



Specialists in School Buildings

INTERAGENCY AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

(Construction Manager as Owner's Consultant)

AGREEMENT

Made this 29th day of May the year of 2012

BETWEEN The Owner:

Woodland School District #404
800 Third Street
Woodland Washington, 98674

And the Construction Manager:

Educational Service District 112
Through Construction Services Group (CSG),
a program of ESD 112
2500 N.E. 65th Avenue
Vancouver, WA 98661

For services in Connection with the Project known as:

Woodland High School

Hereinafter called the "Project", as further described in Article 2

The Owner and Construction Manager, (hereinafter referred to as the "CM"), in consideration of their mutual covenants herein agree as set forth below:

ARTICLE 1 RELATIONSHIP OF THE PARTIES

1.1 Owner and Construction Manager

- 1.1.1 Relationship: Pursuant to the authority under RCW 28A.310.200(7) and 28A.310.010, the CM shall be the Owner's principal consultant in providing the CM's services described in this Agreement. The CM and the Owner shall perform the duties and obligations as stated in this Agreement.
- 1.1.2 Standard of Care: The CM covenants with the Owner to furnish its services hereunder properly, in accordance with the standards of its profession and best construction management practices, and in accordance with applicable federal, state and local laws and regulations which are in effect on the date of this Agreement first written above.

1.2 Owner and Designer

- 1.2.1 Owner-Designer Agreement: The Owner shall enter into a separate agreement, the "Owner-Designer Agreement", with one or more Designers to provide for the design of the Project and certain design-related services during the Construction Phase of the Project.

1.3 Owner and Contractors

- 1.3.1 Construction Contract: The Owner shall enter into a separate Agreement with one or more Contractors for the construction of the Project. Contractor under this Agreement will include any subcontractors providing services on the Project.

1.4 Relationship of the CM to Other Project Participants

- 1.4.1 Working Relationship: In providing the CM's services described in this Agreement, the CM shall use best efforts to maintain on behalf of the Owner, a successful working relationship with the Contractor and Designer.
- 1.4.2 Limitations: Nothing in this Agreement shall be construed to mean that the CM assumes any of the responsibilities or duties of the Contractor or the Designer. The Contractor will be solely responsible for construction means, methods, techniques, sequences and procedures used in the construction of the Project and of the safety of its personnel, property, and its operations and for performing under the agreement with the Owner. The Designer is solely responsible for the design requirements and design criteria of the Project and shall perform in accordance with the agreement between the Designer and the Owner. The CM's services shall be rendered compatibly and in cooperation with the services provided by the Designer and the Contractor under the Agreements with the Owner. It is not intended that the services of the Designer and the Contractor be competitive or duplicative with the CM's services, but rather complementary.

ARTICLE 2 PROJECT DEFINITION

- 2.1 The term "Project", when used in the Agreement, shall be defined as all work to be finished or provided in accordance with the Contract Documents prepared by the Designer and the Contractor, also known as the Work.
- 2.2 The Project name and location is as follows:

New Woodland High School
Location: Dike Access Road, Woodland, WA.

ARTICLE 3 BASIC SERVICES

3.1 CM's Basic Services

3.1.1 Basic Services: The CM shall perform the Basic Services described in this Article 3. It is not required that the services be performed in the order in which they are described.

3.2 Pre-Design Phase

3.2.1 Project Management

3.2.1.1 Designer Selection: The CM shall assist the Owner in the selection of a Designer by developing lists of potential firms, developing criteria for selection, preparing and transmitting the requests for proposal, and assisting in conducting interviews.

3.2.1.2 Designer Contract Preparation: The CM shall assist the Owner in review and preparation of the agreement between the Owner and Designer.

3.2.2 Time Management

3.2.2.1 Master Schedule: The CM shall review and make recommendations with regard to the Master Schedule to be prepared by the Designer for the Project. The Master Schedule shall specify the proposed starting and finishing dates for each contract related to the Project and the dates by which certain design, construction and ancillary activities must be complete.

3.2.3 Cost Management

3.2.3.1 Project and Construction Budget: The CM shall review and make recommendations with regard to the Project and Construction Budget to be prepared by the Designer. The CM shall review the budget with the Owner and Designer and create a master budget document for the entire Project against which future expenditures will be measured.

3.2.4 Management Information System (MIS)

3.2.4.1 Establishing the Project MIS: The CM shall develop a MIS in order to establish communication between the Owner, CM, Designer, Contractor and any other parties involved with the Project identified by Owner or CM.

3.3 Design Phase

3.3.1 Project Management

3.3.1.2 Progress Meetings: The CM shall conduct and document periodic progress meetings attended by the Owner, Designer and other project team members. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress.

3.3.1.3 Review of Design Documents: The CM shall review the design documents and make recommendations to the Owner and Designer as to scheduling, time of construction, and coordination of documentation among Contractors; and as to the separation of the Project into contracts for various categories of the Project.

3.3.1.4 Owner's Design Reviews: If requested, the CM shall expedite the Owner's design reviews by compiling and conveying the Owner's review comments to the Designer.

3.3.1.5 Approvals by Regulatory Agencies: The CM shall review documents sent to regulatory agencies by Designer and shall advise the Owner of potential problems and suggested solutions regarding completion of such reviews.

3.3.1.6 Other Contract Conditions: The CM shall assist in the preparation of the General and Supplemental Conditions of the Design Contract.

3.3.1.7 Project Funding: The CM shall assist the Owner in preparing documents concerning the Project and Construction Budget for use in obtaining or reporting on Project funding. The documents shall be prepared in a format approved by the Owner. The CM will assist the Owner in complying with OSPI state matching funds requirements and accounting procedures.

3.3.2 Time Management

3.3.2.1 Revisions to the Master Schedule: As necessary throughout the Design Phase, the CM shall recommend revisions to the Master Schedule. If approved by the Owner, the Owner shall issue, as needed, change orders to the appropriate parties to implement the Master Schedule revisions.

3.3.3 Cost Management

- 3.3.3.1 Cost Control: The CM shall review an estimate of the construction cost (to be prepared by others) for each submittal of design drawings and specifications from the Designer. This estimate shall include a contingency acceptable to the Owner, CM and the Designer for construction costs appropriate for the type and location of the Project and the extent to which the design has progressed.
- 3.3.3.2 Project and Construction Budget Revision: The CM shall make recommendations to the Owner concerning revisions to the Project and Construction Budget that may result from design changes.
- 3.3.3.3 Monthly Project Management Reports: The CM shall prepare and distribute a monthly status report to the Owner including schedule and financial updates.

3.4 Procurement Phase

3.4.1 Project Management

- 3.4.1.1 Bidder's Interest Campaign: The CM shall conduct a telephone and correspondence campaign to attempt to increase interest among qualified bidders.
- 3.4.1.2 Notices and Advertisements: The CM shall assist the Owner in preparing and placing notices and advertisements to solicit bids for the Project.
- 3.4.1.3 Pre-Bid Conference: The CM shall conduct, in conjunction with the Owner and Designer, Pre-Bid Conferences. These conferences shall be forums for the Owner, CM and Designer to explain the Project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, the Owner's administrative requirements and technical information.
- 3.4.1.4 Addenda: The CM shall receive from the Designer a copy of all addenda. The CM shall review addenda for effect on the Project and Construction budget, scheduling and time of construction, and for clarity and coordination in documentation.
- 3.4.1.5 Bid Opening and Recommendations: The CM shall assist the Owner in the bid opening and shall evaluate the bids, including alternate bid prices and unit prices, for responsiveness and price. The CM shall make recommendations to the Owner concerning the acceptance or rejection of bids.
- 3.4.1.6 Post-Bid Conference: The CM shall conduct a Post-Bid Conference to review contract award procedures, schedules, and Project staffing and other pertinent issues.
- 3.4.1.7 Construction Contracts: The CM shall assist the Owner in the assembly, delivery and execution of the Contract Documents. The CM shall issue to the Contractor on behalf of the Owner the Notice of Award and the Notice to Proceed.
- 3.4.1.8 Public Contracting. The Owner and the CM shall ensure and act in full compliance with all applicable public contracting and public works provisions.

3.4.2 Time Management

- 3.4.2.1 Master Schedule: The CM shall recommend to the Owner any appropriate revisions to the Master Schedule. Following acceptance by the Owner of such revisions, the CM shall provide a copy of the Master Schedule to the Designer and to the bidders.

3.4.3 Cost Management

- 3.4.3.1 Estimates for Addenda: The CM shall review estimates of costs for all Addenda (estimate to be provided by others) and make recommendations to the Owner regarding the impact on Project budget.
- 3.4.3.2 Analyzing Bids: Upon receipt of the bids the CM shall evaluate the bids, including alternate bid prices and unit prices, and shall make a recommendation to the Owner regarding the award of the Construction Contract.
- 3.4.3.3 Monthly Project Management Reports: The CM shall prepare and distribute a monthly status report to Owner including schedule and financial updates.

3.5 Construction Phase

3.5.1 Project Management

- 3.5.1.1 Pre-Construction Conference: The CM shall conduct, in consultation with the Owner, the Contractor and Designer, a Pre-Construction Conference during which the CM shall review the

- Project reporting procedures and other rules related to implementation of the construction phase of the Project.
- 3.5.1.2 Permits, Bonds and Insurance: The CM shall verify that the required licenses/registration, permits, performance and payment bonds, and acceptable insurance documentation, have been obtained from the Contractor before commencement of the Work.
- 3.5.1.3 On-Site Management and Construction Phase Communication Procedures: The CM shall provide onsite contract administration as an agent of the Owner, and the CM shall establish and implement coordination and communication procedures among the CM, Owner, Designer and Contractor.
- 3.5.1.4 Contract Administration Procedures: The Designer shall establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents including but not limited to: shop drawings, samples and other submittals; contract schedule adjustments; change order proposals; written proposals for substitutions; payment applications; and the maintenance of logs. The CM will receive copies of all such documents after the Designer has reviewed them and prior to their final approval/acceptance by the Owner.
- 3.5.1.5 Project Site Meetings: The CM shall conduct meetings at the Project site with each Contractor, and the CM shall conduct coordination meetings with the Contractor, the Owner and the Designer. The CM shall prepare and distribute minutes to all attendees, the Owner, the Contractor and Designer.
- 3.5.1.6 Coordination of Other Independent Consultants: The CM shall coordinate technical inspection and testing provided by others (Contractor will make the day-to-day calls for inspection or testing). The CM shall receive a copy of all inspection and testing reports. The CM shall not be responsible for providing, nor shall the CM control, the actual performance of technical inspection and testing.
- 3.5.1.7 Minor Variations in the Work: The CM may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the contract price or time and which are consistent with the overall intent of the Contract documents. The CM shall provide to the Owner and the Designer copies of such authorizations.
- 3.5.1.8 Change Orders: The CM shall establish and implement a change order control system. All changes to the Contract between the Owner and Contractor shall be only by change order executed by the Owner.
- 3.5.1.8.1 Owner-initiated Changes: All proposed changes shall first be described in detail by the CM in a request for a proposal issued to the Contractor. The request shall be accompanied by drawings and specifications prepared by the Designer. In response to the request for a proposal, the Contractor shall submit to the CM for evaluation detailed information concerning the price and time adjustments, if any, as may be necessary to perform the proposed change order work. The CM shall review the Contractor's proposal, shall discuss the proposed change order with the Contractor, and endeavor to determine the Contractor's basis for the price and time proposed to perform the work.
- 3.5.1.8.2 Contractor-initiated Changes: The CM shall review the contents of all Contractor requested changes to the contract time or price, endeavor to determine the cause of the request, and assemble and evaluate information concerning the request. The CM shall provide to the Designer a copy of each change request, and the CM shall in its evaluations of the Contractor's request consider the Designer's comments regarding the proposed changes.
- 3.5.1.8.3 The CM shall make recommendations to the Owner regarding all proposed change orders. At the Owner's direction the CM shall prepare and issue to the Contractor appropriate change order documents. The CM shall provide to the Designer copies of all approved change orders.
- 3.5.1.9 Quality Review: The CM shall establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to assist in guarding the Owner against work by the Contractor that does not conform to the requirements of the Contract Documents. The CM shall reject any portion of the Work and transmit to the Owner and Contractor a notice of nonconforming work when it is the opinion of the CM, Owner, or Designer that such work does not conform to the requirement of the Contract Documents.

- 3.5.1.10 Operation and Maintenance Materials: The CM shall receive from the Contractor operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. The CM shall review for completeness and deliver this information to the Owner and shall provide a copy of the information to the Designer.
- 3.5.1.11 Substantial Completion: The CM shall assist the Designer in determining when the Project and the Contractor's work are substantially complete. In consultation with the Designer, the CM shall, prior to issuing a Certificate of Substantial Completion, prepare a list of incomplete work or work which does not conform to the requirements of the Contract Documents. This list shall be attached to the Certificate of Substantial Completion.
- 3.5.1.12 Final Completion: In consultation with the Designer, the CM shall determine when the Project and the Contractor's work is finally completed, shall issue a Certificate of Final Completion and shall provide to the Owner a written recommendation regarding payment to the Contractor.

3.5.2 Time Management

- 3.5.2.1 Master Schedule: The CM may adjust and update the Master Schedule and if so, will distribute copies to the Owner, the Contractor and Designer. All adjustments to the Master Schedule shall be made for the benefit of the Project.
- 3.5.2.2 Contractor's Construction Schedule: The CM shall review the Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.
- 3.5.2.3 Construction Schedule Report: The CM shall, on a monthly basis, review the progress of construction of the Contractor, shall evaluate the percentage complete of each construction activity as indicated in the Contractor's Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule report that shall be prepared and distributed to the Contractor, Owner and Designer by the CM. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the Contractor. The CM shall advise and make recommendations to the Owner concerning the alternative courses of action that the Owner may take in its efforts to achieve Contract compliance by the Contractor.
- 3.5.2.4 Effect of Change Orders on the Schedule: Prior to the issuance of a change order, the CM shall determine and advise the Owner as to the effect on the Master Schedule of the change. The CM shall verify that activities and adjustments of time, if any, required by approved change orders have been incorporated into the Contractor's Construction Schedule.
- 3.5.2.5 Recovery Schedules: The CM may require the Contractor to prepare and submit a recovery schedule as specified in the Contract Documents. Such schedule is a tool to describe how the contractor will recover from any delays in construction.

3.5.3 Cost Management

- 3.5.3.1 Schedule of Values: The CM shall, in participation with the Contractor, determine a Schedule of Values for the Construction Contract. The Schedule of Values shall be the basis for the allocation of the contract price to the activities shown on the Contractor's Construction Schedule.
- 3.5.3.2 Allocation of Cost to the Contractor's Construction Schedule: The Contractor's Construction Schedule shall have the total contract price allocated by the Contractor among the Contractor's scheduled activities so that each of the Contractor's activities shall be allocated a price and the sum of the prices of the activities shall equal the total contract price. The CM shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to the Contractor shall be based on the Contractor's percentage of completion of the scheduled activities as set out in the Construction Schedule reports and the Contractor's compliance with the requirements of the Contract Documents.
- 3.5.3.3 Effect of Change Orders on Cost: The CM shall advise the Owner as to the effect on the Project and Construction Budget of all proposed and approved change orders.
- 3.5.3.4 Cost Records: In instances when a lump sum or unit price is not determined prior to the Owner's authorization to the Contractor to perform change order work, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to each subcontractor incurred by the Contractor in performing the Work.

- 3.5.3.5 Progress Payments: The CM shall review the payment applications submitted by the Contractor and determine whether the amount requested reflects the progress of the Contractor's work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment reports. The report shall state the total contract price. Payments to date, current payment requested, retainage and actual amounts owed for the current period.
- 3.5.3.6 Monthly Project Management Reports: The CM shall prepare and distribute a monthly status report to Owner including schedule and financial updates.
- 3.5.3.7 Change Order Reports: The CM shall periodically during the Construction Phase prepare and distribute Change Order reports. The report shall list all Owner-approved charge orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware.

3.6 Post-Construction Phase

3.6.1 Project Management

- 3.6.1.1 Record Documents: The CM shall coordinate and expedite submittals of information from the Contractor for preparation of record and as-is drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the Owner.
- 3.6.1.2 Operation and Maintenance Materials and Certificates: Prior to the final completion of the Project, the CM shall compile manufacturer's operations and maintenance manuals, warranties and guarantees, and certificates, and index and bind such documents in an organized manner. This information shall then be provided to the Owner.
- 3.6.1.3 Occupancy Permit: The CM shall assist the Owner in obtaining an occupancy permit by coordinating final testing, preparing and submitting documentation to governmental agencies, and accompanying governmental officials during inspections of the Project.

3.6.2 Cost Management

- 3.6.2.1 Change Orders: The CM shall continue during the Post-Construction Phase to provide services related to change orders.
- 3.6.2.2 11-month Warranty Review: The CM shall participate in an 11-month warranty review walk through with the Owner and Designer to document work to be completed or corrected by the Contractor.
- 3.6.2.3 Close Out Reports: At the conclusion of the Project, the CM shall prepare and deliver to the Owner final Project accounting and close out reports.

ARTICLE 4 ADDITIONAL AND OPTIONAL SERVICES

- 4.1 At the request of the Owner, and pursuant to a written amendment to this Agreement, the CM shall perform Additional or Optional Services and the CM shall be compensated for same in a manner agreed by both parties. Such Additional and Optional Services may include:
 - 4.1.1 Optional Service: **Building Commissioning** Services as required and defined by OSPI (the fee is **\$99,780.00**).
 - 4.1.2 Optional Service: **Constructability Reviews** as required and defined by OSPI. (The fee is **\$99,780.00**).
 - 4.1.3 Optional Service: **Value Engineering** as required and defined by OSPI (the fee is **\$99,780.00**).
 - 4.1.4 Optional Service: **FF&E** services related to the selection, procurement, storage maintenance and installation of the Owner-furnished equipment and furnishings (the fee is **\$73,500.00**).
 - 4.1.5 Additional Service: Consultation regarding replacement of work or property damaged by fire or other cause during construction and furnishing services in connection with the replacement of such;
 - 4.1.6 Additional Service: Services made necessary by the default of the Contractor;
 - 4.1.7 Additional Service: Preparation for and serving as a witness in connection with any arbitration, mediation or legal proceeding;

- 4.1.8 Additional Service: Technical systems design and project management (phone, data, security, clock and bell, fire alarm and related low voltage systems).

ARTICLE 5

DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

- 5.1 The date for the CM's Basic Services shall be: **May 1, 2012 through December 31, 2015 (Term).**
5.2 The duration of the CM's Basic Services may be changed as specified in Article 6.

ARTICLE 6

CHANGES IN THE CONSTRUCTION MANAGER'S BASIC SERVICES AND COMPENSATION

6.1 Owner Changes

- 6.1.1 The Owner, without invalidating this Agreement, may make changes in the CM's Basic Services specified in Article 3 of the Agreement. The CM shall promptly notify the Owner of changes that increase or decrease the CM's compensation or the duration of the CM's Basic Services or both.

6.2 Authorization

- 6.2.1 Changes in CM's Basic Services and entitlement to additional compensation, reduction in compensation, or a change in duration of this Agreement shall be made by a written amendment to this Agreement executed by the Owner and the CM. The amendment shall be executed by the Owner and CM prior to the CM performing the services required by the amendment.

6.3 Invoices for Additional Compensation

- 6.3.1 The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provision of Article 8 of this Agreement
6.3.2 If the State fails to fund the construction phase in June, 2012, the construction phase may be delayed until such time as funding is available without additional payments to CM.

ARTICLE 7

OWNER'S RESPONSIBILITIES

- 7.1 The Owner shall provide to the CM complete information regarding the Owner's knowledge of the requirements for the Project. The CM may use and rely on the information furnished by the Owner in performing services under this agreement, and on the reports, data, and other information furnished by the Owner to the Designer.
- 7.2 The Owner shall be responsible for the mitigation or removal of any asbestos, PCBs, petroleum, hazardous materials and radioactive materials, and the consequences of such presence. The CM will assist the Owner in the acquisition of professional services needed to affect these removal activities.
- 7.3 The Owner shall examine information submitted by the CM and shall render decisions pertaining thereto promptly.
- 7.4 The Owner shall furnish legal and insurance counseling services as may be necessary for the Project.
- 7.5 If the Owner or the CM observes or otherwise becomes aware of any fault or defect in the Project or any work that does not comply with the requirements of the Contract Documents, the party noticing the defect shall give prompt written notice thereof to the other party.
- 7.6 The Owner shall cause any and all agreements between the Owner and the Designer to be compatible and consistent with this Agreement when the CM agreement precedes the Designer agreement.
- 7.7 The Owner shall cause any and all agreements between the Owner and the Contractor to be compatible and consistent with this Agreement.
- 7.8 At the request of the CM, the Owner at the Owner's expense shall furnish sufficient copies of the Contract Documents for the CM to conduct its work.
- 7.9 The Owner, its representatives and consultants shall communicate with the Contractor only through the CM.

- 7.10 The Owner shall send to the CM and shall require the Designer to send to the CM copies of all notices and communications sent to or received by the Owner or the Designer relating to the Project. During the Construction Phase of the Project, the Owner shall require that the Contractor submit all notices and communications relating to the Project directly to the CM.

ARTICLE 8 COMPENSATION AND PAYMENT FOR CM SERVICES

8.1 Compensation Basis

- 8.1.1 The CM shall receive compensation for its services in accordance with Paragraph 8.2.

8.2.1 Compensation for Basic Services

- 8.2.2 The Owner shall compensate the CM for performing Basic Services described in Article 3 with a fixed fee calculated as follows:

Fixed fee of **\$658,274.00**. Monthly billings to be derived by dividing the fee by the number of months in the project ($\$658,274 / 43 \text{ months} = \$15,308.69$). This calculation assumes the first billable month will be June 2012 and the last billable month will be December 2015. If the State fails to fund the construction phase in June 2013, payment to the CM will be suspended during the construction phase until construction commences. If the delay results in the Project not being completed during the term of this Agreement, the parties may amend this Agreement to extend its term subject to Owner's rights in Article 10.

- 8.2.2.1 Current Hourly Labor Rates: for use if/when additional or optional services are requested by the Owner on an hourly basis (subject to a maximum of 3% per year increase):

- Director: \$ 125/hour
- Senior Construction Manager: \$ 95/hour
- Construction Manager: \$ 90/hour
- Construction Accountant: \$ 85/hour
- Clerical: \$ 45/hour

- 8.2.2.2 Direct Expenses: In addition to the compensation for Basic Services the CM shall be reimbursed for its direct expenses incurred in providing Basic and Additional Services except as noted. Direct expenses include: Handling, shipping, mailing and reproduction of materials and documents on behalf of the Project. Included in basic Services.

- 8.2.2.3 Payments: Payments to the CM shall be made monthly, not later than thirty(30) days after receipt of the CM's invoice by the Owner.

- 8.2.2.4 Compensation for Additional Services: The CM shall be compensated for performing additional services in an amount and on terms mutually agreeable between the Owner and CM.

ARTICLE 9 INSURANCE AND MUTUAL INDEMNITY

9.1 Construction Manager's Liability Insurance

- 9.1.1 General Liability: The CM shall procure and maintain insurance approved by Owner for protection from claims for damages for bodily injury including personal injury, sickness or disease or death of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. The Owner shall be named as an additional insured under the CM's liability policy.
- 9.1.2 Workman's Compensation: The CM shall provide workman's compensation coverage for its employees as required by the local jurisdiction in which the Project is located.
- 9.1.3 Property Insurance: The CM shall provide property insurance for any job site property owned by the CM. The Owner shall be named as an additional insured under the CM's property insurance policies.

- 9.1.4 Professional Liability: The CM shall procure and maintain professional liability insurance for protection from claims arising out of the performance of professional services caused by a negligent error, omission or act for which the insured is legally liable; such liability insurance will provide for coverage in such amounts, with such deductible provisions and such period of time required by the Owner.
- 9.2 Owner's Insurance**
- 9.2.1 The Owner shall be responsible for purchasing and maintaining its own liability and property insurance and at the Owner's option, may purchase and maintain such additional insurance to protect the Owner against claims losses, or damages that may arise from the Project.
- 9.2.2 The CM, as an agent of the Owner, shall be named as an additional insured in the Owner's liability policy and be named as an additional insured on any property insurance policy obtained by the Owner for the project.
- 9.3 Notices and Recovery**
- 9.3.1 The Owner and CM each shall provide the other with copies of all policies thus obtained for the Project. Each party shall provide the other thirty (30) days written notice of cancellation, non-renewal or endorsement reducing or restricting coverage.
- 9.4 Waiver of Subrogation**
- 9.4.1 The Owner and CM waive rights of recovery against each other and against the Contractor, Designer, and other consultants, subcontractors, suppliers, agents and employees of the other for damages during construction covered by any property insurance as set forth in the Contract Documents. The Owner and the CM shall each require appropriate similar waivers from their contractors, designers, and other consultants, subcontractors, suppliers and agents.
- 9.5 Indemnity**
- 9.5.1 To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, its employees, agents, officers, directors and partners from and against any and all damages arising from bodily injury or property damage and reasonable attorney's fees incurred by the Owner caused by the negligent act, error or omission of the CM, or the CM's consultants, or any other party for whom the CM is legally liable, in performance of services under this Agreement. The CM shall procure and maintain insurance as required by and set forth in this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of the CM and the CM's consultants and the officers, directors, partners, employees, and agents of any of them, to the Owner and anyone claiming by, through, or under the Owner, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause or causes, including but limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty (express or implied) of the CM or the CM's consultants and the officers, directors, partners, employees, and agents of any of them, (hereafter "the Owner's claims"), shall not exceed the total insurance proceeds paid on behalf of or to the CM by the CM's insurers in settlement or satisfaction of the Owner's claims under the terms and conditions of the CM's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense and appeal) (Limitation) provided, this Limitation does not apply to any claim that is not covered by insurance proceeds.
- 9.5.2 The Owner shall cause the Designer to indemnify and hold harmless the Owner, its employees, agents and representatives to the same extent and in the same manner that CM has provided indemnification for the Designer under Paragraph 9.5.1.
- 9.5.3 The Owner hereby indemnifies and holds harmless the CM and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage for bodily injury and property damage for which Owner is liable that arise out of or result from negligent acts or omissions of the Owner, its employees, agents, representatives, independent contractors, suppliers, the Contractor and Designer subject to the Limitation set forth in Section 9.5.1..
- 9.5.4 The Owner shall cause the Contractor to indemnify and hold harmless the CM from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs, and expenses and fees that are asserted against the CM and that arise out of or result from negligent acts or omissions by the Contractor, its employees, agents and representatives in performing the Work.

ARTICLE 10

Woodland School District
New High School

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VANDOCs:50151175.2

TERMINATION AND SUSPENSION

Termination

- 10.1.1 This Agreement may be terminated by the Owner for convenience after seven (7) days written notice to the CM.
- 10.1.2 This Agreement may be terminated by either party should the other party fail substantially to perform in accordance with the terms hereof through no fault of the other; provided however, before termination can go into effect the non-defaulting party shall give the defaulting party 20 days notice to cure any violation of this Agreement.
- 10.1.3 In the event of termination under Paragraphs 10.1.1 or 10.1.2, the CM shall be paid its compensation for services performed to date of termination.

10.2 Suspension

- 10.2.1 The Owner may, in writing, order the CM to suspend all or any part of the CM's services for the Project for the convenience of the Owner or for stoppage beyond the control of the Owner or the CM. During suspension of services, payment to the CM will be suspended as well.
- 10.2.2 If the project is resumed, the CM shall have the option of requiring that its compensation be renegotiated. A suspension of this Agreement does not void this Agreement.

ARTICLE 11 DISPUTE RESOLUTION

- 11.1 The Owner and the CM shall submit all disputes between them arising out of this Agreement to mediation prior to either party initiating against the other a demand for arbitration pursuant to Paragraph 11.2 below. The dispute shall be submitted to mediation under the then current Construction Industry Mediation Rules of the American Arbitration Association.
- 11.2 All disputes that the Owner and CM are unable to resolve by mediation shall be decided by arbitration. The Owner and the CM shall submit the dispute to arbitration under the then current Construction Industry Rules of the American Arbitration Association.
- 11.3 Notice of demand for arbitration must be filed in writing with the other party to this Agreement and with the Arbitrator(s). The demand must be made within thirty (30) days after mediation has concluded and failed to provide resolution agreeable to both parties. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such dispute in question would be barred by the applicable statute of limitations or of repose.
- 11.4 The award rendered by the arbitrator(s) will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modification or appeal.
- 11.5 Unless otherwise agreed in writing, the CM shall continue to carry out its responsibilities under this Agreement during any dispute, and the Owner shall continue to make payments in accordance with this Agreement.

ARTICLE 12 ADDITIONAL PROVISIONS

12.1 Limitations and Assignment

- 12.1.1 The Owner and the CM each binds itself, its successors, assigns and legal representatives to the terms of this Agreement.
- 12.1.2 Neither the Owner nor the CM shall assign or transfer its interest in this Agreement without the written consent of the other.

12.2 Governing Law

- 12.2.1 The law of the state where the Project is located shall unless otherwise provided, govern this Agreement.

12.3 Extent of Agreement

- 12.3.1 This Agreement constitutes the entire agreement between the parties and incorporates all prior agreements and understandings in connection with the subject matter hereof.

12.4 Severability

- 12.4.1 If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such portion.

Woodland School District
New High School

12.5 Notices

12.5.1 All notices required by this Agreement or other communications to either party shall be deemed given when made in writing and deposited in the United States Mail, certified, postage prepaid, addressed as follows:

To the Owner:

Michael Green - Woodland School District Superintendent
800 Third Street
Woodland Washington, 98674

To the CM:

Douglas S. Nichols, Director
Construction Services Group
ESD 112
2500 N.E. 65th Avenue
Vancouver, WA 98661

IN WITNESS WHEREOF, the parties have duly executed this Contract as of the date set forth on page 1 hereof.

OWNER

By: _____

Title: _____

Educational Service District 112
Through Construction Services Group (CSG),
a program of ESD 112

By: _____

Title: _____