

**Limon School District RE-4J**  
**New PK-12 School Facility and Gym Renovation**  
874 F Street, Box 249  
Limon, CO 80028



**REQUEST FOR QUALIFICATIONS/PROPOSAL -  
COMMISSIONING SERVICES**

Limon School District RE-4J, Limon, Colorado, invites your firm to submit a qualification statement for Commissioning Services. The District is conducting a qualifications and proposal-based selection process to retain a firm for third party commissioning services for the construction of a \$25,019,362 new K-12 school replacement and gym renovation. The Limon SD project will maintain instruction on the existing K-12 campus in Limon, Colorado. The Middle School & Library building and the Elementary building will be demolished in summer of 2014 to allow construction of the new two story classrooms, support spaces and administration. Once completed the High School wing will be demolished, final building connections completed along with parking, play areas and landscaping.

**RFQ/P TIMELINE AND GENERAL REQUIREMENTS** (Dates are tentative and subject to change)

- 2/19 Issue RFQ/P to Commissioning Firms
- 2/24 Questions due owner/RLH engineering, 5pm
- 2/25 Response to questions
- 2/28 RFQ/P due owner/RLH engineering NLT 3pm
- 3/3-5 RFQ/P screening by district committee
- 3/5 Notify Commissioning Firms of final selection
- 3/7 SD Drawings Due
- May 2014 - Groundbreaking ceremony
- August 2015 - Project estimated substantial completion.

Prospective Commissioning Firms must submit one (1) hard-copy original of qualifications statement/proposal in a sealed package, clearly identifying that this is a response to this RFQ/P, addressed to the District's Owner's Representative:

Chuck Jordan  
RLH Engineering, Inc.  
541 East Garden Drive, Unit S  
Windsor, CO 80550  
970-686-5695

Additionally, an electronic version, in pdf format, of the RFQ/P response shall be forwarded to [cjordan@rlhengineering.com](mailto:cjordan@rlhengineering.com) by the submittal deadline.

**Responses to the RFQ/P will be accepted no later than February 28, 2014 at 3:00 p.m.**

### **COMMUNICATION AND QUESTIONS**

All official communication with Applicants and questions regarding this RFQ/P will be via email to the Owner's Representative: Chuck Jordan, RLH Engineering, Inc., at [cjordan@rlhengineering.com](mailto:cjordan@rlhengineering.com). Applicants are not to contact the school district or CDE's Capital Construction BEST program staff directly. The deadline for submitting questions for clarification is February 24, 2014 at 5:00 p.m. A one-time response to the questions will be provided to all registered RFQ/P holders no later than February 25, 2014. The District reserves the right to accept or reject any or all qualification statements depending on the best interests of the District. All costs incurred by prospective commissioning firms associated with qualification statement preparation, interviews and contract negotiations are the responsibility of the commissioning firm.

### **Scope of Services (Exhibit A):**

Proposal for Commissioning Services shall include as a minimum the following:

#### **A. Scope of Work**

The purpose of the commissioning process is to assist in providing Limon School District RE-4J a high level of assurance that the numerous complex systems have been installed in the prescribed manner for the various schools:

The District's goals for the commissioning process include:

- To insure that intended design performance is achieved, and to verify that the equipment is installed per manufacturer's recommendations.
- Verify systems receive operational checkout by contractors.
- Improve occupant satisfaction, and reduce warranty callbacks.
- Improve final acceptance, and improve systems reliability.
- Assist in evaluating energy savings options associated with LEED for New Construction Guidelines.

#### **B. Equipment and Systems to be commissioned**

Generally, Commissioning shall be performed for all Mechanical Systems/Equipment and Lighting Control System. Mechanical systems being considered at this time for the facility include:

Academic Areas

- DX cooling, displacement ventilation, condensing boilers, VAV with hot water reheat, energy recover
- Direct / indirect cooling, condensing boilers, VAV with hot water reheat, energy recovery  
VoAg / Shop
- Unit Heater / Evaporative Cooling  
Gym / Cafeteria
- Constant volume; DX / gas fired RTU's  
Administration
- DX cooling, overhead VAV

### C. Commissioning Team

The commissioning team will be headed by the commissioning agent (CxA) and will consist of (as applicable) an owner's representative (OR), architect-engineer (AE-DB), construction contractor (GC-DB), relevant contractors and subcontractors (including controls and test-and-balance), relevant sub-consultants/contractors and facility operating staff. The CxA will be involved in all of the following phases: design, construction, acceptance, and warranty.

Indicate in your response if the CxA is qualified to perform HVAC and Lighting Controls or if the commission of those systems will be by more than one person.

The team will meet as needed to review the commissioning process. Meetings will be coordinated between the CxA and the Design Builder, and scheduled well in advance of the planned meeting time. The lead person from each of the above mentioned team sub-groups should attend the commissioning coordinator's meeting. Communication, documentation and cooperation are critical to the commissioning task. All team members must emphasize these points to help make the process run smoothly and successfully. Meeting minutes will be documented by the CxA and distributed to the commissioning team.

### D. Tasks and Responsibilities

The tasks and responsibilities for the commissioning process are listed below. For the most part, the tasks happen sequentially, although some are ongoing and overlapping. Below is a description of each task:

**1) Issuance of Owner's Project Requirements (OPR):** CxA will meet with the Owner, Owner's Representative and DB to develop an OPR document. This document will assist the DB in developing a Basis of Design for the project and LEED documentation.

**2) Design Review:** The CxA will review at a minimum three design submittals (DD, 50% CD and 95% CD are anticipated, but could be adjusted with coordination with the OR) and offer energy-efficiency, commissioning, and O&M related input, including test-and-balance and will include a letter-report to the design team. The CxA shall attend design meetings when applicable, review sequences of operation, and prepare appropriate reports.

**3) Commissioning Plan:** Develop a plan intended to give an overall view of the process, a good idea of the various stages of commissioning, and what items will be involved or needed at each stage.

**4) Construction Observations:** The construction observations conducted by the CxA are an independent effort from the design team's efforts. The CxA observes the construction process and reports findings to the Owner, OR, DB and specific subcontractors, where appropriate. These observations will aid contractors in dealing with installation issues and, in a number of cases, will provide information for subsequent review by the design team, during their own walk-through. The CxA will:

- Make regular job-site visits, which include checks of installation practices, attend construction meetings and report unresolved issues, and provide a report for each site visit within 10 business days of a site visit. These are typically as needed, but should be at least bi-weekly during construction and installation of mechanical system components
- Work with DB/OR to get commissioning activities on the master construction schedule
- Create inspection checklists for DB and verify completed checklist
- Coordinate with DB sequence of events for controls, TAB, and commissioning
- Verify proper installation of equipment/systems to be commissioned
- Observe equipment start-up ensuring adherence to manufacturer's recommendations
- Test components as prescribed in commissioning specifications

**5) Submittal Review:** The CxA will make use of submittals, with access provided by the Owner, for developing the pre-functional and functional procedures. Review and commentary on the submittals will take place where appropriate. Submittal review shall be performed concurrent with the DB, and shall be returned with comments within ten (10) business days.

**6) Pre-Functional (PF) Performance Procedures:** Pre-functional checklists verify that the physical installation of equipment meets the design intent, specifications and applicable codes for the building. The forms are written by the CxA and are to be filled out by the CxA with the assistance of the installing contractor or contractors. Toward the end of the pre-functional process, the vendor or installing contractor will provide any applicable start-up documentation. While the contractors are carrying out the installation process and assisting with the PF forms, the CxA will conduct site visits to provide assistance and observe installation and start-up progress.

**7) Controls Point-to-point Verification:** The CxA will select random system control points (approximately 10 percent of the total) to verify the point-to-point report submitted by the control system contractor. Information from the design intent controls drawings and contractor documentation will be checked against the CxA's findings.

**8) TAB:** The CxA will review all draft TAB procedures and processes, which shall be submitted in advance of any work. The CxA will provide Oversight and Verification of the TAB process and will review the draft TAB report.

**9) Functional Performance (FP) Procedures:** The CxA will develop procedures and forms and will carry out the plan. The appropriate contractors and/or vendors will be

responsible for assisting with the operation of equipment for these procedures. The procedures give an outline of the methods for system verification used by the CxA, and documentation of the process is made on functional performance forms (checklists). Functional performance checklists are intended to verify the final functional abilities of individual equipment and systems. Functional checks usually follow an “inverted pyramid” flow, meaning that subsystem components are tested, and then system components, followed by system-level testing, and finally integrated system testing.

**10) Record Drawings:** The CxA shall assist with the engineer’s document review process by reviewing record drawings to see that commissioning details have been incorporated. Discrepancies noted will be reported to the DB for correction by the appropriate party.

**11) O&M Submissions:** The CxA will furnish a sample O&M Manual table of contents and will review all O&M manuals provided by contractors for the equipment and systems covered by the commissioning process. The review will verify that O&M instructions include and are consistent with the commissioning process and that conditions encountered during commissioning are properly addressed. Part of the review process will verify that instructions, piping diagrams, etc., are specific (edited where necessary) to the actual equipment provided in the project.

**12) Staff Training:** On-site training programs for the various building systems will be taught by the appropriate design/construction party. The CxA will provide planning guidance and program overviews. The DB is responsible for providing a proposed agenda and schedule of the training beforehand for approval by the CxA and the Owner. Video taping the training sessions is strongly recommended but not included as part of this proposal.

**13) Construction Issues:** Any issues identified during observations and checkouts will be noted by the CxA and reported to the appropriate parties. As part of their contractual responsibilities, the design and construction team, as appropriate, will develop and implement solutions that address these issues.

**14) Commissioning Report:** The CxA will prepare a final commissioning report for the Owner. The report will contain specific component and system checkout information (pre-functional and functional forms) as well as relevant commissioning-related information regarding system operation. The commissioning report is intended to augment the O&M submissions rather than to replace them. In addition to this final commissioning report, interim observation reports along with completed commissioning forms will be issued as appropriate.

**15) Warranty Phase:** The CxA will:

- Perform diagnostic monitoring
- Perform appropriate seasonal testing before 2-year warranty period expires. Completion of the facility is expected August 2015, and seasonal testing should be anticipated during the winters of '15 and '16.

**16) Completion of Enhanced Commissioning (Alternate #1):** All activities that define fundamental commissioning per LEED for New Construction and Major Renovation

are included in the base Cx scope. The base Cx scope also includes some services that are considered Enhanced Commissioning per LEED. In addition to those items, Add Alternate #1 shall include the completion of enhanced commissioning by reviewing the building operation within 10 months after substantial completion. A plan should be developed to mitigate any outstanding commissioning-related issues. Since most items required for enhanced commissioning are tied into the base scope, the alternate price shall include the cost for reviewing building operation within 10 months after substantial completion and producing a plan for resolution of outstanding issues as a result of this review. In addition, a Systems Manual coordinated with the DB Operations and Maintenance manual shall be developed.

**17) Measurement and Verification (Alternate #2):** The intent of this task is to provide for the on going accountability of building or energy system performance. The measurement and verification phase shall cover a 1-year period of post construction occupancy. The CxA shall develop an M&V plan, make recommendations on where to install necessary metering equipment (with consideration to the project budget), track performance by comparing predicted performance to actual performance, and evaluate energy efficiency by comparing actual performance to baseline performance. The appropriate vendors and/or contractors will be responsible for installing metering equipment. The International Performance Measurement and Verification Protocol, Volume III provides descriptions of best-practice techniques for verifying energy performance. The CxA is responsible for any model calibration necessary to utilize the energy model developed by the DB. The DB will be utilizing IES-VE modeling software.

#### **E. Invoices and Payment**

The Owner shall be billed monthly on time and material basis or actual hours expended for the Scope of Services provided.

#### **F. Fees (Exhibit B)**

See attached spreadsheet – Provide fees as indicated.

#### **G. Qualifications Section:**

In order to select the firm best qualified for the Limon School District RE-4J project we are asking that the prospective Consultant respond to the following questions.

1) Approach to Project

Describe your firm's process and strategies for providing the Tasks and Responsibilities for the Cx scope of work. Also describe other services provided that may not be identified in the Tasks and Responsibilities for the Cx scope of work. Identify any work performed by subcontractors, and which area will be self-performed. Identify other current project commitments and ability of the firm and proposed staff to serve this project.

2) Work Experience

List all K-12 school facility commissioning experience and qualifications related to the proposed project. Project experience should clearly be in a CxA role and not

MEP design role. Provide references of completed projects. Also, indicate which types of mechanical systems were utilized on these projects.

3) Personnel

Identify the commissioning coordinator, and any key personnel, their skill and qualifications, technical competence, experience on similar projects, capacity to undertake the project, and their availability throughout the duration of the project. Additionally, specifically identify personnel responsible for Lighting Control commissioning, and their relevant qualifications and experience in this role. Identify if the personnel performing Design Review will also be responsible for Construction Observation and other construction-phase Cx services

4) Insurance Certificate(s)

Provide sample insurance certificate(s), which identifies types of coverages offered by your firm. Minimum Insurance Requirements are identified in Exhibit C, standard Consultant Agreement.

**H. Evaluation Criteria:** Award of Contract will be based on the following:

Criteria	Point Value
Firm History	10 points
Proposed Team members & DB Sub-consultants	20 points
Current Workload	5 points
Approach to local participation	10 points
High performance/ sustainable experience	10 points
DB/ team approach to project	20 points
Software tools/ Pre-construction approach to design and estimating	15 points
References	10 points
Total	100 points

Award of Contract

- A. All submitted responses will receive a decision memorandum and scoring matrix following the selection process.

- B. Submission of a proposal indicates bidder's acceptance of the evaluation method. The district reserves the right to reject any or all proposals for any reason, and to re-issue the RFQ/P.
- C. The District's Consultant Agreement is attached to the RFQ/P. By submitting qualifications, fee proposal, and billing rates, the Consultant agrees to the terms and conditions of the agreement and will sign the agreement as written.

### **I. Legal Requirements**

1. The selected firm will be required to indemnify and hold the District and its agents and employees harmless from and against all suits or actions of any kind, including, but not limited to, workers' compensation claims brought against them for or on accounts of any damages or injuries received or sustained by any parties, by or from the acts of the successful firm or its agents or employees.
2. The selected firm shall indemnify and hold the District and its agents and employees harmless from any and all claims, causes of action, suits and liabilities, including attorneys' fees and costs arising out of or relating to disclosure of any information included in the successful firm's proposal.
3. Prior to the commencement of any work, Firm shall forward Certificates of Insurance to the District and its Owner's Representative. The insurance required shall be procured and maintained by the Firm for the duration of the contract. The insurance shall be with a carrier licensed in the State of Colorado and shall have "A" or better Best rating. The District will not accept any form of Agreement or General Conditions in which a Limitation of Liability states any figures less than the insurance limits noted above.
4. Firm shall name Limon School District RE-4J as additional insured on all insurance except Workers' Compensation. The Firm shall furnish the District and its Owner's Representative with Certificates of Insurance prior to commencement of work.

5. Verification of Information:

Applicants are hereby notified that the District will rely on the accuracy and completeness of all information provided in making its selection. As such, Applicants are urged to carefully review all information provided to ensure clarity, accuracy and completeness of such information. As the District deems necessary and appropriate in its sole discretion, Limon School District reserves the right to make any inquiries or other follow up required to verify the information provided. The District reserves the right to select any or reject any and all submissions in their best interest.

6. Disclosure of Information:

All submissions and other materials provided or produced pursuant to this RFQ may be subject to the Colorado Open Records Law, CRS 24-72-201 ET. Seq. As such, Applicants are urged to review these disclosure

requirements and any other exceptions to disclosure of information furnished by another party and, prior to submission to CDE, appropriately identify materials, which are not subject to disclosure. In the event of a request by CDE or School District for disclosure of such information, CDE or School District shall advise the Applicant of such request to give the Applicant an opportunity to object to the disclosure of designated confidential materials furnished to CDE.

7. Discrimination in Employment:

Connection with the performance of work on this project, the selected Service Provider agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Service Provider further agrees to insert the foregoing provision in all subcontracts hereunder.

8. Applicable Laws:

This selection process and the performance of any selected shall be subject to, governed by and construed in accordance with applicable Federal Laws, the laws of the State of Colorado and the Charter, and other applicable regulations as the same may be amended from time to time.

9. Cost of Developing Qualifications:

Any costs associated with developing qualifications, preparing for and attending an interview is the sole responsibility of the Service Provider. The District assumes no liability for any costs incurred throughout the entire selection process.

10. Qualification Ownership:

All qualifications, including attachments, supplementary materials, sketches, etc. shall become the property of the District and will not be returned to the applicant.

**Exhibit B**

**F. Fees (to be submitted in a sealed envelope separate from the Qualifications Package)**

Commissioning firm will perform work as proposed in the RFQ on a hourly basis for a maximum "Not to Exceed" price

Base Bid

Limón School District RE-4J, PK12 Base Commissioning (Fundamental Cx, + some Enhanced Cx, per LEED v3) Not to Exceed Cost	
=	\$

Alternate #1

Completion of Enhanced Cx for Project Listed Above (per LEED v3) (Not included in NTE price above)	
=	\$

Alternate #2

Measurement and Verification for Project Listed Above (per LEED v3), Option D, IPMVP Volume III (Not included in NTE price above)	
=	\$

This amount includes services listed in the RFQ, and includes direct project expenses for expenditures

Not to Exceed Breakdown for Fundamental+ Cx (Base Bid)

Work Description	% of Time	Estimate of Hours	Estimated Number of Meetings and/or Site Visits
<b>Design Phase</b>			
OPR/Basis of Design Review (as required by Fundamental)			
Design and Construction Documents Review (not required for Fundamental Commissioning, but this should be priced with base bid)			
Commissioning Plan			
Specification Development			
Attend design meetings			
<b>Construction Phase</b>			
Attend construction meetings			
Construction Observations			
Pre-functional procedures			
Controls point to point verifications			
Functional Performance procedures			
<b>Close Out Phase</b>			
Records Drawings			
O&M Submittal Review			
Commissioning Report (Fundamental)			
Warranty Phase			
<b>TOTAL</b>	100%		

Breakdown for Alternate #1 - Completion of Enhanced Cx

Work Description	% of Time	Estimate of Hours	Estimated Number of Meetings and/or Site Visits
Design Review of OPR & BOD (as required by Enhanced)			
Review of Design of Construction Documents (price with base scope above)			
Submittal Review			
Development of System Manual			
Training			
Commissioning Report (Enhanced)			
Review of Building Operation within 10 Months after Substantial Completion			
<b>TOTAL</b>	100%		

Breakdown for Alternate #2 Measurement and Verification

<b>Work Description</b>	<b>% of Time</b>	<b>Estimate of Hours</b>	<b>Estimated Number of Meetings and/or Site Visits</b>
Develop an M&V Plan in accordance with LEED v3, Option D as specified in IMPVP Volume III. The M&V period must cover at least 1 year of post construction occupancy and provide a process for corrective action should energy savings be underachieved.			
<b>TOTAL</b>			

Billing Rates

<b>Billing Rate Breakdown</b>	<b>2014</b>	<b>Total Estimate of Hours Allocated to Project During 2014</b>	<b>2015</b>	<b>Total Estimate of Hours Allocated to Project During 2015</b>
Principal, Project Executives				
Senior Associates, Senior Project Managers				
Associates, Senior Engineers, Project Managers				
Staff Engineers Level II				
Staff Engineers Level I				
Senior Field Technicians				
Field Technicians				
Secretarial				
Trip charge or minimum charge if applicable				
Mileage to project site if applicable				

## CONSULTANT AGREEMENT

**THIS CONSULTANT AGREEMENT** (“Agreement”) is made and entered into as of the date set forth below each party’s signature hereto and is by and between Limon Public Schools RE-4J (“District”), having a principal place of business at 874 F Avenue, Limon, Colorado 80028, and [REDACTED] (“Consultant”), having a principal place of business at [REDACTED], for the provision of [REDACTED] services in connection with the District’s BEST grant and construction of renovations and additions to its preK-12 facility (hereafter the “Project”).

### RECITALS

**WHEREAS**, the District has determined that there is a need for the Consultant’s services specified below in this Agreement; and

**WHEREAS**, the goal of the Agreement is to secure services from a person or entity with a high degree of professional skill for the benefit of the District; and

**WHEREAS**, the District has determined that the Consultant is qualified to provide services to the District, and will agree to perform and carry out the services in a good and professional manner as outlined in this Agreement.

**THEREFORE**, in consideration of the foregoing recitals, incorporated by this reference, and their mutual promises, the parties agree as follows:

**1. The Project:** The Project generally consists of the following:

- Demolition of the middle school and elementary school buildings;
- Reconstruction and reconfiguration of the K-12 facility; and
- Upgrades to the existing athletic facilities.

The Request for Qualifications/Proposal (RFQ/P) For An [REDACTED] (“RFQ/P”) and the RFP/Q Response submitted by the Consultant (“RFP/Q Response”) are incorporated herein by this reference and, to the extent that any term thereof conflicts with or is inconsistent with this Agreement, this Agreement shall govern and the terms of the RFQ/P and the RFP/Q Response that conflict with this Agreement or are inconsistent with this Agreement shall be of no force or effect.

**2. Scope of Services:** The Consultant shall perform the services set forth in the attached Exhibit A (the “Services”).

**3. Term:** Subject to earlier termination by the District as provided herein, the term of this Agreement shall commence as of the mutual execution of this Agreement, and continue through the successful completion of the Services and the one-year warranty phase of the Project, which shall commence on the date of occupancy or the start of the warranty phase, whichever is later.

4. **Standards:** Consultant shall perform all Services in a diligent, safe, and workmanlike manner, using its best skill and judgment pursuant to the standards of the industry or profession for the Services.

5. **Contract Price and Payment:** The Consultant shall perform the Services for the total contract price of \$ [REDACTED] (“Contract Price”) and pursuant to the fee schedule set forth in Exhibit B. Unless otherwise expressly stated in this section, all necessary labor, mileage, reproduction expenses, licenses, materials, supplies, equipment, reimbursables, and all other items necessary to complete the Services shall be part of and not in addition to the Contract Price. Consultant shall submit an itemized invoice to the Colorado Department of Education (“CDE”) on a monthly basis. Consultant shall submit each invoice to the District for review and approval prior to submitting the invoice to CDE. No monthly invoice will exceed \$ [REDACTED]. Consultant acknowledges that CDE will pay undisputed sums within forty-five (45) days of receiving a valid invoice. The invoice shall include: (i) the date(s) Services were rendered; (ii) a detailed description of the Services performed; (iii) names of the individuals providing Services; (iv) hours worked; (v) billing or compensation rate for the Services; (vi) all other direct expenditures allowable within the Contract Price; and (vii) if a “fixed price” contract, applicable milestones achieved and related progress payments earned.

Consultant shall send invoice for District review to:  
Limon School District RE-4J  
874 F Avenue  
Limon, Colorado 80028  
Attn: Superintendent

6. **Independent Contractor:** The Consultant understands and acknowledges that this Agreement is a contract for services and that an employee-employer relationship does not exist between the Consultant and the District. The Consultant shall perform all Services, using independent judgment and expertise, as an independent Consultant and not as an employee of the District. Neither the Consultant nor any agent, employee or sub-consultant of the Consultant shall be an agent or employee of the District nor shall any of them have any authority, express or implied, to bind the District to any agreement or incur any liability or obligation attributable to the District. **The Consultant acknowledges that it is not entitled to workers’ compensation or other benefits from the District and that the Consultant is obligated to pay federal and state income tax on any moneys earned from the District pursuant to this Agreement.**

7. **Use of Work Product and Infringement Claims:** The Consultant’s work product, including without limitation, Consultant’s notes, memoranda, photographs, spreadsheets, data and designs or plans (collectively “Work Product”), shall be delivered to the District within the time frame(s) contemplated by this Agreement or at the latest upon completion of the Services, shall become the property of the District, and may be used by the District for any purpose. The Consultant shall defend and indemnify the District from and against all suits or claims for infringement of any alleged patent rights, copyright, or trade secrets arising out of District’s ownership or use of Consultant’s Work Product and shall indemnify the

District from loss on account thereof and shall pay any judgments or fees resulting therefrom, including, but not limited to, royalties, license fees, and attorneys' fees.

**8. Insurance.**

a. The Consultant shall purchase and maintain in effect at all times during the term of the Agreement the policies of insurance with the applicable coverages described below. The Consultant shall submit certificates of insurance to the District within ten (10) days of mutual execution of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to the District. All coverages shall be continuously maintained through the Term of this Agreement and any warranty periods to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to Section 11 of this Agreement. In case of any claims made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. If the expiration date of the insurance certificate is prior to final completion, the Consultant shall provide a new certificate of insurance at least thirty (30) days prior to the expiration of the current policy. Unless otherwise specified, such insurance shall be written by sureties legally authorized to write such insurance in the State of Colorado, provided such surety companies have a current Best Credit Rating of A- or higher and a current Financial Size Category of Class X or greater. The Consultant waives any and all rights to recover against the District or against its officers, agents, or employees, for any loss or damage to the Consultant arising from any cause that is covered or required to be covered by the insurance that the Consultant is required to carry pursuant to this Section 5, or which is covered by any other insurance actually carried by the Consultant to the extent of the limits of such policy. From time to time, the Consultant shall cause its insurer to waive such insurer's subrogation rights under policies against the beneficiaries of this waiver. Consultant shall require that all of its agents and subconsultants also comply with these insurance requirements.

i. **Workers' Compensation Insurance.** Consultant shall purchase and maintain workers' compensation insurance, including occupational disease provisions for all employees, in accordance with statutory requirements, and including any required flow down. Such policy must have coverage limits of at least: \$100,000 per accident, \$100,000 disease each employee and \$500,000 accident/disease policy limit. Such policy shall contain a waiver of subrogation in favor of the District.

ii. **Professional Liability Insurance.** Consultant shall purchase and maintain professional liability insurance with coverage limits for each occurrence or claim of \$2,000,000, if professional services are provided under this Agreement.

iii. **Commercial General Liability Insurance.** Consultant shall purchase and maintain commercial general liability insurance with coverage limits of not less than \$1,000,000 for personal or bodily injury to any one person, \$1,000,000 for premises/operations, general aggregate of \$2,000,000 per project, \$1,000,000 per occurrence, \$2,000,000 products - completed operations aggregate, and \$300,000 for damage to rented property.

**iv. Comprehensive Automobile Liability Insurance.** Consultant shall purchase and maintain comprehensive automobile liability insurance with coverage limits for all owned, hired and non-owned vehicles and power mobile equipment used by the Consultant on District property of \$1,000,000/person, \$1,000,000/accident, and \$1,000,000/property damage.

**v. Umbrella Insurance.** Contractor may provide an umbrella and/or excess liability policy in order to meet the minimum liability requirements, so long as coverage is written on a “following form” basis.

**b.** The policies required by subparagraphs (ii), (iii) and (iv), above shall be endorsed to include the District, the District’s officers, board members and employees, CDE, and Trustee Zion’s First National Bank as additional insureds. The policies required by subparagraphs (iii) and (iv) shall be primary insurance, and any insurance carried by the District, its officers, or its employees, or carried by or provided through any insurance pool of the District, shall be excess and not contributory insurance to that provided by the Consultant. The Consultant shall be solely responsible for any deductible losses under any policy required above.

**c.** Notwithstanding any other portion of this Agreement, failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement for which the District may immediately terminate this Agreement, or, at its discretion, the District may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all money so paid by the District shall be repaid by the Consultant to the District upon demand, or the District may offset the cost of the premiums against any money due to the Consultant from the District.

**9. Sales and Use Taxes.** The District is exempt from the payment of any state, and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance of Services. The Consultant shall not include any of these taxes in any charges or invoices to the District.

**10. Representations.**

**a.** Consultant represents that the Services will be performed by Consultant in a diligent, safe, and workmanlike manner and Consultant shall use its best skill and judgment pursuant to the standards of the profession for such Services in furthering the District’s best interests. If Consultant's performance does not conform to such standards and District notifies Consultant of same, Consultant agrees to immediately take all action necessary to remedy the nonconformance. Any costs incurred by Consultant to correct such nonconformance shall be at the Consultant's sole expense.

**b.** The Consultant represents that it understands the nature, location, and scope of the Services, the character of the equipment and facilities needed prior to and during the performance of the Services, the general and local conditions, and all other matters which can in

any way affect the Services and is not relying on any representations or promises by the District except as set forth in this Agreement.

c. The Consultant shall cooperate with and shall not in any way interfere with the other consultants, if any, on the site or any work or employees of the District.

d. The Consultant represents that the Services shall be performed in a good and workmanlike manner and shall be suitable and fit for the purposes for which they are intended.

e. The Consultant represents that it has full authority under applicable law to execute and deliver this Agreement and to perform all of the obligations under this Agreement.

11. **Indemnity and Hold Harmless.** To the fullest extent permitted by law, Consultant shall indemnify and hold District harmless from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of the Services provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the work performed and including the loss of use resulting therefrom, and only to the extent that it is proximately caused in whole or in part by any negligent or intentional act or omission or breach of contract of Consultant, any sub-consultant, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. This specific indemnification by Consultant is in addition to and not in lieu of other remedies that may be available to the District.

12. **Licensing Requirements.** As a condition of this Agreement, Consultant shall maintain in effect at all times during the term of the Agreement, any necessary license and/or registration required by applicable law. Consultant shall ensure that each of its employees, sub-consultants, or similar personnel which is subject to licensing and/or registration maintains in effect at all times while performing work on the Project, a valid and appropriate license and/or registration.

13. **Nonappropriation.** Notwithstanding any provisions of this Agreement to the contrary, the parties acknowledge that any and all of District's obligations under this Agreement are subject to and contingent upon funds for that purpose being budgeted, appropriated and otherwise made available by District. If District is at any time unable or unwilling to appropriate the funds required to satisfy its obligations under this Agreement, for whatever reason, this Agreement shall terminate as of the end of the then current fiscal year without further action of any party. District will notify Consultant prior to the end of the then current fiscal year in the event of such nonappropriation.

14. **Safety, Health and Accident Reports.** The safety and health of Consultant, Consultant's employees and agents brought on District property will be the sole responsibility of Consultant. Consultant will comply with all local, state, and federal environmental, health and safety requirements, including those relating to the transportation, use and handling of hazardous material. Consultant will report all accidents, injury-inducing occurrences or property damage

arising from the performance of Services as soon as reasonably practical. District will have the right to receive, at its request, copies of any reports filed with Consultant's insurer or others. Consultant's employees and agents on District property will comply with all plant rules and regulations.

**15. Records and Audits.** Consultant will maintain complete and accurate records of all charges incurred by District under this Agreement, in accordance with generally accepted accounting principles, for a period of twenty-four (24) months from the date of termination of the Agreement. District will have the right to inspect Consultant's records upon reasonable notice and to retain copies thereof.

**16. Hazardous Materials.**

**a.** Unless otherwise provided in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal, or disposal of hazardous materials in any form at the Project site, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl, or other toxic materials. The Consultant shall, however, prior to commencement with any portion of the work, provide notice to the District of the presence, location, and condition of any known or suspected asbestos-containing materials that are discovered at the Project site. Such notice shall be in writing and shall be submitted no more than twenty-four hours after such materials or suspected materials are discovered. To the extent known, the notice shall include the quantity, location, and condition of the material.

**b.** In the event of such discovery, the Consultant shall not proceed with the work until it has received written authorization from the District. If the Consultant proceeds with the work without this authorization, it does so at its own risk.

**17. General Provisions.**

**a. Compliance with Laws and Policies.** The Consultant shall abide by all applicable laws to the performance of the Services and the subject matter of this Agreement and by all District policies and procedures, including without limitation those related to the prohibited use and/or possession of alcohol, tobacco or firearms on District grounds. The Consultant shall at all times strictly enforce this prohibition among its own employees, agents or sub-consultants and their employees, agents or sub-consultants.

**b. Taxes and Fees.** The Consultant shall pay, at its own expense, all applicable taxes and fees in the execution of the terms of this Agreement, including but not limited to excise tax, federal and state income taxes, payroll and withholding taxes, unemployment taxes, and worker's compensation payments for its employees, and shall indemnify and hold the District harmless for all claims arising under such taxes and fees.

**c. Nondisclosure of Confidential Information.** The Consultant will not disclose to any third person or entity any records or writings of the District, its employees or students, regardless of the form, that are protected by state or federal law no matter how those documents come into the Consultant's possession.

d. **Changes/Amendments.** At any time, by written order, the District may make changes in or additions to the Services to be performed by this Agreement, issue additional instructions, require modified or additional work or services within the general scope of the Agreement, or vary the amount of District-furnished property. If the Consultant believes that any changes cause any increase or decrease in the cost of, or in the time required for, performance of Services under this Agreement, an equitable adjustment may be made in the Agreement price or term of performance, or both, and the Agreement will be modified in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within ten (10) calendar days from the date of receipt by the Consultant of the notification of changes; provided, however, that the District, if it decides that the facts justify such action, may receive and act on any such claim asserted at any time prior to final payment under this Agreement. Failure to agree to any adjustment will be a dispute concerning a question of fact within the meaning of the clause of this Agreement titled "Disputes." However, nothing in this clause excuses the Consultant from proceeding with the Agreement as changed, and it is limited to proceeding with its appeal pursuant to the Section titled "Disputes," below. Other than written change directives or orders issued pursuant to this Section, no amendment, change or modification to this Agreement shall be effective or enforceable unless it is in writing and executed by each party.

e. **Disputes.** In the event that any dispute between the parties arises out of this Agreement, the parties shall meet and confer in a good faith effort to resolve such dispute. In event such efforts do not resolve the dispute within fifteen (15) days from the date the dispute arises, the District may elect to submit the dispute to mediation before the Judicial Arbitrator Group or other independent mediation service. This provision shall survive termination of this Agreement. This provision shall not be considered an election of remedies. The District may elect to pursue litigation for any dispute arising under this Agreement at any time.

f. **Immunities.** The District retains all of its rights, privileges, and immunities under the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*

g. **Termination for Convenience.** Upon written notice, the District may terminate this Agreement in whole or in part if it determines, in its sole discretion, that termination is in the District's best interest. After notice of termination has been given, the Consultant shall promptly stop work on the cancellation date specified in the notice. The District will conduct an audit of the Consultant's costs to determine reasonable costs expended to the date of cancellation, or the District may determine the Consultant's cost based on the schedule of values specified in Exhibit A or exact cost of any work performed. The Consultant will not be reimbursed for any anticipated profit.

h. **Termination for Cause.** This Agreement may be terminated by the District upon not less than five (5) days' written notice should the Consultant fail to perform in accordance with the terms of this Agreement through no fault of the District. The Consultant shall not terminate this Agreement without the written consent of the District, other than for nonpayment as provided below in this Section. In the event of termination for convenience or cause, the Consultant shall deliver to the District all Work Product, including but not limited to

drawings, plans, reports, data, and similar materials relating to the Services prepared by or in the possession of the Consultant. If the District fails to make payment when due, the Consultant may, upon ten (10) days' written notice to the District, suspend performance of Services. Unless payment is received by the Consultant within ten (10) days of the date of the notice, the suspension shall take effect without further notice.

i. **Force Majeure.** The District may delay delivery, performance or acceptance occasioned by causes beyond its control. The Consultant shall hold goods or delay performance at the direction of the District and shall deliver goods or perform Services when the cause affecting the delay has been removed. The District shall be responsible only for Consultant's direct additional costs in holding the goods or delaying performance of this Agreement at District's request. Causes beyond District's control shall include government action or failure of the government to act where such action is required, strike or labor disputes, fire or unusually severe weather.

j. **Illegal Aliens.** The Consultant certifies that it shall comply with the provisions of C.R.S. 8-17.5-101 *et seq.* The Consultant shall not knowingly (i) employ or contract with an illegal alien to perform work under this Agreement, (ii) enter into a contract with a sub-consultant that knowingly employs or contracts with an illegal alien to perform work under this Agreement, or (iii) enter into a contract with a sub-consultant that fails to contain a certification to the Consultant that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

k. **Governing Law/Venue.** The laws of the State of Colorado shall govern the performance and interpretation of the Agreement. Venue for any dispute concerning the Agreement shall be exclusively in the federal court located in Colorado or the state court located in Lincoln County, Colorado.

l. **No Assignment.** This Agreement may not be assigned by the Consultant without the District's prior written consent.

m. **Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, or pre-paid first-class certified mail, return receipt requested, addressed to the respective party at the address set forth in the first paragraph of this Agreement or to such other addresses as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery, (ii) on the date received if by electronic mail; or (iii) three (3) days after postmark if mailed as provided in this Section.

n. **Counterparts.** This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing this Agreement, facsimile or scanned signatures shall be as valid as the original.

**o. Waiver.** A failure to assert any rights or remedies available to a party under the terms of this Agreement, or a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

**p. Execution of Agreement.** This Agreement contains the entire understanding of the parties and supersedes all prior understandings, agreements, or representations by or between the parties, whether oral or written, that in any way relate to the subject matter of this Agreement. Execution of this Agreement constitutes a representation by the Consultant that to the best of the Consultant's knowledge no conflict of interest exists between the District representatives and the Consultant or its employees and agents.

**q. Interpretation.** This Agreement shall control with respect to the Services described herein. This Agreement shall not affect the interpretation or validity of the parties' prior agreement or any other agreements referred to therein.

**r. No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the District.

**s. Severability.** If any provision of this Agreement is ruled to be invalid or illegal, such ruling shall have no effect upon the remaining provisions that shall be considered legally binding and given full effect.

**[Signature Page Is Next Page].**

**IN WITNESS WHEREOF**, the undersigned agree to be bound by the terms and conditions of this Agreement.

**LIMON SCHOOL DISTRICT RE-4J**

By: \_\_\_\_\_  
President, Board of Education

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

**ATTEST:**

By: \_\_\_\_\_  
Secretary, Board of Education

**CONSULTANT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT A**  
**SERVICES**

**EXHIBIT B**  
**FEE SCHEDULE**

B1 Contract Price: All services shall be charged based on the hourly rates set forth in Paragraph B2 below, with the total base fees not to exceed \$\_\_\_\_\_.

B2 Hourly Rates: