

## CONSTRUCTION MANAGEMENT AS AGENT AGREEMENT

This Construction Management Agreement is made as of the 20<sup>th</sup> day of March 2020, by and between River Valley School District ("Owner") and Cooperative Educational Service Agency 10 ("CM Agent"), for project management services, as more fully described herein.

### RECITALS

- A. Owner intends to design, develop and construct the construction project identified in Section 2 below and herein referenced to as the Project.
- B. Owner will enter into separate agreements for the design, engineering procurement, and construction work for the Project.
- C. Owner desires to engage CM Agent to perform the services specified in this Agreement to facilitate the Project, and CM Agent desires to accept such engagement, upon the terms and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and CM Agent agree as follows:

- 1. **DEFINITIONS.**
  - 1.1. "Agreement" shall mean this Construction Management Agreement.
  - 1.2. "Effective Date" shall mean the date first set forth above.
  - 1.3. "Facility" shall mean the River Valley School District facilities located in River Valley, Wisconsin.
  - 1.4. "OSHA" shall mean the Occupational Health and Safety Administration.
  - 1.5. "Owner" shall mean River Valley School District.
  - 1.6. "Project" shall mean those certain components set forth in Section 2.1 performed within the Facility.
  - 1.7. "Reimbursable Expenses" means those certain costs incurred by CM Agent that are limited to Project travel as preauthorized by Owner, document reproduction, FedEx or other courier expenses, costs for specialists or consultants engaged at Owner's direction and on behalf of Owner, and other Owner preapproved expenses.
  - 1.8. "CM Agent" shall mean Cooperative Educational Service Agency 10.
  - 1.9. "CM Agent's Fee" shall mean Owner's compensation to CM Agent for CM Agent's services under this Agreement, as set forth in Section 5.1
  - 1.10. "Services" shall mean those services CM Agent will provide under this Agreement as further described in Section 3.2.

1.11. "Termination Expenses" are defined as those reasonable and unavoidable expenses actually incurred and paid by CM Agent, arising directly out of the termination and not otherwise reimbursed or paid to CM Agent under other provisions of this Agreement.

1.12. "Total Project Cost" shall mean all costs, less the CM Agent's Fee, incurred to complete the Project, including but not limited to (i) costs of all labor, services, materials, supplies and equipment, (ii) rental charges for temporary facilities, supplied and equipment, (iii) fees and expenses for permits, licenses, design services, testing, and inspections, (iv) any materials purchased directly by the Owner and, (v) any and all change orders.

## 2. PROJECT.

2.1. Project. The Project is composed of the following major components:

2.1.1 Scope of work at this time has not been determined. This agreement will be amended when further details are known. Refer to Appendix A for amended document.

Owner and CM Agent may expand the scope of the major components for the Project by mutually agreeing to the same in writing. At such time, Owner and CM Agent shall also mutually agree in writing to changes in CM Agent's Services under Section 3, if any, relating to the expanded scope as well as CM Agent's compensation therefor pursuant to Section 5.4.

## 3. CM AGENT DUTIES

3.1. Duty Of Care. CM Agent shall fully and promptly execute the Services, outlined in Section 3.2 below, and CM Agent shall use its best skill and judgment at all times and in the most expeditious and economical manner to further the interest of Owner with respect to the Project. CM Agent shall coordinate its Services with others on the Project and shall comply with Owner-approved schedules. CM Agent acknowledges that its Services include specialized consulting expertise to support Owner in achieving a timely and economical execution of the development and construction of the Project. CM Agent agrees to perform its Services in a manner equivalent in skill, quality and efficiency to reputable, experienced project management companies performing similar services for projects of like size, kind and cost.

3.2. Services. CM Agent will perform the following Services with respect to the Project

### **Project Set-up and Procurement**

3.2.1. Review Project concepts, goals, and objectives.

3.2.2. Review and understand facility use, considering possible future expansion.

3.2.3. Review and identify critical project elements to track (e.g. quality, cost, schedule, budget).

3.2.4. Review site constraints and agency coordination elements for submittal and approval requirements.

3.2.5. Coordinate and review Owner furnished information such as existing property surveys, subsurface, and existing environmental information.

- 3.2.6. Facilitate procurement of certain materials and equipment to be incorporated into the Project which Owner and CM Agent observe may involve long lead times to avoid disruption to the Project schedule.
- 3.2.7 Update Facility Condition Index (FCI) score, an on-going annual replacement cost, existing deferred maintenance value, and annual budget amounts for estimation allocation for capital projects, and scheduling expenditures for long range planning.

**Pre-Construction Services**

- 3.2.8 Assist/advise in the preparation and solicitation of general contractors during the prequalification process.
- 3.2.9 Work in concert with Owner and architects to recommend the scope of work to be included into contractor bid packages.
- 3.2.10 Prior to bidding, provide a professional opinion pertaining to probable costs and bid structure as it pertains to alternatives and substitutions.
- 3.2.11 Assist in the bid review process prior to recommending the successful bidder, with the knowledge that Owner will have the final decision in selecting the bidder for the Project.
- 3.2.12 Request information from bidders, contractors, and architects regarding OSHA agreements and citations within the past five (5) years.
- 3.2.13 Request from architects, contractors, and other pertinent parties a copy of any of their safety programs or plans, and make recommendations to the Owner as to the reliability of such programs or plans.
- 3.2.14 Assist in contract preparation and negotiation providing guidance and advice pertaining to protection of Owner's interests.
- 3.2.15 Attend pre-construction meetings.
- 3.2.16 Review architect designs and plans for the Project and present same to Owner for final approval.
- 3.2.17 Upon Owner's written request, assist Owner in finding temporary alternative facilities for Owner's operations during construction.

**Services During Construction**

- 3.2.18 Provide on-site monitoring of construction to resolve minor disparities between architects and contractors and to reject the use of inappropriate means and methods of construction and failure to follow plans/specifications which CM Agent observes.
- 3.2.19 Serve as the liaison between the architect, contractor, and Owner bringing significant or unresolved disparities to the Owner with advice as to the appropriate resolution.

- 3.2.20 Attend job site meetings scheduled at mutually agreeable intervals during construction periods and provide overview reports to the Owner highlighting areas of concern.
- 3.2.21 Witness quality assurance testing, inspection, and commissioning procedures.
- 3.2.22 Monitor Project for deficiencies and recommend any special testing needed in coordination with architects/engineers.
- 3.2.23 Provide the initial review of all submittals, including shop drawings and samples, and provide guidance and recommendations to Owner regarding acceptance of the same.
- 3.2.24 Provide the initial review of all change orders, working with the Owner, contractors and architects to resolve or provide recommendations for approval or denial based upon necessity, cost, and other pertinent variables.
- 3.2.25 Coordinate with contractors who shall ensure the worksite is secured and safe for employees, students, and workers and provide reports to Owner as to the status of same.
- 3.2.26 Oversee general safety compliance of architects, contractors, and/or other pertinent parties working on the Project; however, CM Agent does not assume liability for any noncompliance with state, federal, or industry safety requirements by such parties.
- 3.2.27 Advise Owner on proper management of any environmental hazards that may be identified prior to or during the construction period and, upon Owner's written direction and for an additional fee mutually agreed upon in writing, manage all aspects of environmental issues not addressed by contractors, architects, or other subcontractors on the Project.
- 3.2.28 Assist with hiring of surveyors, special consultants, and testing lab services as required and upon authorization of the Owner.
- 3.2.29 Provide Project status reports as required, including invoices and payments.
- 3.2.30 In concert with the architects and contractors, develop punch lists and monitor Project close out documents to ensure completeness.
- 3.2.31 Perform other tasks in Owner's best interests relative to reviewing contractors' compliance with designs, plans and appropriate construction methods on the Project.
- 3.2.32 During construction period(s) and at mutually agreeable intervals provide written reports of Project progress as compared to the Project timeline and budget status including variances and summary of changes to Project scope, budget, or timeline.
- 3.2.33 Meet with architects, contractors, and Owner as needed to advise Owner on any changes or alterations to original Project design or materials.

**Post-Construction Services**

- 3.2.34 Work with relevant state and municipal officials to review plans, perform inspections, and coordinate the reporting and remediation of any findings.
  - 3.2.35 When requested by Owner, and during the initial six (6) month period following substantial completion of the Project, monitor, observe or review the testing and start-up of such utilities, systems, and equipment.
  - 3.2.36 Review payment requests of construction contractors for approval and payment, offering recommendations to Owner for withholding or payment.
  - 3.2.37 Monitor the receipt of lien waivers for completed work.
  - 3.2.38 Receive, review, and verify written guarantee and warranty records for Owner.
  - 3.2.39 Assist Owner in performing guarantee and warranty inspections with architects and contractors.
  - 3.2.40 Attend meetings and/or inspections at mutually agreeable times when requested by Owner to resolve problems related to design, physical condition, or operation of the Project, or to seek enforcement of warranties.
  - 3.2.41 Assist Owner in analysis and resolution of any outstanding claims arising out of the Project for a period of four (4) months.
  - 3.2.42 Assist and provide presentations to school board, committees, and/or other stakeholders of the Owner.
  - 3.2.43 Submit final Project status report summarizing project history and conformance to schedule and budget.
  - 3.2.44 Assist Owner in final close-out of the Project, including ensuring all government approvals for legal use and occupancy have been met and attending final meetings and inspections of the completed Project.
  - 3.2.45 Understand and agree that all final Project decisions lie with Owner.
- 3.3 CM Agent Availability. CM Agent shall ensure that the person(s) primarily responsible for providing the Services on a day to day basis will be available on weekdays. John Berget will be the Project Manager for the Project.
- 3.4 Services Not Included. The Owner understands and agrees that the CM Agent is not acting as an architect, engineer, or general contractor for the Project, but is solely assisting the Owner by providing advice, oversight, and monitoring services. The CM Agent shall not be responsible for any architectural or engineering work or design, construction schedule, means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, although the CM Agent shall assist and consult with the Owner with respect thereto. The Owner acknowledges that the CM Agent is not responsible for the design of the Project. The CM Agent agrees that all consultations with and recommendations to the Owner shall be made to assist the Owner in overseeing and monitoring the Project. The Owner acknowledges that the CM Agent shall have no liability to the Owner whatsoever under this Agreement for any acts or omissions of architects, contractors, or any other associated professionals and/or

consultants, including the failure of such parties to efficiently perform services on the Project and in compliance with their agreements executed with Owner.

4. **OWNER'S DUTIES.** Owner shall cooperate with CM Agent to facilitate the performance of CM Agent Services. Owner shall retain and pay all consultants, contractors, vendors, suppliers and other professionals who shall perform the design, engineering, procurement and construction of the Project. Owner shall endeavor to provide information, decisions, payments, selections, staff support, review and approvals required under this Agreement in a timely and expeditious manner. All contracts shall be signed by Owner after review and recommendation by CM Agent and approval by Owner.

5. **COMPENSATION.**

5.1. **CM Agent's Fee.** Customer shall compensate CM Agent for the Services ("CM Agent's Fee") at the rate of 1.5% of the Total Project Cost plus hourly billing rates for the necessary consultants based on the rates below. The Parties agree to monthly time and materials billing as well as quarterly progress billing. The Parties agree to an annual renewal of this agreement. The renewal start date shall be June 1, 2021. If either of the Parties choose to cancel the auto renewal of this agreement, the District or CESA 10 shall provide a 60 day written notice prior to the auto renewal date.

| Position Description                                | Hourly Rate |
|---|-------------|
| Facilities Management Executive Director            | \$150.00    |
| Senior Project Manager                              | \$120.00    |
| Project Manager / Facility Advisor / EHS Consultant | \$106.00    |
| EHS Technician/Project Coordinator                  | \$85.00     |
| Business Analyst / QA-QC / Marketing                | \$75.00     |
| Program Support                                     | \$60.00     |

5.2. **Schedule of Payments of CM Agent's Fee.**

5.2.1 Owner shall pay the CM Agent's Fee in four payments, as follows. The

| Payment 1<br>(Phase 1 work)                              | Payment 2<br>(Phase 1 work)                              | Payment 3<br>(Phase 2 work)                              | Payment 4<br>(Phase 2 work)                              |
|--|--|--|--|
| 30 days after Contract signature (Estimated 4/20/20)     | 5/20/2020  | 9/20/2020  | Within 30 days of Project Completion (Estimate 4/20/21)  |
| 50% of estimated CM Agent's Percentage Fee<br>\$1,245.00 | 50% of estimated CM Agent's Percentage Fee<br>\$1,245.00 | 50% of estimated CM Agent's Percentage Fee<br>\$5,625.00 | 50% of estimated CM Agent's Percentage Fee<br>\$5,625.00 |

below payments are in addition to monthly time and material fees:

Payment shall be made via check/wire and be directed to

CESA 10 Accounting  
725 West Park Avenue  
Chippewa Falls, WI 54729

5.2.2 The Parties acknowledge that material increases in estimated Total Project Cost may result from change orders that Owner approves during the construction phase of the Project. To ensure that CM Agent is evenly compensated for the increased provision of the Services in relation to such change orders, each payment set forth in the table in Section 5.2.1 shall be increased by an amount equal to 1.5% of the value of any change order approved since the previous payment.

- 5.3. Reimbursable Expenses. Reimbursable Expenses incurred will be reimbursed at net cost.
- 5.4. Additional Services. Services in addition to those identified in Section 3 must be authorized in writing by Owner. Owner shall compensate CM Agent for the provision of such additional services on an hourly basis in accordance with the aforementioned labor rates. Payments for Additional Services will be due within thirty (30) days of CM Agent invoicing Owner for same.

## 6. TERMINATION.

- 6.1. Termination by Owner for Cause. Owner may terminate this Agreement for cause if CM Agent

6.1.1. Refuses or fails to perform any of the Services with due diligence to the satisfaction of Owner;

6.1.2. Fails to comply with any laws, ordinances or rules, regulations or order of a public authority having jurisdiction over the Project; or commits any other material breach of this Agreement, and such refusal, failure or breach continues for seven (7) business days after Owner gives CM Agent written notice thereof.

- 6.2. In the event of termination of CM Agent for cause pursuant to Section 6.1, CM Agent shall be paid in accordance with Section 5 of this Agreement for all Services properly performed through the date of termination and all approved Reimbursable Expenses actually incurred through the termination, less any costs incurred by Owner due to the failure or refusal of CM Agent to perform Services in accordance with this Agreement.

- 6.3. Termination by CM Agent for Cause.

6.3.1. CM Agent may terminate this Agreement if Owner defaults in its obligation(s) to make payment to CM Agent in the time provided herein and such failure continues for thirty (30) days after CM Agent gives Owner written notice thereof.

6.3.2. In the event of termination by CM Agent for cause pursuant to Section 6.3.1, CM Agent shall be paid in accordance with Article 5 of this Agreement for all Services properly performed through the date of termination, all approved Reimbursable Expenses actually incurred through the termination date and all Termination Expenses.

- 6.4. Termination by Owner Without Cause. Owner may suspend or terminate the Services of CM Agent or this Agreement, in whole or in part, for Owner's convenience and without cause upon thirty (30) business days' notice. If this Agreement is terminated by Owner for Owner's convenience, CM Agent shall be entitled to payment for Services properly completed and reasonable Reimbursable Expenses incurred up to the date of termination but shall not be entitled to consequential or incidental damages, including, without limitation, lost profits.

**7. OWNERSHIP AND AVAILABILITY OF DOCUMENTS AND OTHER MATTERS.**

All documents related to the Project, prepared by, for, or under the direction of CM Agent hereunder, whether such documents are prepared in Owner's name or in CM Agent's name, shall be the property of Owner and shall not be used or released by CM Agent for any other purposes without Owner's written approval.

8. **AMENDMENTS.** This Agreement may only be amended in writing signed by Owner and CM Agent.

**9. INSURANCE AND INDEMNIFICATION.**

- 9.1. Insurance. CM Agent shall purchase, at its own expense, and maintain Worker's Compensation Insurance, Comprehensive General Liability Insurance with contractual liability coverage, Comprehensive Automobile Liability Insurance and Professional Liability Insurance from a company or companies lawfully authorized to do business in the State of Wisconsin. Worker's Compensation Insurance coverage shall be carried consistent with State of Wisconsin statutory requirements. Comprehensive General Liability, Automobile Liability and Professional Liability Insurance coverage shall each be carried in a minimum amount of \$1 million as to any one claim, and \$1 million in general aggregate. Owner, and Owner's agents, officers, directors and employees shall be named as additional insured under CM Agent's comprehensive general liability and automobile liability insurance policies. Copies of the actual policies shall be available for Owner's inspection upon reasonable notice to CM Agent.

- 9.2. Indemnity.

9.2.1. CM Agent shall indemnify and hold harmless Owner and the Owner's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the Services provided that such claim, damage, loss or expense is attributable to bodily injury, or death, or to injury to or destruction of tangible property (other than to the Project itself), but only to the extent caused in whole or in part by negligent acts or omissions of CM Agent, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and in no event shall the preceding indemnification apply to liability to the extent caused by the negligence or willful misconduct of Owner or Owner's agents or employees.

9.2.2. Owner shall indemnify and hold harmless CM Agent and its agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees provided that such claim, damage, loss or expense is attributable to bodily injury, or death, or to injury to or destruction of tangible property, but only to the extent caused in whole or in part by negligent acts or willful misconduct of Owner, anyone directly or indirectly employed by Owner or anyone for whose acts it may be liable, and in no event



shall the preceding indemnification apply to liability to the extent caused by the negligence or willful misconduct of CM Agent or its agents or employees.

- 9.3. Limitation of Liability. Notwithstanding any provision of this Agreement that might be interpreted to the contrary, neither Party shall be liable to the other for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of this Agreement. The maximum liability of each Party to the other under this Agreement shall be an amount equal to the CM Agent's Fee.
- 9.4. CM Agent's Employee Claims. CM Agent assumes full liability for all personal injury claims suffered by its employees, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretation of said Act or otherwise; and CM Agent shall indemnify and defend Owner, its officers, directors, shareholders, agents, CM Agents and employees from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, sustained as a result of such claims, to the full extent of applicable law.

10. **INDEPENDENT CONTRACTOR.** Nothing contained in this Agreement or in CM Agent's performance of the Services under this Agreement shall be construed as creating an employment relationship between Owner and CM Agent or CM Agent's employees. Nothing contained in this Agreement shall be construed to mean that CM Agent and Owner are joint venturers or partners, it being expressly understood and agreed by the parties that CM Agent, in performing Services under this Agreement, shall be deemed an independent contractor of Owner.

11. **GOVERNING LAW.** This Agreement shall be subject to and governed by the laws of the State of Wisconsin.

12. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall be binding upon CM Agent and Owner and their respective successors and permitted assigns. The parties executing this Agreement each represent that the signatory has the legal authority to bind the entity for which signature is made, and that all necessary corporate authorization for such signature has been duly obtained. Neither party may assign this Agreement without the written consent of the other party hereto.

13. **NOTICES.** All notices or other communications required under this Agreement shall be made in writing and deemed properly given if hand delivered, sent by confirmed facsimile transmission or email or sent by FedEx, UPS or other nationally recognized commercial overnight courier as follows:

IF TO OWNER: TOM ANDRES, DISTRICT ADMINISTRATOR  
RIVER VALLEY SCHOOL DISTRICT  
660 W. DALEY STREET  
RIVER VALLEY, WI 53588

IF TO CM AGENT: COOPERATIVE EDUCATIONAL SERVICE AGENCY 10  
725 WEST PARK AVE.  
CHIPPEWA FALLS, WI 54729  
(715) 720-2196 OFFICE  
(262) 957-4742 CELL  
ATTN: JOHN BERGET

jwberget@cesa10.k12.wi.us

Notices hand delivered or sent electronically shall be deemed received when given, if prior to 3 PM recipient's local time on a business day, otherwise on the next regularly occurring business day. Notices sent by nationally recognized commercial overnight courier shall be deemed received on the business day following deposit.

14. **WAIVER.** No action or failure to act by Owner or CM Agent shall constitute a subsequent waiver of a right or duties afforded under this Agreement or constitute approval or acquiescence of a breach of this Agreement.

15. **EXECUTION; ENTIRE AGREEMENT.** This Agreement may be signed in counterparts which taken together shall constitute the complete agreement. The exchange of copies of this Agreement and of signature pages hereto by electronic or facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by electronic mail or facsimile shall be deemed to be their original signatures for all purposes in connection with this Agreement. This Agreement represents the entire understanding and contract between the parties and supersedes all other agreements, oral or written regarding the subject matter of this Agreement.

[Signature Page Follows]

This Agreement is made as of the Effective Date.

**OWNER: RIVER VALLEY SCHOOL DISTRICT**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CM AGENT: CESA 10**

\_\_\_\_\_  
Mike Haynes, CESA 10 Administrator

**Appendix A  
Measures**

River Valley School District agrees to implement the following measures between March 10, 2020 and June 30, 2020. The budget for work completed during the aforementioned dates is currently estimated at \$166,000.

| <b>Measure</b>                                | <b>Dollar Amount</b> |
|---|----------------------|
| 1. MS LED Emergency Lighting & Generator Demo | \$50,000             |
| 2. ES Exit/Entrance Doors                     | \$14,000             |
| 3. MS Furnace Replacements (1 Penthouse)      | \$50,000             |
| 4. HS Exit/Entrance Door Replacements (2)     | \$18,000             |
| 5. MS Exit/Entrance Door Replacement (2)      | \$12,000             |
| 6. MS Window Replacements                     | \$10,000             |
| 7. HS Window Replacements                     | \$12,000             |

River Valley School District agrees to implement the following measures between June 1, 2020 and June 1, 2021. The budget for work completed during the aforementioned dates is currently estimated at \$750,000.

| <b>Measure</b>      | <b>Dollar Amount</b> |
|---------------------|----------------------|
| 1. To Be Determined | \$                   |
| 2.                  | \$                   |
| 3.                  | \$                   |
| 4.                  | \$                   |
| 5.                  | \$                   |
| 6.                  | \$                   |
| 7.                  | \$                   |

Final implementation of the aforementioned measures will be based on actual costs and budgetary availability. Measures scope of work may be adjusted based on available funding.

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Mike Haynes, CESA 10 Administrator

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Tom Andres, Administrator  
River Valley School District