

SECTION 00 60 00

AGREEMENT FOR PRECONSTRUCTION SERVICES

THIS PRECONSTRUCTION SERVICES AGREEMENT ("Agreement") is made by and between Ridgefield School District No. 122, a Washington quasi-municipal corporation ("Owner"), and [REDACTED], an [entity type] ("Contractor"). This Agreement will be effective on the last signature date set forth below, and will be the agreed basis for the performance of and compensation for Preconstruction Services for the RSD 2017 Bond Projects (the "Project").

RECITALS:

- A. The Project consists of three Components: (1) a new 5-6/7-8 schools complex; (2) expansion of Ridgefield High School; and (3) repurposing the existing View Ridge Middle School into school district offices and community spaces, as well as minor security upgrades at Union Ridge and South Ridge elementary schools;
- B. Owner intends to design and construct the Project utilizing the services of a General Contractor/Construction Manager ("GC/CM") pursuant to the GC/CM alternative public works contracting procedure authorized by Chapter 39.10 RCW;
- C. Owner on December 2, 2016, made a Request for Proposals (RFP) for GC/CM services, and on [REDACTED], 2016, made a Request for Final Proposals (RFFP);
- D. The RFP and RFFP provide that the Owner desires the selected GC/CM Contractor to provide certain Preconstruction Services in furtherance of a successful Project; and
- E. Contractor has submitted the highest-scoring proposal to provide GC/CM services, part of which includes Preconstruction Services.

NOW, THEREFORE, in consideration of the mutual promises and other consideration set forth below, Owner and Contractor agree as follows:

AGREEMENT:

- 1. Scope of Work: Contractor agrees to furnish all services, labor, material, and professional personnel necessary to perform Preconstruction Services as called for in the Preconstruction Work Plan in Attachment A, which is incorporated herein by this reference, and as described in Section 3.3 of the GC/CM Agreement and in the RFP and RFFP for the Project.
- 2. Compensation: Owner will pay Contractor the agreed-upon sum of [REDACTED] (\$[REDACTED]), excluding Washington State sales tax, for such Preconstruction Services. The Contractor will submit monthly invoices for its services based on actual time and expenses incurred without markup. Owner will pay Contractor monthly for satisfactorily completed work appropriately invoiced, and such compensation will not exceed the total amount set forth above. Any amount that exceeds the agreed total compensation will be at the Contractor's sole cost and expense unless there are scope changes in the Preconstruction Services authorized by Change Order or amendment.

3. Early Subcontract Bidding:

- a. Consistent with RCW 39.10.370, the Contractor may bid major subcontract bid packages before the Owner and Contractor reach an agreement on the Maximum Allowable Construction Cost (MACC) for the Project. The Contractor will only bid such packages with Owner's prior written approval. Following proper completion of bidding, contractor may issue an intent to award a subcontract to the responsible bidder submitting the lowest responsive bid.
- b. Before soliciting such major subcontract bid packages, the Contractor will submit, for review and approval by the Owner:
 - i. A Subcontract Plan outlining the subcontract packages, with bid package estimates and a procurement schedule for each package;
 - ii. A final bidder Outreach Plan;
 - iii. Bidding instructions and bid forms;
 - iv. Standard subcontract agreements; and
 - v. An updated Schedule.
- c. All work associated with finalization of the Outreach Plan, selection of subcontractors pursuant to RCW 39.10.380-.385, and the prebid eligibility process pursuant to RCW 39.10.400 will be included in the Preconstruction Work Plan and compensated as Preconstruction Services. Implementation of the Outreach Plan and all other work associated with bidding of bid packages will be the responsibility of the Contractor. Only to the extent that the Contractor has included the costs of such other subcontract bidding work in its bid for Specified General Conditions Work, and only if the Owner and Contractor execute a GC/CM Agreement, will the Contractor be reimbursed for the costs of such other subcontract bidding work.
- d. In conducting all early subcontract bidding, Contractor will comply with the bidding requirements of all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, those in chapters 39.10 and 39.04 RCW.
- e. All agreements entered into between Contractor and Subcontractors of any tier will comply with all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, those affecting bidder responsibility, prevailing wage, and retainage. Such agreements will be in a form approved by the Owner and contain provisions consistent with those in this Agreement.
- f. The parties agree that upon negotiation of a MACC, any subcontracts awarded under this section prior to negotiation of the MACC will be incorporated into said MACC.

4. Independent Contractor Relationship. The parties intend that an independent contractor relationship will be created by this Agreement. The Owner is interested primarily in the results to be achieved; subject to the terms of this Agreement, the implementation of the Preconstruction Services will lie solely with the discretion of the Contractor. No agent, employee, servant, or representative of the Contractor will be deemed to be an employee,

agent, servant, or representative of the Owner for any purpose, and the employees of the Contractor are not entitled to any of the benefits the Owner provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, Subcontractors, or representatives during the performance of this Agreement.

5. Inability to Execute GC/CM Agreement:

- a. This Agreement is solely for Preconstruction Services. Owner and Contractor acknowledge that they will negotiate in good faith toward a MACC for the Project, although they may not reach agreement. Accordingly, Owner and Contractor are not relying on the assumption that a GC/CM Agreement will subsequently be signed.
- b. In the event Owner and Contractor do not successfully negotiate a MACC, as defined in the RFFP, this Agreement will be immediately terminated upon written notice to Contractor by Owner. In such event, Contractor will be paid the value of its Preconstruction Services provided to the date of termination; not be entitled to any other compensation, damages, loss of profits, or payment of any other kind; and not undertake further services or purchases obligating the Owner in any manner.

6. Prevailing Wages: To the extent that any of the work of this Agreement is subject to the payment of prevailing wages, the Contractor will comply with all applicable provisions of Chapter 39.12 RCW regarding prevailing wages; provide the Owner with all documents required therein; and pay not less than the prevailing rate of wage to such laborers, workers, or mechanics in each trade or occupation required for the work, whether performed by the Contractor, Subcontractor of any tier, or other person doing or contracting to do the whole or any part of the work subject to prevailing wages and contemplated by this Agreement. The execution date of this Agreement will be the effective date for any prevailing wages required to be paid herein. In any case, the Contractor will not pay any person described herein less than the hourly minimum rate of wage.

7. Statement of Intent to Pay Prevailing Wages: Prior to the Owner paying the Contractor for any work under this Agreement, whether such work is subject to prevailing wages or not, the Contractor will file with the Owner a Statement of Intent to Pay Prevailing Wages for itself, and a Statement of Intent to Pay Prevailing Wages for each Subcontractor of any tier that performed work subject to prevailing wages during the period for which payment is sought. All such Statements of Intent to Pay Prevailing Wages must be approved by the Department of Labor and Industries prior to filing them with the Owner.

8. Retainage: In accordance with Chapter 60.28 RCW, the Owner will retain from the monies earned by the Contractor hereunder five (5) percent as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor, or materialman who will perform any labor or furnish any supplies related to the Project and the State with respect to taxes imposed pursuant to titles 50, 51, and 82 RCW that may be due from Contractor. Said retainage will be reserved in an Owner fund until thirty (30) days following completion of the Preconstruction Services, as determined by Owner. Said retainage will not be released to Contractor until the Owner has received certification from the Washington State Department of Revenue that all taxes, increases, and penalties due from Contractor, and all taxes due and to become due with respect to the Project, have been paid in full or are readily collectible without recourse to the State's lien on the retainage, and until the requirements of Sections 6-7 and 11(f) of this Agreement have been satisfied.

9. Payment and Performance Bonds: In accordance with Chapter 39.08 RCW, Contractor will furnish to the Owner a bond, with a surety company licensed in Washington as surety, conditioned that Contractor will faithfully perform all provisions of this Agreement, pay all laborers, mechanics, subcontractors, and materialmen, and all persons who supply such person, persons, or subcontractors, with provisions and supplies for carrying out the Project, and pay the taxes, increases, and penalties incurred on the Project under state law. Said bond will be in the amount of the total amount of this Agreement. If the total contract amount is \$35,000.00 or less, Contractor may opt to have the Owner retain fifty (50) percent of the contract amount in lieu of the bond for a period of thirty (30) days after the date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.
10. Apprentice Utilization Requirement. The Contractor will comply with the apprentice utilization requirement of RCW 39.04.320, as now enacted or hereafter amended, and as such requirement may be adjusted by the Owner for this Agreement pursuant to RCW 39.04.320(2).
11. Compliance with Laws.
- a. The Contractor will, at its own expense, apply for, obtain, and maintain in full force and effect all permits and approvals required for the Preconstruction Services before commencing work. Further, the Contractor will apply for and obtain any inspections or approvals required prior to completing services.
 - b. The Contractor will comply with all federal, state, and local laws, ordinances, and regulations that affect performance of the Preconstruction Services, including without limitation: any applicable state public works or bonding requirements; regulations for licensing, certification, and operation of facilities, programs, and accreditation; and licensing of individuals.
 - c. The Contractor will be responsible for the safety of all workers on the Project and will comply with all appropriate state safety and health standards, codes, rules, and regulations, including, but not limited to, those promulgated under the Washington Industrial Safety and Health Act, Chapter 49.17 RCW ("WISHA"), and as set forth in Title 296 WAC (Department of Labor and Industries). The Contractor will likewise be obligated to comply with all federal safety and health standards, codes, rules, and regulations applicable to the Project.
 - d. The Contractor will immediately report to the Owner any failure to comply with laws, regulations, or ordinances related to environmental compliance, including but not limited to: spills, unauthorized fill in waters of the State (including wetlands), water quality standards, noise, and air quality.
 - e. The Contractor specifically agrees to pay any applicable business and occupation (B&O) taxes which may be due on account of this Agreement.
 - f. The Contractor will fully satisfy, and will require any subcontractors to fully satisfy, any obligation to make industrial insurance premium payments related to the Project and required under RCW 51.12.050 and/or RCW 51.12.070. Specified retainage relating to the Project will be withheld until receipt by the Owner of evidence that Contractor and all of its subcontractors have fully satisfied any obligation to make industrial insurance premium

payments related to the Project and required under RCW 51.12.050 and/or RCW 51.12.070.

- g. Contractor will comply, and ensure that its officers, employees, agents, Subcontractors, and Subcontractors' officers, employees, and agents comply with all applicable Ridgefield School District policies and procedures, including, but not limited to: Policy 4210 and Procedure 4210P ("Regulation of Dangerous Weapons on School Premises"); and Policy 4215 ("Use of Tobacco, Nicotine Products & Delivery Devices"). Without limiting the foregoing, personnel of Contractor or its Subcontractors performing work pursuant to the Agreement will not use tobacco products, including but not limited to "vaping" or "e-cigarette" liquid or equipment, on Owner's property. At the discretion of the Owner, Contractor will remove from Owner's property, at its sole cost and expense, any of its or its Subcontractors' employees or agents if they are in violation of Ridgefield School District policies and procedures.
 - h. Background Checks. In the event that Contractor or any of Contractor's agents, employees, or applicants for employment will have regularly scheduled unsupervised access to children, Contractor will require a record check through the Washington State Patrol criminal investigation system under RCW 43.43.830-.834, RCW 10.97.030, and RCW 10.97.050, and through the Federal Bureau of Investigation, before either hiring the applicant or allowing the previously hired agent or employee to work at Owner's facilities. The record check will include a fingerprint check using a complete Washington State criminal identification fingerprint card. The Contractor will provide a copy of the records generated by the record check to the subject of the records and to the Owner. If an applicant has had a record check within the previous two (2) years, the Contractor may waive the record check requirement for that applicant. The Contractor will pay all costs of the requirements set forth in this provision. In addition, any agreements between Contractor and any Subcontractors who will perform services for the Owner will include this provision requiring the Subcontractor to comply with RCW 28A.400.303.
 - i. Crimes Against Children. In accordance with RCW 28A.400.330, Contractor will prohibit any employee of the Contractor from working at a public school who has or may have contact with children at a public school during the course of his or her employment and who has pleaded guilty to or been convicted of any crime enumerated in RCW 28A.400.322, as now or hereafter amended. Any failure to comply with this section will be grounds for the Owner to immediately terminate the Contract. In addition, any agreements between Contractor and any Subcontractors who will perform services for the Owner will include this provision requiring the subcontractor to comply with RCW 28A.400.330.
12. Insurance. Contractor will procure and maintain in full force and effect during the duration of the Preconstruction Services the liability insurance required by Attachment B, which is incorporated herein by this reference.
13. Indemnification.
- a. To the fullest extent permitted by law and subject to the following conditions, the Contractor will defend, indemnify, and hold harmless the Owner, its directors, officers, employees, agents, consultants, attorneys, and insurers, and the employees, agents, successors, and assigns of any of them (collectively, the "Indemnified Parties"), from and against any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, costs, and expenses ("Legal Claims"), of whatever kind or nature and including,

but not limited to, design professional and consultant fees and attorney fees incurred on Legal Claims and in providing the right to indemnification, arising out of or resulting from acts or omissions of the Contractor, a Subcontractor of any tier, their agents, and anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable ("Indemnitors").

- b. The Contractor will fully defend and indemnify the Indemnified Parties for Legal Claims arising from the sole negligence or willful misconduct of the Indemnitors. Where any such Legal Claims arise from the concurrent negligence of (1) the Indemnified Parties and (2) the Indemnitors, the Contractor's obligations to defend and indemnify the Indemnified Parties under this section will be effective only to the extent of the Indemnitors' negligence.
- c. The obligations of the Contractor under this section will not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a person or party described in this section.
- d. This section will survive expiration or termination of the Agreement for any reason.

14. Treatment of Assets. Title to all property furnished by the Owner will remain in the name of the Owner. The Owner will become the owner of any improvements completed by the Contractor as part of the Project in addition to any work product and other documents, if any, prepared by the Contractor pursuant to this Agreement.

15. Maintenance and Inspection of Records.

- a. The Contractor will maintain books, records, and documents that sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and will maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records will be subject at all reasonable times to inspection, review, or audit by the Owner, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.
- b. The Contractor, at such times and in such forms as the Owner may require, will furnish to the Owner such statements, records, reports, data, and information as the Owner may request pertaining to matters covered by this Agreement.
- c. The Contractor will at any time during normal business hours and as often as the Owner or State Auditor may deem necessary make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement, and will permit the Owner or its designated authorized representative to audit and inspect such records and data. The Owner will receive a copy of all audit reports made by the State Auditor or a third-party firm as to the Contractor's activities related to this Agreement. The Owner may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Contractor's activities that relate, directly or indirectly, to this Agreement.
- d. The Contractor will retain all books, records, documents, and other material relevant to this Agreement for six (6) years after its expiration. The Contractor agrees that the Owner or its designee will have full access to and the right to examine any of said materials at all reasonable times during said period.

16. Changes.

- a. Either party may request changes to the scope of services and performance to be provided hereunder; however, no change or addition to this Agreement will be valid or binding upon the Owner unless such change or addition is written and signed by both parties. Such amendments will be attached to and made part of this Agreement.
- b. Owner may authorize by unilateral amendment to this Agreement the performance of additional work by the Contractor when deemed necessary by Owner, provided that the Contractor may, within fourteen (14) calendar days from the date of the Owner's unilateral amendment, submit a written objection of the amendment to the Owner. If such an objection is filed with the Owner within the time specified, the amendment will not become effective unless signed by both parties.

17. Assignment. The Contractor will not assign its performance under this Agreement or any portion thereof without the written consent of the Owner. The Owner reserves the right in its sole discretion to reject any such requested assignment.

18. Term and Termination.

- a. Term. The Preconstruction Services will be completed by [date]. This Agreement will expire upon completion of the Preconstruction Services, as determined by Owner, or upon execution and approval by Owner's Board of Directors of a GC/CM Agreement superseding this Agreement.
- b. Termination for Convenience. The Owner may terminate this Agreement, in whole or in part, at any time, by written notice to the Contractor. In the event of termination for the convenience of the Owner, the Contractor will be paid its costs for work performed up to the time of termination. The Contractor will promptly submit a termination claim to the Owner. If the Contractor has any property in its possession belonging to the Owner, the Contractor will account for the same and dispose of it in the manner directed by the Owner.
- c. Termination for Cause. Failure to comply with any of the provisions stated herein will constitute material breach of contract and cause for termination. If the Contractor fails to perform in the manner called for in this Agreement, or if the Contractor fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within seven (7) days' written notice thereof, the Owner may terminate this Agreement for cause. Termination will be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. Nondiscrimination. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment or in the provision of services to anyone on the grounds of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal. Without limiting the foregoing, Contractor will comply with all applicable federal, state, and local laws, regulations, and ordinances prohibiting discrimination in employment and services, including, but not limited to the Washington Law Against Discrimination, Chapter 49.60 RCW.

20. Attorney Fees and Costs. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party will be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney fees and other costs incurred in that action or proceeding.

21. Jurisdiction and Venue. This Agreement will be governed by laws of the State of Washington, both as to interpretation and performance, with the exception of Washington's choice-of-law rules. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof will be instituted and maintained only in any of the courts of competent jurisdiction in Clark County, Washington.

22. General Provisions.

- a. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior oral or written agreements, commitments, or understandings concerning the matters provided for in this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the parties hereto.
- b. Modification. The parties may modify this Agreement only by a subsequent written agreement executed by the authorized representatives of the parties.
- c. Severability. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void, or unenforceable, the validity of the remaining provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- d. No Waiver. A failure by either party to exercise its rights under this Agreement will not preclude that party from subsequent exercise of such rights and will not constitute a waiver of any other rights under this Agreement unless stated as such in a writing signed by an authorized representative of the party and attached to this Agreement.
- e. Time of the Essence. Both parties recognize time is of the essence in the performance of the provisions of this Agreement.
- f. Headings. Headings in this Agreement are included only for convenience and will not control or affect the meaning or construction of this Agreement.

ATTACHMENTS: The following documents, whether attached hereto or not, are hereby incorporated by reference and made a part of this Agreement, as if set forth herein in full:

- 1. Attachment A: Preconstruction Work Plan, dated
- 2. Attachment B: Insurance Requirements for Preconstruction Services
- 3. Attachment C: Prevailing Wage Information
- 4. Terms and conditions relating to Preconstruction Services from the following documents:

- a. RFFP;
- b. GC/CM Agreement (as included in the RFFP); and
- c. RFP.

FOR OWNER:

FOR CONTRACTOR:

By: _____

By: _____

Signature _____

Date _____

Signature _____

Date _____

Name: _____

Name: _____

Title: _____

Title: _____

END OF SECTION

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