

PR#: _____
Contract Number: _____
RFP Number (if applicable): _____

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 27th day of August, 2021, by and between **The Concord Consulting Group of Illinois, Inc.** (“Contractor”) and Milwaukee Board of School Directors (“MPS”).

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Provide all services as outlined in your proposal dated July 27, 2021, to **provide Owners Representative – For ESSER II Relief Fund Projects – Design & Construction**

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM: August 27, 2021 – December 31, 2023

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed contract with approval to proceed shall not be compensated pursuant to this contract. Any continuation of the contract beyond this term must be set forth in writing and signed by the original signatories to the contract.

3. COMPENSATION

The above-mentioned services will be provided on an as-needed basis for a fee not-to-exceed the rate schedule identified in the response to RFP 21-027 dated July 27, 2021.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

DFMSAccountsPayable@milwaukee.k12.wi.us

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person’s sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not be limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

7. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Professional Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability	\$1,000,000 per occurrence
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be given to MPS. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this contract.

8. SHIPPING/TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

9. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

10. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

11. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the

contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

12. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days notice, but reserves the right to give immediate notice. If In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

13. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

14. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

15. PROHIBITED PRACTICES

- A. Contractor during the period of this contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Resources Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this contract.

16. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

17. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this contract, or to their designees.

18. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

19. INTEGRATION/SEVERABILITY

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

20. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

21. TIMING

Time is of the essence in this Contract.

22. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

23. FORCE MAJUERE

MPS will not be liable to pay contractor for any work that the contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS' reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

24. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

25. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

26. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Executive Director of Communications & Outreach.

27. ORDER OF PRIORITY

Should Contractor and MPS sign Contractor's Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

28. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

29. CCS REQUIREMENT

The HUB requirement on this contract is 25%. The student employment requirement is 1500 paid hours per contract year. The Career Education requirement is 20 hours per contract year. Failure to achieve this requirement may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR: **The Concord Consulting Group of Illinois, Inc.**

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____

By: _____
(Principal or Administrator Signature)

Dated: _____

Dated: _____

Address: 1000 North Water Street, Suite 1550

Milwaukee, Wi 53202

Phone Number: (414) 225-5305

By: _____

Keith P. Posley, Ed.D.
Superintendent of Schools

Tax Id or SS _____

Budget Code: **VARIOUS**

By: _____

Bob Peterson
President - Milwaukee Board of School Directors

COST PROPOSAL FORM

Planning and Organization Phase Fee

Our proposed approach is that for the Planning and Organization of the program, engagement with the project team(s), etc. as described in section 3.1 A of the RFP, we provide these services for \$50,000.00 on a Not to Exceed basis to be billed against using the hourly rates listed on page 3. Our approach to this phase is further described in TAB D of this response.

Base Service Fee

Once the program has been established, the scopes for each IPD contractor have been identified, the projects have been appropriately grouped together, and a phasing plan has been established to efficiently complete the work with the necessary time frame, we propose a Lump Sum fee will be established for each set of projects. Our fee for Owner's Representative services will be based on the sliding scale, provided on the following page, calculated as a percentage of the construction budget for each group of projects, as determined during the Program Planning and Organization phase. Our approach to the day-to-day project management of the projects is further described in TAB D of this response.

The services included and excluded from this fee calculation are as follows:

Base Services Inclusive of:

- Overall Project Coordination
- Budget & Schedule management
- Change-Order Evaluation
- Attendance at Design Meetings (bi-weekly)
- Attendance at Construction Meetings (weekly)
- Owner Meetings
- Estimate Reviews
- Design Reviews
- Project Bidding Oversight
- Shop Drawing Review Process Participation
- Field inspections once per week in conjunction with construction meetings
- Pay Application Reviews
- Project Reporting
- Management and oversight of 3rd party consultants and contractors, such as abatement
- Quality Control
- Implementation of a web-based program project management software
- Energy Conservation
- Project Close Out, Punch Lists and Final Accounts

Base Services does not include:

- Feasibility Studies (Any requirement to be completed on a pre-agreed Lump Sum or Hourly Rates)
- 3rd Party Estimating (See estimating fee matrix on the following page)
- Off Shift work (The above percentages will need to be adjusted to allow for off-shift work)
- Field Inspections outside what is clarified above (Once clarified with MPS adjustments to be made per the hourly rates)
- Reproduction of drawings
- Any scope of services desired by MPS that are excluded from the percentage fee calculation can be provided on either an hourly based or a pre agreed lump sum amount. With the exception of cost estimating, a fee matrix has been included.

Cost Proposal Outline

Base Service Fee Calculation

The following sliding scale fee matrix is how we propose to calculate our base fee.

Construction Budget (in Dollars)			Base Services Actual
\$ 1	to	\$ 1,000,000	TBD
\$1,000,000	to	\$2,500,000	3.50%
\$2,500,000	to	\$5,000,000	3.00%
\$5,000,000	to	\$10,000,000	2.50%
\$10,000,000	to	\$20,000,000	2.00%
\$20,000,000	to	\$30,000,000	1.70%
\$30,000,000	to	\$50,000,000	1.50%
\$50,000,000	to	\$75,000,000	1.30%
\$75,000,000	to	\$100,000,000	1.15%

Cost Estimating Fee Schedule

Construction Cost (in Dollars)		Program / Concept Stage	Schematic Design Stage	Design Development Stage	Construction Documents Stage	Total Fee	Percent Fee	
Up	to	\$500,000	\$1,750	\$2,750	\$3,250	\$4,000	\$11,750	2.345%
\$500,000	to	\$1,000,000	\$2,500	\$4,000	\$4,750	\$5,750	\$17,000	1.695%
\$1,000,000	to	\$2,500,000	\$3,000	\$5,000	\$5,750	\$6,750	\$20,500	0.815%
\$2,500,000	to	\$4,000,000	\$4,000	\$6,500	\$7,500	\$9,000	\$27,000	0.670%
\$4,000,000	to	\$6,000,000	\$5,000	\$8,250	\$9,500	\$11,250	\$34,000	0.565%
\$6,000,000	to	\$8,000,000	\$5,750	\$9,500	\$11,000	\$13,250	\$39,500	0.495%
\$8,000,000	to	\$10,000,000	\$6,250	\$10,250	\$12,000	\$14,500	\$43,000	0.430%
\$10,000,000	to	\$15,000,000	\$8,250	\$13,750	\$16,250	\$19,250	\$57,500	0.385%
\$15,000,000	to	\$20,000,000	\$10,500	\$17,250	\$20,250	\$24,000	\$72,000	0.360%
\$20,000,000	to	\$30,000,000	\$14,250	\$23,500	\$27,250	\$32,750	\$97,750	0.325%
\$30,000,000	to	\$40,000,000	\$15,250	\$25,500	\$29,750	\$35,500	\$106,000	0.265%
\$40,000,000	to	\$60,000,000	\$18,750	\$31,000	\$36,000	\$43,250	\$129,000	0.215%
\$60,000,000	to	\$80,000,000	\$19,750	\$32,750	\$38,000	\$45,500	\$136,000	0.170%
\$80,000,000	to	\$100,000,000	\$23,250	\$38,500	\$44,750	\$53,500	\$160,000	0.160%
\$100,000,000	to	\$125,000,000	\$26,250	\$43,500	\$50,750	\$60,750	\$181,250	0.145%
\$125,000,000	to	\$150,000,000	\$30,500	\$50,500	\$58,750	\$70,250	\$210,000	0.140%
\$150,000,000	to	\$200,000,000	\$36,250	\$60,000	\$70,000	\$83,750	\$250,000	0.125%
\$200,000,000	to	\$500,000,000	\$87,000	\$144,000	\$168,000	\$201,000	\$600,000	0.120%
\$500,000,000	to	\$1,000,000,000	\$159,500	\$264,000	\$308,000	\$368,500	\$1,100,000	0.110%

MPS REQUEST FOR PROPOSAL
Owners Representative – for ESSER II Relief Funds Projects

INFORMATIONAL HOURLY RATES:

Provide names and hourly billing rates of all personnel assigned to projects and the hourly rates for the other services that will be added as necessary such as providing additional Project Management staff.

	Name	Title	Task	Percentage Assigned to Work
Project Leader:	Patrick Condron	Project Executive	Project Leader	\$200/Hr
Key Members:	John Duggan	Chief Operating Officer	QA/QC	\$235/Hr
	Mark Johnson	Project Executive	Senior Project Manager	\$170/Hr
	Michael Hacker	Senior Project Manager	Senior Project Manager	\$170/Hr
	Patrick Flaherty	Senior Project Manager	Senior Project Manager	\$170/Hr
	Mike Lodge	Director, Technical Services	Technical Services	\$200/Hr
Other Members:	Brian Kuhn	Project Manager	Design Review/ On site Inspections	\$140/Hr
	Lev Zvenyach	Sr. Mech & Plumbing Engineer	Design Review/ On site Inspections	\$175/Hr
	Dennis Hess	Sr. Electrical Engineer	Design Review/ On site Inspections	\$140/Hr
	John Tilleman	Director, Cost Management	Cost Estimating	\$200/Hr
	Devon Ellis	Owner/Principal/Structural Engineer	Design Review/ On site Inspections	\$130/Hr
	Andrea Nemecek	Principal-in-Charge	Architectural Design Review	\$165/Hr
	Nick Migan	Sr. Project Architect/Project Manager	Design Review/ On site Inspections	\$145/Hr
	Concord - TBD	Senior Estimator	TBD	\$175/Hr
	Concord - TBD	Cost Estimator II	TBD	\$140/Hr
	Concord - TBD	Project Manager	TBD	\$140/Hr
	Concord - TBD	Cost Estimator I	TBD	\$130/Hr
	Concord - TBD	Assistant Project Manager	TBD	\$100/Hr
	Concord - TBD	Assistant Cost Estimator	TBD	\$105/Hr

Note: Hourly Rates are subject to annual adjustment by mutual consent.