Des Moines Public Schools
Purchasing Department
515-242-7649

PROFESSIONAL SERVICES AGREEMENT – RFP7606 Construction Services

THIS AGREEMENT is entered into the date listed below written between the Des Moines Public Schools (**District**) and (**Provider**)

Name: Lang Construction Group, Inc.

Address: 1601 West Lakes Parkway, Suite 100

City State Zip: West Des Moines, Iowa 50266

Phone: 515-645-9680

Email: slang@lang-cg.com

1. **SERVICES BY PROVIDER**
   A. **Performance of Services:** The Provider shall perform the services described in the scope of work detailed Section Four (IV) of Request for Proposal RFP7606 Construction Services. All services will be rendered to the best of the Providers ability and in a timely and professional manner in compliance with all the terms and conditions established by the District.
   B. **Modification:** The District may make changes to the services that were described in Section four (IV) in Request for Proposal RFP7606 Construction Services. In the event of a modification to the original document, the District shall notify the Provider by written notice. If any modification results in an increase or a reduction of the work described in this section, then the compensation hereunder shall be modified, if mutually accepted by both parties.

2. **PAYMENT**
   A. **Payment Terms:** The District shall pay the Provider as detailed in the Scope of Work and stated below: The District plans to pay the Provider using a procurement or virtual credit card, or may make payments by electronic funds transfer and recommends that the Provider accepts one of these forms of payment. Invoices should be sent to the District within 2 business days after completion of work.

3. **DISCRIMINATION AND COMPLIANCE WITH LAWS**
   A. **Compliance:** The Provider shall be familiar and comply with all local, state, and federal directives, ordinances, rules, orders, and laws as applicable to, and affected by, this contract. It is the policy of the Des Moines Community School District not to illegally discriminate on the basis of race, color, national origin, sex, disability, religion, creed, age (for employment), marital status (for programs), sexual orientation, gender identity and socioeconomic status (for programs) in its educational programs and its employment practices. There is a grievance procedure for processing complaints of discrimination. If you believe you have been discriminated against or treated unjustly, please contact the Director of Human Resources, Anne Sullivan at 2323 Grand Avenue, Des Moines, IA 50312, 515-242-7662 anne.sullivan@dmschools.org Section 504 34 CFR 104.8, Title IX 34 CFR 106.9, OCR Guidelines IV.O and V.C
   B. **Violation**: Violation of this Section 3 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension of the Agreement by the District, in whole or in part, and may result disqualification for further work for the District.

4. **TERMINATION OF AGREEMENT**
   A. **Termination:** In order to protect the vested interests of the taxpayers of the Des Moines Public School District, and to ensure the efficient utilization of their tax dollars, Provider shall comply with all contractual obligations contained herein, with respect to these obligations, the District will report any non-compliance issues in writing, to the Provider for corrective action. Continued non-compliance by the Provider shall be the District's justification for placing the Bidder's contract on probation status or termination.
   B. **Debarment:** The District is prohibited from entering into a contract where an organization or, its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local department or agency.
   C. All other terms and conditions as listed @ http://www.dmschools.org/wp-content/uploads/2015/08/General-Terms-n-Conditions-New.pdf as stated in Request of Proposal RFP7606 Construction Services.

5. **DISCLOSURE & OWNERSHIP OF WORK**
   A. **Non-Disclosure Agreement:** The provider agrees to all terms and conditions as specified in their executed Non-Disclosure Agreement, and is subject to Iowa code chapter 22 regarding public open records. If necessary for the service provided.
   B. **Information:** All data, materials, reports, memoranda and other documents developed under this Agreement whether finished or not shall become the property of the District, shall be forwarded to the District at its request and may be used by the District as it sees fit.

6. **ADMINISTRATION**
   A. The Facility Management Director, Jamie Wilkerson, or his designee shall be the District's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices under this agreement.

7. **INDEMIFICATION**
   The Provider and the District agree on the following terms as stated in the Request for Proposal RFP7606 Construction Services.

8. **INSURANCE: RISK OF LOSS**
   The Provider and the District agree on the following terms as stated in the Request for Proposal RFP7606 Construction Services.

9. **INDEPENDENT PROVIDER**
   A. **Employees:** All employees of the Provider shall be considered to be, at all times, employees of the Provider under its sole direction and not an employee or agent of the District. The Provider shall supply competent and physically capable employees in a number that is consistent with the requirements detailed in the scope of work. Where required, employees shall be licensed and accredited. The Provider shall certify that all employees employed in support of this contract who have direct contact with students, which is defined to mean being in the presence of students during regular school hours or during school-sponsored activities, have not been convicted of (i) a felony; (ii) any offense involving the sexual molestation, physical or sexual abuse or rape of a child; or (iii) a crime of moral turpitude. In signing the Professional Services Contract the Provider has read, understands and will comply with the attached Offender's Acknowledgement Form below (Appendix A). The Provider will be responsible for the cost of all the equipment, accessories, labor, and materials in order to the work as detailed in the Scope of Services.

9. INDEPENDENT PROVIDER

B. **Removal of Employees:** The District may require the Provider to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on District property is not in the best interest of the District.

C. **Controlled Substances:** In accordance with the District's policy regarding the use of tobacco and alcohol products and/or illegal drugs, no employee of the Provider shall be permitted to use these substances when performing work on District property.

10. CONTRACT ASSIGNMENT

Neither the District nor the Provider shall assign, transfer, or encumber any rights, duties or interests accruing from this Agreement without the express prior written consent of the other.

11. FUTURE SUPPORT

The District makes no commitment and assumes no obligations for the support of the Providers activities except as set forth in this Agreement.

12. GENERAL PROVISIONS

A. **Governing Laws:** The terms and conditions of this Agreement shall be construed in accordance with the laws of Polk County, Iowa. Wherever differences exist between Federal and State statutes or regulations affecting this Agreement, interpretation shall be in the direction of that which is most beneficial to the interests of the District.

B. **Severability:** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The District and the Provider agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

C. **Non Waiver:** Any failure by the District to enforce strict performance of any provision of the Agreement will not constitute a waiver of the District's right to subsequently enforce such provision or any other provision of the Agreement.

D. **District Marks:** The Provider will not use any trade name, trademark, service mark, or logo of the District in any advertising, promotions, or otherwise, without the Districts express prior written consent.

E. **No Assignments:** Neither the Agreement nor any rights of obligations of the Provider arising under the Agreement may be assigned without the Districts prior written consent.

F. **Notices:** All notices and other communications under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set below.

G. **Legal Fees:** In any lawsuit between the parties with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any relief may be awarded.

H. **Counterparts:** The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together shall be deemed to be the same document.

13. SCOPE OF WORK

A. Scope

The provider and the District agree on the following terms for the Provider to deliver services described in the scope of work detailed in Section Four (IV) of Request for Proposal RFP7606 Construction Services.

B. Application of Award

This Request for Proposal RFP7606 Construction Services has two awardees. Lang Construction Group, Inc. LLC is the primary awardee and Trinity Construction Group is the secondary awardee. The primary awardee retains the right of first refusal. Before work begins the District will solicit a quote from the primary awardee, who must determine if they are be able to complete the project by the specified deadline. If the due date can be met the provider must quote the number of hours needed to complete the project. If the primary awardee is unable to complete the project by due date the District reserves right to utilize the secondary awardee in which the project must be completed by the specified deadline. At which time the secondary awardee will quote the number of hours needed to complete the project. The District will hold whomever is awarded the project to complete the assigned work by the date specified. Failure to complete the work assigned by the specified date will result in a negative grade for the awardee and may be grounds for the District to reassign the provider's award status.

Rates	Cost / UoM
Carpenter Hourly Rates	
Framing Journeyman Hourly Rate	
Framing Apprentice Hourly Rate	
Finish Journeyman Hourly Rate	
Finish Apprentice Hourly Rate	
General Laborer Hourly Rate	
Night differential for off hours work (State as a percentage, i.e. standard rate + 15% for all)	
Emergency / Overtime rate (State as a percentage, i.e. standard rate + 50% for all)	
Material & Supplies mark up over cost	
Trip Charges (rate / mile)	
Drywall Hourly Rates	
Installer Hourly Rate	
Taping, Compounding & Finishing Hourly Rate	
Texture Hourly Rate	
General Laborer Hourly Rate	
Night differential for off hours work (State as a percentage, i.e. standard rate + 15% for all)	
Emergency / Overtime rate (State as a percentage, i.e. standard rate + 50% for all)	

Drywall Rates	
Material & Supplies mark up over cost	
Trip Charges (rate / mile)	
Insulation Hourly Rates	
Applicator Hourly Rate	
General Laborer Hourly Rate	
Night differential for off hours work (State as a percentage, i.e. standard rate + 15% for all levels)	
Emergency / Overtime rate (State as a percentage, i.e. standard rate + 50% for all levels)	
Material & Supplies mark up over cost	
Trip Charges (rate / mile)	
Rates	**Cost / UoM**
Ceiling System Hourly Rates	
New Installation Journeyman Hourly Rate	
New Installation Apprentice Hourly Rate	
General Laborer Hourly Rate	
Repair / Remodel Installation Journeyman Hourly Rate	
Repair / Remodel Installation Apprentice Hourly Rate	
General Laborer Hourly Rate	
Night differential for off hours work (State as a percentage, i.e. standard rate + 15% for all levels)	
Emergency / Overtime rate (State as a percentage, i.e. standard rate + 50% for all levels)	
Material & Supplies mark up over cost	
Trip Charges (rate / mile)	
Flooring System Hourly Rates	
Carpet Installation	
VCT Installation	
Ceramic Tile Installation	
Quarry Tile Installation	
Sheet Vinyl Flooring Installation	

C. Contract Term

The service will begin on July 1, 2017 and end on the last day of the fiscal school year, June 30, 2018. The contract period shall be for one (1) year and may be renewable for four additional one-year periods at the end of each fiscal year at the discretion of the District. The renewal's pricing structure will be negotiated prior to the termination of the previous contract period. A resulting contract may be terminated at any time without penalty by the District upon a thirty (30) day written notice.

D. Bonding / Performance Requirements

Surety bonds (performance bonds) for labor and materials are not required for project costing less than $25,000.00 dollars. However if a project is estimated at or above $25,000.00 then the awardee must be able to provide a 100% Performance bond, cashiers or certified check in the full amount of the project. Failure to secure appropriate bonding may result in the immediate termination of any resulting contract from this agreement. A valid bond must be provided to the Facility Management Director, Jamie Wilkerson prior to commencement of work.

14. CONFLICTING CONTRACT TERMS

In the event there is conflicting information the ranking level of precedence will be the 1.) Professional Service Contact, 2.) The original Request for Proposal RFP7606 Construction Services, 3.) The response from the provider to RFP7606 Construction Services.

15. EXTENT OF AGREEMENT / MODIFICATION

This Agreement, together with the attachment below and other written addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

PROVIDER	DISTRICT
By: Steven G. Lang (Digitally signed by Steve Lang DN: C=US, E=slang@lang-cg.com, O="Lang Construction Group, Inc.", CN=Steve Lang Reason: I agree to the terms defined by the placement of my signature on this document Date: 2017.06.08 16:43:05-05'00')	By: Thomas Harper
Printed Name: Steven G. Lang	Printed Name: Thomas Harper
Title: President	Title: CFO
Effective Date Signed: 6-08-17	Effective Date Signed: 6/9/17
Address: 1601 West Lakes Parkway, #100	Address: 2323 Grand Ave.
City: West Des Moines State: IA	City: DM State: Ia
Zip: 50266	Zip: 50312

Attachments:
RFP7606 Construction Services
Response to RFP7606 Construction Services
Board Agenda

Acknowledgment & Certification

("Provider") is providing services to the Des Moines Independent Community School District ("District") as a contractor, vendor, supplier, provider or sub-provider and/or is operating or managing the operations of a contractor, vendor, supplier or provider. The services provided by the Provider may involve the presence of the Provider's employees upon the real property of the District.

The Provider acknowledges that Iowa law prohibits a sex offender who has been convicted of a sex offense against a minor from being present upon the real property of the District. The Provider further acknowledges that, pursuant to Iowa law, a sex offender who has been convicted of a sex offense against a minor shall not operate, manage, be employed by, or act as a contractor or volunteer at the District.

The Provider hereby certifies that no one who is an owner, operator or manager of the Provider has been convicted of a sex offense against a minor. The Provider further certifies and agrees that it shall not permit any person who is a sex offender convicted of a sex offense against a minor to provide any services to the District in accordance with the prohibitions set forth above.

The Provider further certifies that the Provider has completed a satisfactory background check on the Provider's employees. The Provider hereby agrees to provide the District with the Provider's background screening procedures including specific context and infractions that are reviewed by the Provider. The District reserves the right to, but does not have the obligation to, conduct a District background check on Provider employees as determined by the District in its sole discretion. The District reserves the right to restrict access of any Provider employee upon the real property of the District if such employee does not clear the District's background check. The District reserves the right, but does not have the obligation to, to audit the Provider's background screening program at any time, whether announced or unannounced. The Provider hereby agrees that the Provider shall, upon request, permit an authorized District representative to review background screening records, including those of individual Provider employees, in order to conduct a compliance review, audit or investigation, to the fullest extent permitted by law.

The Provider shall ensure that the provisions of this Acknowledgement and Certification are extended to any and all subcontractors, consultants, or others the Provider may engage if such engagement involves their presence upon the real property of the District.

The Provider understands and agrees that violation of any of the provisions of this Acknowledgement and Certification shall constitute sufficient grounds for termination of any contract or subcontract without damages or penalty to the District.

This Acknowledgment and Certification is to be construed under the laws of the State of Iowa. If any portion hereof is held invalid, the balance of the document shall, notwithstanding, continue in full legal force and effect.

In signing this Acknowledgment and Certification, the person signing on behalf of the Provider hereby acknowledges that he/she has read this entire document that he/she understands its terms, and that he/she not only has the authority to sign the document on behalf of the Provider, but has signed it knowingly and voluntarily.

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

The party identified above as Provider ("Provider") anticipates having dealings from time to time with Des Moines Independent Community School District., and/or one or more of the affiliates of Des Moines Independent Community School District. (Individually and collectively referred to herein as "Customer"). In the course of such dealings, Provider may receive or have access to certain information concerning Customer or third parties to whom Customer has an obligation of confidentiality. In consideration of the business dealings of the parties, Provider agrees to the terms of this Confidentiality and Nondisclosure Agreement ("Agreement").

1. **Confidentiality.** For purposes of this Agreement, Customer's "Confidential Information" consists of: (a) all non-public information (including but not limited to trade secrets, proprietary information, and information about products, business methods and business plans) relating to Customer's business (or to the business of Customer's licensors, suppliers or other trading partners) that is either marked or otherwise identified as confidential or proprietary, or that a reasonable person would understand to be considered confidential by Customer (even if not so marked or identified); and (b) all information that Customer is obligated by law to treat as confidential for the benefit of third parties, including but not limited to personal, financial, and/or health information about individuals who have applied for or purchased financial products or services from Customer. Provider acknowledges that, in connection with the performance of this Agreement or otherwise in the course of its dealings with Customer, Provider may receive Confidential Information from Customer or may otherwise have access to or learn of Customer's Confidential Information. In the absence of Customer's prior written consent to a specific disclosure or use, Provider will not disclose to any third party any of Customer's Confidential Information, either orally or in writing, and will not appropriate any of Customer's Confidential Information to Provider's own use or to the use of any third party. Confidential Information that is provided by Customer to Provider will be used by Provider and its agents only for the purpose for which it was provided, and access to such information will be restricted to individuals who require the information (or access to the information) to further that purpose. Without limiting any of the foregoing, Provider will take at least such precautions to protect Customer's Confidential Information as Provider takes to protect its own confidential information, and in any event will take all precautions that are reasonably necessary to protect the security of Customer's Confidential Information. Upon Customer's request, Provider will return or destroy, as specified by Customer, all tangible items containing any of Customer's Confidential Information, including all copies, abstractions and compilations thereof, without retaining any copies of the items required to be returned or destroyed. With respect to an electronic or computer copies or records of or relating to the same, without limiting the foregoing, upon request for destruction by the Provider, the Provider shall immediately shred, permanently delete or otherwise irretrievably destroy and render unreadable all such copies or records from all computers, laptops, servers, back-up systems, storage devices and media owned by, or operated by or for the Provider.
2. **Notification obligation**. Upon learning of any unauthorized disclosure or use of Customer's Confidential Information, Provider will notify Customer promptly and cooperate fully with Customer to protect Customer's Confidential Information.
3. **Disclosure required by law.** If Provider believes it is required by law or by a subpoena or court order to disclose any of Customer's

Confidential Information, then prior to any disclosure Provider will promptly notify Customer in writing, attaching a copy of the subpoena, court order or other demand, and Provider will make all reasonable efforts to allow Customer an opportunity to seek a protective order or other judicial relief.

4. **Non-restricted information.** Except as stated in the final sentence of this paragraph, nothing in this Agreement will be construed to restrict disclosure or use of information that: (a) was in the possession of or rightfully known by Provider, without an obligation to maintain its confidentiality, prior to receipt from Customer; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Provider in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Provider without the participation of individuals who have had access to Customer's Confidential Information. Provider acknowledges that certain laws governing information about individuals are more restrictive than the foregoing statements, and Provider agrees to comply in all respects with such laws.
5. **Duration of obligations.** The obligations imposed by this Agreement will survive termination of an existing business relationship between Provider and Customer, or completion of the exploration of a potential business relationship between the parties, as applicable, and will remain in effect with respect to each item of Confidential Information until that information becomes unprotected under the terms of the paragraph above titled "Non-restricted information". However, if applicable law sets a maximum period for the duration of obligations of nondisclosure and non-appropriation of confidential information, the obligations imposed by this Agreement with respect to each item of Confidential Information (other than trade secrets and other than information about individuals that is protected by law) will remain in effect only until such period expires.
6. **Additional limitation.** If Provider is directed in writing by Customer to discuss a request for proposals ("RFP") and the business dealings associated with that RFP only with specifically named employee(s) of Customer, then Provider agrees not to disclose any information relating to that RFP to any other employee of Customer.
7. **Non-waiver.** No term or provision of this Agreement will be deemed waived and no breach will be deemed excused unless such waiver or consent will be in writing and signed by Customer. No consent by Customer to, or waiver of, a breach by Provider will constitute a consent to, waiver of, or excuse for any different or subsequent breach.
8. **Partial invalidity.** If any provision of this Agreement is held to be unenforceable, the remaining provisions will continue in full force and effect. In addition, the parties or the court will modify any unenforceable provision so as to make it enforceable under applicable law, while keeping the modified provision as consistent as possible with the original intent of the parties.
9. **Headings.** The paragraph headings in this Agreement are for reference purposes only and will not be deemed a part of this Agreement.
10. **No assignment.** Rights and obligations under this Agreement are personal, and may not be assigned or delegated by either party.
11. **Governing law.** This Agreement will be governed by the laws of the state of Iowa, without reference to conflict of law principles.
12. **Consents, permissions and approvals.** If a provision of this Agreement requires Provider to obtain Customer's written consent, permission or approval (or similar indication of agreement) with respect to a specified matter, such consent, permission or approval (or similar indication of agreement) will,