charge up to 8% of the cost that it owes for materials supplied or work properly performed by its lower-tiered subcontractors or suppliers.
 5. The total fee owed to Contractor and all subcontractors, as calculated in accordance with the foregoing, for work performed by all lower-tiered subcontractors that are not in privity of contract with Contractor or a subcontractor may not exceed 25% of the total amount owed to all lower-tiered subcontractors. Additionally, District will not owe any fee related to the direct settlement of any claim between Contractor and any subcontractor.

If a change in the Work involves both additive and deductive items, the fees charged in accordance with this section will be calculated based on, and then added to, the net difference of the items. If the net difference is negative, no fee will be added to the negative figure. The parties acknowledge that the fees listed in this section are substantially greater than the fees and overhead normally included in determining the Contract Sum bid; that these higher percentages are a sufficient amount to compensate Contractor for all effects of changes in the Work; and that the resulting overcompensation of Contractor for these changes compensates Contractor for all changes in the Work for which Contractor believes that the percentage is otherwise insufficient.

- 12. Inspection and Acceptance of Work.** District shall inspect Contractor's Work and advise Contractor of any deficiencies, or if there are none, that the Work has been accepted. Contractor shall perform all additional Work necessary to correct any deficiencies without undue delay and without additional cost to District.
- 13. Right to Withhold Payments.** District shall have the right to withhold from payments due Contractor such sums as necessary, in District's sole opinion, to protect District against any loss, damage, or claim that may result from Contractor's performance or failure to perform under this Contract or the failure of Contractor to make proper payment to any suppliers or subcontractors.
- 14. Liquidated Damages.** The parties acknowledge that District will incur serious and substantial damage if Substantial Completion of the Work does not occur within the Contract Time. The parties further acknowledge that the amount of the damage would be difficult if not impossible to determine. The damage may include, for example, personnel and overtime costs, transportation costs, governmental fees, storage costs, portable rental costs, loss of use, and lost opportunities. Consequently, the Contract Documents may include provisions for

liquidated damages as a reasonable estimate of losses that District might incur. District's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. If a liquidated damages provision is contained in any Contract Document and Contractor has violated a provision related to it, District may withhold from payments due Contractor such sums as are required to satisfy District's claims under the liquidated damages provision. This section does not affect District's right to withhold payment under Section 13.

15. Knowledge of Site Conditions. Contractor shall, as a condition precedent to commencement of the Work (a) become familiar with the Project site and review all analyses, studies, and test data available to Contractor concerning the conditions of the Project site, (b) inspect the location of the Work and satisfy itself as to the condition thereof, including all structural, surface, and observed subsurface conditions, and (c) determine (i) that the Contract Sum is just and reasonable compensation for all the Work, including all foreseen and foreseeable construction risks, hazards, and difficulties in connection therewith, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the Work shall not result in any lateral or vertical movement of any adjacent structure. Contractor will notify District in writing in advance of commencement of the Work if it determines that it cannot satisfy these conditions.

16. Special Care. Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

17. District's Right to Stop the Work.

- a. If Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents, District may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- b. If suspension of the Work is warranted by reason of unforeseen conditions that may adversely affect the quality of the Work if such Work were continued, District may suspend the Work by giving written notice to Contractor. In such event, the Contract Time shall be adjusted accordingly, and the Contract Sum shall be adjusted to the extent, if any, that additional costs are incurred by reason of such suspension.
- c. Notwithstanding any other provision, District's authorized representative may, in his or her complete discretion, stop all of the Work, or any portion of the Work, if the Work creates a safety hazard or if a life/safety threat exists to the facility or its occupants. Any cost to correct deficiencies in Contractor's Work will be borne solely by Contractor.

18. Performance of the Work. Contractor shall supervise, coordinate, and perform the Work in accordance with the Contract Documents in a professional, safe, and workmanlike manner and in accordance with all laws, codes, and professional standards applicable to the industries and trades involved, including without limitation compliance with all applicable federal, state, and local building codes, District's construction and life safety policies and procedures, certification requirements applicable to the Work, and other policies or standards incorporated or referenced in the Contract Documents. Unless otherwise noted or directed, Contractor will perform all Work in accordance with product manufacturers' recommendations or directions for best results. No preparatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of Architect or District's Representative. Conflicts between manufacturers' directions shall be resolved by Architect.

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

- a. If terminated under 9(c) by District due to a breach by Contractor, District may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to District the amount of the reasonable excess.
- b. In addition to the remedies in Sections 9 and 13 for a breach by Contractor, District also shall be entitled to any other equitable and legal remedies that are available.
- c. If District breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments for which Contractor has completed the Work.

20. Claims.

- a. **Time Limits on Claims:** Claims by either party must be made within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made in writing to Architect and the other party, and must identify the known bases for each Claim and the nature and amount of the relief sought. Failure to timely file a written claim constitutes a waiver of the claim.
- b. **Continuing Contract Performance:** Pending final resolution of a Claim except as otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract and District shall continue to make payments in accordance with the Contract Documents.
- c. **Claims for Additional Costs:** If Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property. In an emergency affecting the safety of persons or property, Contractor shall act to prevent threatened damage, injury, or loss and shall immediately notify District. The prices in any Claim must conform to the terms of Section 11.
- d. **Claims for Additional Time:** If Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

21. Compliance With Applicable Law. Contractor shall comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including without limitation the following:

- a. **ORS 279A.110:** Contractor certifies that Contractor has not discriminated and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a women-owned business, a business that is owned by a service-disabled veteran, or an emerging small business that is certified under ORS 200.055.
- a. **ORS 279C.380:** Unless exempted by District in writing pursuant to District's Public Contracting Rules, prior to starting Work under this Contract, Contractor shall execute and deliver to District a good and sufficient performance bond, in a form acceptable to District, in a sum equal to 100% of the Contract Price for the faithful performance of the Contract, and shall execute and deliver to District a good and sufficient payment bond, in a form acceptable to District, in a sum equal to 100% of the Contract Price solely for the protection of claimants under ORS 279C.600.

- b. ORS 279C.505: Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the Work provided for in such Contract; payroll contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state, county, school, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug-testing program is in place.
- c. ORS 279C.510: If this Contract includes demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- d. ORS 279C.515: If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, 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 Contractor by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve Contractor or Contractor's surety from any obligation with respect to any unpaid claims.
- Unless the payment is subject to a good-faith dispute as defined in ORS 279C.580, if Contractor or any first-tier subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by District, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good-faith dispute as defined in ORS 279C.580.
- e. ORS 279C.520:
- i. Contractor shall not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
 1. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
 2. For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 3. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540.

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
 - ii. Contractor shall comply with ORS 652.220 (addressing the prohibition of discriminatory wage rates based on sex and of employer discrimination against an employee who is a complainant). Compliance is a material element of this Contract. Failure to comply is a breach that entitles District to terminate this Contract for cause.
- iii. Contractor shall not prohibit any of Contractor's employees from discussing the employee's wage, salary, benefits, or other compensation with another employee or another person, and Contractor shall not retaliate against an employee who does so.
- iv. Contractor shall and shall require its subcontractors to give notice to their employees who work under this Contract in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- f. ORS 279C.525: State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:
- i. Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
 - ii. State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
 - iii. Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and port districts.
 - iv. Tribal Governments.
- g. ORS 279C.530: Contractor shall promptly, as due, make payments to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums that Contractor agrees to pay for such services and all moneys and sums that Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

To the extent any of Contractor's employees are covered by the Oregon employment laws, Contractor, its subcontractors, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. See Contractor Exemption Certification – Exhibit 4 if you believe you may be exempt from this requirement.

- h. ORS 279C.545: Workers employed by Contractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with Contractor within 90 days from the completion of the Contract, providing Contractor has:
- i. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to any or all workers employed on the work, and
 - ii. Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.
- i. ORS 279C.580(3): Contractor shall include in each subcontract for property or services with a first-tier subcontractor a clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to Contractor by District. Contractor shall also include in each subcontract a clause that states that if Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by District, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its subcontractors to include a similar clause in each contract with a lower-tiered subcontractor or supplier.
- j. ORS 279C.800 to 279C.870:
- i. This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker that Contractor, any subcontractor, or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled *Definitions of Covered Occupations for Public Works Contracts in Oregon*. The prevailing wage rates for public works contracts in Oregon are contained in the following publications: The January 1, 2018 *Prevailing Wage Rates for Public Works Projects in Oregon*, the January 1, 2018 PWR Apprenticeship Rates, and the most current Prevailing Wage amendment. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHDPWR/pwr_state.shtml and are hereby incorporated as part of the Contract Documents.
 - ii. This Contract is not subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding subsection j(i) of this section, if this Contract is subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in subsection j(i) of this section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Clackamas County, Building Construction Type) and are hereby incorporated by reference as part of the Contract Documents. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.
- iii. District shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- iv. Contractor and any subcontractors shall post the prevailing wage rates in a conspicuous and accessible place in or about the Project.
- k. ORS 279C.836: If this Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870, Contractor shall:
- i. File a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting Work on the Project, unless exempt under ORS 279C.836(2), (7), or (8).
 - ii. Include in every subcontract a provision requiring the subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the project, unless exempt under ORS 279C.836(2), (7), or (8).
- l. ORS 279C.845: If this Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870:
- i. Contractor or Contractor's surety and every subcontractor or subcontractor's surety shall file with District a certified statement on a form provided by BOLI certifying the hourly rate of wage paid each worker employed by Contractor or subcontractor on the Work and that no such worker has been paid less than the prevailing rate of wage or wage specified under the Contract.
 - ii. Notwithstanding ORS 279C.555 or 279C.570(7), District shall retain 25% of all amounts earned by Contractor until Contractor has filed the certified statements as required by ORS 279C.845. In addition, Contractor shall retain 25% of any amount earned by a first-tier subcontractor until such subcontractor has filed the certified statements with District. District and/or Contractor shall pay any such retained amounts within 14 days after such certified statements are filed.
- m. ORS 468A.710: If this Contract requires asbestos abatement, Contractor or subcontractor must possess an asbestos abatement license as required by ORS 468A.700 et seq.
- n. ORS 671.560, 701.055: If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a construction contractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.005. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify District immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

23. When Work Is Performed on District Property (Including Schools) Contractor Shall Comply With the Following:

- a. **Identification** Contractor performing work on District Property or for District shall carry photo identification and will present such, to anyone on request. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the District in its sole discretion determines is required to easily identify Contractors.
- b. **Sign-in Required.** As required by schools and other District locations, each day of work Contractor's employees shall sign into the Main Office to receive an in-school identification/visitor tag to be displayed on the person at all times they are in the school or other location.
- c. **No Smoking.** Smoking or other use of tobacco is prohibited on the District property..
- d. **No Weapons or Firearms.** Except as provided by Oregon Statutes and District policy, weapons and firearms are prohibited on District property.

24. When Work Is Performed in or on School Sites, Contractor Shall Comply With the Following:

- a. **No Unsupervised Contact with Students.** Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Contractor will ensure that Contractor, any subcontractors, and their officers, agents and employees will have no direct unsupervised contact with students while on District property. Contractor will work with the District to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contact with students in a particular circumstance or circumstances, Contractor shall so notify the District prior to beginning any Work that could result in such contact. Contractor authorizes District to obtain information about Contractor and Contractor's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Contractor that will have unsupervised contact with students. Contractor also agrees to cause Contractor's employees and/or subcontractors, if any, to authorize District to conduct such background checks. Contractor shall pay all fees assessed by Oregon Department of Education for processing the background check. District may deduct the cost of such fees from a progress or final payment to Contractor under this contract, unless Contractor elects to pay such fees directly.
- b. **Confidentiality.** The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by Contractor in the performance of this contract: may not be re-disclosed to third parties without written consent of the students' parents/guardians; and must be used only for the purposes identified in this contract.

25. Quality of Goods and Services. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trade.

26. Staffing; Delay. Contractor shall furnish sufficient staffing and equipment and work such hours, including night shifts, overtime, and weekend and holiday work, as may be necessary to insure the production of the Work in accordance with the date of Substantial

Completion and the approved construction schedule. If Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of Contractor or any subcontractor, fails to meet the approved construction schedule, then Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations, or days of work, all without additional cost to District. District will not be liable for any damages or extra costs resulting from any delay in Contractor's work not caused by District. All such damages or costs shall be paid by Contractor.

27. Errors. Contractor shall perform such additional work as may be necessary to correct errors in the Work required under this Contract without undue delay and without additional cost.

28. Access to Records. Contractor agrees that District and its authorized representatives shall have access to the books, documents, papers, and records of Contractor that are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts.

29. Maintenance of Records. Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that District's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.

30. Ownership of Work. All work products created by Contractor as part of Contractor's performance of this Contract, including background data, documentation, and staff work that are preliminary to final reports, shall be the exclusive property of District. If any such work products contain intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants District a perpetual, royalty-free, fully paid-up, non-exclusive, and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, re-use, in whole or in part, and to authorize others to do so, all such work products. District shall have no rights in any pre-existing work product of Contractor provided to District by Contractor in the performance of this Contract except to copy, use, and re-use any such work product for District use only. If this Contract is terminated by either party or by default, District, in addition to any other rights provided by this Contract, may require Contractor to transfer and deliver such partially completed work products, reports, or other documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.

31. Warranty.

- a. Contractor warrants to District and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor,

improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Architect or District, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- b. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment from District, whichever is later.
- c. If, after 10 days' notice, Contractor fails to proceed to cure any breach of this warranty, District may have the defects corrected and Contractor and its surety shall be liable for all expenses incurred. In case of an emergency where, in the opinion of District or Architect, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to Contractor, but Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this subsection are not exclusive, but are cumulative of any other remedies District may have.
- d. Contractor shall assign all manufacturers' warranties to District and all guarantees and warranties of goods supplied under this Contract shall be deemed to run to the benefit of District. Contractor shall provide District with all manufacturers' warranty documentation and operations and maintenance manuals not later than the date of final acceptance of the Work by District.

32. Employees of Contractor. At the direction of District, Contractor will immediately remove any employee of Contractor from all District premises where District determines, in its sole discretion, that removal of such employee would be in the best interests of District.

33. Security. Any disclosure or removal of any matter and/or property, not in conjunction with the specifications, on the part of Contractor Contractor's employees shall be cause for immediate cancellation of the Contract. Any liability, including but not limited to attorney fees, resulting from any action or suit brought against District as a result of Contractor's or Contractor's employees' willful or negligent release of information, documents, or property contained in or on District property shall be borne by Contractor. All information, documents, and property contained within these facilities shall be considered privileged and confidential.

34. Indemnification.

- a. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless District, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this section.
- b. In claims against any person or entity indemnified under this section by an employee of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under subsection a. of this section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Contractor or a subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

35. Insurance. Unless otherwise provided below, Contractor shall at all times maintain in force at Contractor's expense, the following insurance coverage:

- a. **Workers' Compensation:** As required by ORS 656.017, subject employers shall provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees shall have this insurance unless exempt under ORS 656.027.
- b. **Commercial General Liability:** Contractor shall purchase and maintain CGL insurance with occurrence-based coverage on ISO Form CG 0001 (12/04 or later) or an equivalent form approved in advance by District. The CGL insurance shall include all major coverage categories including bodily injury, property damage, and completed operations coverage maintained for at least six years following final payment. The CGL insurance will also include the following: (1) separation of insured; (2) incidental medical malpractice; and (3) personal injury with employment exclusion deleted. Contractor shall maintain CGL insurance coverage of at least \$2 million for each claim, incident, or occurrence, and at least \$3 million annual aggregate coverage.
- c. **Motor Vehicle Liability:** Contractor shall purchase and maintain motor vehicle liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by District. The automobile liability insurance shall include pollution liability coverage with vehicle overturn and collision. Contractor shall maintain motor vehicle liability insurance of at least \$1 million for each claim, incident, or occurrence, and at least \$2 million annual aggregate coverage.
- d. **Builders All-Risk:** Not required – District provides coverage.
- e. **Additional Requirements:** All insurance coverage shall be provided by an insurance company having an A.M. Best rating of at least A- and/or licensed to do business in Oregon. Contractor alone is responsible for paying all deductibles and retentions. A cross-liability clause or separation of insureds condition shall be included in all general liability policies required by this Contract. Contractor's coverage shall be primary in the event of loss.
- f. **Certificate of Insurance:** Contractor shall furnish to District a current certificate of insurance for each of the above required coverages prior to conducting Work under this Contract. Additional insured endorsements must be written on ISO Form CG 2010 (11/85) or CG 2037 (07/04) together with CG 2033 (07/04), or their equivalent. Each certificate must provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days' prior written notice from Contractor or its insurer to District. Each certificate shall also state the relevant deductible or retention level. For general and automobile liability coverage, the certificate shall also provide that District, its agents, officers, and employees are additional insureds with respect to Contractor's services provided under this Contract. If requested by District, Contractor shall also provide complete copies of insurance policies to District.

36. Notice of Injury or Damage to Person or Property. If any person suffers physical injury or property damage arising from the Work regardless of the cause, Contractor shall give notice of such injury or damage, whether or not insured, immediately to District's authorized representative and Contractor's authorized representative. The notice shall provide sufficient detail to enable District and any other party affected to investigate the matter.

37. Waiver. Waiver of any default under this Contract by District shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

38. Arbitration.

- a. Any Claim arising out of or related to the Contract, except those waived as provided for in Section 20, shall, after decision by Architect or 30 days after submission of the Claim to Architect, be subject to arbitration. At any time, party(ies) may endeavor to resolve disputes by mediation.
- b. Claims shall be decided by arbitration that, unless the parties mutually agree otherwise, shall be in accordance with the rules of the Arbitration Service of Portland, Inc. The demand for arbitration shall be filed in writing with the other party to the Contract and with the Arbitration Service of Portland, Inc., and a copy shall be filed with Architect. Exclusive venue for arbitration shall be in Portland, Oregon.
- c. A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

39. Governing Law. The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and the Public Contracting Rules of the District as they exist at the time of execution of this Contract or any subsequent amendment. Any legal action involving this Contract not subject to arbitration must be brought in Clackamas County Circuit Court. If the Claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

40. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.

41. Merger Clause. This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification, or change in the terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

42. Anti-discrimination Clause. Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, sexual orientation, marital status, familial status, national origin, age, mental or physical disability, or political affiliation in programs, activities, services, benefits, or employment.

43. Attorney Fees. If a suit or action is filed to enforce any of the terms of this Contract, including a request for arbitration under Section 37 of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum that a court, including any appellate court, or arbitrator may adjudge reasonable as attorney fees. In the event the prevailing party is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based on the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon, area for the type of legal services performed.

44. Rule of Construction. The rule of construction that a contract is construed against the drafter shall not apply to any dispute over the interpretation of application of the Contract.

45. Removal of Debris. Contractor shall remove all trash and debris from the site for disposal. Contractor shall clean the work area and remove all trash, debris, and tools at least daily prior to leaving the job site and as needed to maintain a safe work area.

[Signature page follows]

CONTRACTOR DATA AND SIGNATURE

Business Name: _____

Business Address: _____

Contractor Phone: _____ Federal

Tax ID# or Social Security#: _____ Is Contractor
a nonresident alien? Yes No

Business Designation (check one): Sole Proprietorship Partnership
 Corporation-for profit Corporation-nonprofit
 Other [describe here: _____]

Federal tax ID numbers or Social Security numbers are required pursuant to ORS 305.385 and will be used for the administration of state, federal, and local laws. Payment information will be reported to the Internal Revenue Service under the name and federal tax ID number or, if none, the Social Security number provided above.

I have read this Contract including the attached Exhibits. I certify that I have the authority to sign and enter into this Contract. I understand the Contract and agree to be bound by its terms.

Signature Title

Name (please print) Date

NOTE: Contractor must also sign Exhibit 4 and (if applicable) Exhibit 5.

**Clackamas
Education Service District
SIGNATURE**

(This Contract is not binding on District until signed by the appropriate signing authority)

Signature Title Date

Name (please print)

EXHIBIT 2
CLACKAMAS EDUCATION SERVICE DISTRICT
SMALL CONSTRUCTION PROJECTS CONTRACT
STATEMENT OF WORK, COMPENSATION,
PAYMENT, and RENEWAL TERMS

1. Contractor shall perform the following Work: [Describe or reference solicitation documents]
2. The total Contract Price shall be _____.
3. District shall pay Contractor as described in Section 10 of the Contract.

Payments shall be made to the address below:

Name: _____
Title: _____
Address: _____

4. Contractor will invoice District for the Work as follows:

Invoices shall be submitted to the address below:

Name: _____
Title: _____
Clackamas Education Service District
Address: _____

EXHIBIT 3
CLACKAMAS EDUCATION SERVICE DISTRICT
SMALL CONSTRUCTION PROJECTS CONTRACT
CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR

NOTE: Contractor Must Complete A or B below

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

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

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

Signature

Title

Date

OR

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

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

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

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

- A. The labor or services I perform is primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence that is set aside as the location of the business.
- B. I purchase commercial advertising or I have business cards for my business, or I am a member of a trade association.
- C. My business telephone listing is separate from my personal residence telephone listing.
- D. I perform labor or services only under written contracts.
- E. Each year I perform labor or services for at least two different persons or entities.
- F. I assume financial responsibility for defective workmanship or for service not provided by purchasing performance bonds, errors and omission insurance, or liability insurance, or providing warranties relating to the labor or services I provide.

Signature

Date

END OF SECTION

PERFORMANCE AND PAYMENT BONDS

Contractor shall furnish Performance and Payment Bonds in accordance with Article 5, Bidding Procedure, Item 5.6 of Section 00 20 13, Instructions to Bidders.

END OF SECTION

The remaining pages (Part 2 – Drawings) are the drawings for the project. Questions regarding these drawings should be directed to BBL Architects at (503) 850-7859.