

CONTRACT AGREEMENT

Between

Wheatland School District

And

A/E Company Name

For

Architectural/Engineering Services

At

Project Name

DOCUMENTS BOUND HEREWITH

Agreement Form

- Exhibit A: Project Budgets and Fees**
- Exhibit B: District Design Standards**
- Exhibit C: Responsibility Matrix**
- Exhibit D: Schedule**
- Exhibit E: Architect-Engineer Certification**
- Exhibit F: List of Employees Authorized to Come on to
School Campuses**
- Exhibit G: Project Scope Statement**

**Wheatland School District
Agreement for Architectural/Engineering Services
Project Name**

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WHEATLAND SCHOOL DISTRICT

Agreement for Architectural/Engineering Services

Project Name

This agreement is contingent upon Wheatland School District Board approval and will not be valid unless approved.

THIS AGREEMENT, made in three copies on _____ by and between
Wheatland School District, California, hereinafter called Owner, and
A/E Company Name hereinafter called the Architect-Engineer or A-E.

Owner intends to modernize project at **Project Name**. Owner desires to retain A-E to provide base drawings and site survey information, construction document, bidding, and construction phase services in connection with the Project as more fully described herein.

ARTICLE 1. DEFINITIONS

OWNER: The Wheatland School District.

ARCHITECT-ENGINEER (A-E): The organization or individual providing those professional design services associated with construction, alteration, or repair of real property.

OWNER'S CONSTRUCTION MANAGER (CM): The agent appointed by Owner as Owner's representative to provide overall program management and to manage the design and construction phase of the Project. For purposes of this Agreement, the CM shall be considered to possess the same rights as Owner, except that the terms of this Agreement shall not be modified without the approval of the Wheatland School District.

CONTRACTOR: The Contractor who receives the contract award for construction of the Project.

PROJECT: **Project Name**, per Exhibit G.

PROJECT BUDGET: The total available funding as appropriated through the State Allocation Board, local bond measure, or other means to be used for the design and construction of the Project. It is the intent of Owner that the Project Budget include all costs for design, engineering, construction, inspection, technical consultant, surveys, testing, construction management, Project contingencies, and such administrative costs of Owner as shall be deemed appropriate.

CONSTRUCTION BUDGET: The total available funding for work to be bid to Contract Documents, excluding change orders.

ESTIMATE: A-E's opinion of the probable Project construction cost if the Project were to be put out to bid during the time specified in the estimate.

PROJECT CONSTRUCTION COST: Project Construction Cost, as used in this Agreement, means the cost to Owner of all work designed or specified by A-E, including work covered by alternates, but excluding the following: Any payments to A-E or consultants, any costs of inspections, surveys, tests, or fees, and any Construction Management fee.

ARTICLE 2. PROJECT BUDGET and TIME

A. The Project Budget and Construction Budget are established in attached Exhibit A.

B. A-E shall be guided by the District Design Standards, as set forth in Exhibit B, in choosing materials, systems, and components affecting the quality of construction.

C. Time is of the essence in this Agreement.

1. The Consultant shall begin its services on _____ and last until _____. The time performing services under this Agreement may only be extended in writing and by mutual consent of the parties.

ARTICLE 3. BASIC SERVICES OF THE A-E

A-E's Basic Services shall include all work described herein for the development of final design drawings and specifications, together with construction administration and field observation of actual construction of the Project, all in accordance with this contract, The Contract Documents and general conditions for construction, and applicable laws and regulations. A-E's Basic Services shall include design, construction administration, and reporting and shall be divided into the following components:

A. Base Drawings and Site Survey Information.

1. A-E shall prepare Base Drawings of the Project using information from as-built documentation provided by Owner or obtained from the Division of the State Architect, actual site observation and measurement, and other sources as appropriate.

2. A-E shall document other pertinent information from site survey and observation including roof and roof drainage system type and condition, window system type and condition, location and approximate extent of any observable dry rot damage, door threshold type and height by door, location and type of any added

mechanical or electrical equipment, and all available information about modifications to walls, stages, storage areas, or other constructions not-reflected on existing as-builts.

3. A-E shall investigate the Division of the State Architect approval status of any constructions not included on approved drawings.

4. Owner shall approve the Base Drawings prior to A-E beginning the Construction Document Phase.

B. Construction Document Phase (Final Plans)

1. A-E shall prepare, based on the approved scope of work, site survey and observation, as-built and survey information, Base Drawings and basic program scope or any further adjustment in the scope or quality of the Project authorized by Owner, working drawings and specifications setting forth in detail and prescribing the work to be done and the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical service connected equipment. A-E shall cooperate with Owner in submitting the Construction Documents to a third party for peer review and shall incorporate third party peer review comments into the Construction Documents. The final Construction Documents, bidding documents, proposal and contract forms, construction general conditions and any other information determined to be included by A-E and/or Owner shall constitute the Contract Documents ("Contract Documents").

2. A-E shall assist Owner in applying for and obtaining required approvals from applicable state agencies having jurisdiction. Assistance with OPSC and CDE approvals shall be limited to that defined in the responsibility matrix in Exhibit C.

C. Bid and Award Phase

1. A-E shall assist Owner during bid and award phase as follows:

- a) Attendance at and participation in a prebid meeting
- b) Responding to technical questions from bidders
- c) Preparation of addenda as requested by Owner

D. Construction Phase

1. A-E shall provide general direction to a full-time Project inspector employed by and responsible to Owner, as required by the Education Code and Title 24 of the California Code of Regulations. A-E shall advise the inspector and contractors in the preparation of a marked set of prints, indicating dimensioned location of buried utility lines and other construction features (record drawings), which shall be forwarded to A-E upon completion of the Project.

2. A-E shall administer the construction phase, as required by this Agreement, the Contract Documents and the applicable statutes and regulations. A-E shall observe and become familiar with the general quality of construction, and report in writing to Owner any instance where the materials, workmanship, or the general quality of construction is found to be not in conformance with the plans and specifications, building code requirements, or generally accepted industry standards of quality.

3. In providing services during the Construction Phase, A-E shall employ individuals on the Project to whom Owner has no reasonable objection. In the event Owner has a reasonable objection to any employee of A-E performing work at the Project, it shall notify A-E, which shall promptly cause the individual to be removed from the Project.

4. A-E shall provide limited administration of the Contract Documents, including periodic visits at the site to render architectural observations (which are distinguished from the continuous personal inspection of the Project inspector) (1) to become generally familiar with and to keep Owner informed about the progress and quality of the portion of the work completed, (2) to endeavor to guard Owner against defects and deficiencies in the work, and (3) to determine in general if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Contract Documents. A-E shall attend on-site construction meetings at least once per month and shall otherwise be available to Owner and the inspector for site meetings on an “as needed” basis. The minimum hours to be spent at the site during the Construction Phase are as follows:

[Note: Adjust hours as needed to suit project]

| | | |
|---------------------|----|-----------------|
| Architect | 16 | hours per month |
| Mechanical engineer | 4 | hours per month |
| Electrical engineer | 6 | hours per month |

However, A-E shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. A-E shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely Contractor’s rights and responsibilities under the Contract Documents.

5. A-E shall make regular reports as may be required by applicable state agencies; review submittals, and shop drawings for compliance with design intent; review RFI’s and promptly issue responses; review requests for substitution of materials, equipment, and the laboratory reports thereof; assist in preparation of change orders in a format acceptable to the Division of the State Architect; review Contractor’s applications for payment; make final review of the Project; review written guarantees, instruction books, diagrams, and charts required of Contractor; issue A-E’s certificate of completion and final certificate for payment; and timely provide close-out

documentation required by applicable state agencies within 60 days of A-E's certificate of completion.

6. A-E shall interpret and decide matters concerning the Contract Documents or performance of Owner and Contractor under the requirements of the Contract Documents on written request of either Owner or Contractor. A-E's response to such requests shall be made with reasonable promptness and within any time limits agreed upon. Interpretations and decisions of the A-E shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, A-E shall endeavor to secure faithful performance by both Owner and Contractor, and shall not show partiality to either.

7. At Owner's written request, A-E shall assist Owner with any claim resolution process involving Contractor and Owner, including, without limitation, serving as a witness or providing other professional services relating to hearings or other legal proceedings.

a) The parties recognize that this clause is a means of expediting resolution of claims among Owner, Contractor and A-E. However, it is understood that Contractor is not an intended third party beneficiary of this clause.

b) Compensation for these services under this paragraph 7 of Article 3.D shall be provided as set forth in the payment provisions for Extra Services under Article 10, paragraph F, subject to the following:

i) Owner may believe that A-E's work under this Agreement is connected with errors, or omissions or problems related to a claim. As a result, and upon notice of same by Owner, A-E's payment for these Extra Services may be held in suspense by Owner, at Owner's sole discretion, until final determination in accordance with Article 19 of this Agreement or by a court of law or arbitration the proportion that A-E's fault bears to the fault of all parties concerned.

ii) Such amount in suspense, proportionate to the final determination that A-E's fault bears to the fault of all parties concerned, shall not be paid to A-E. However, the remainder of any such amount in suspense shall be paid to A-E after a final determination in accordance with Article 19 of this Agreement or by a court of law or arbitration is made and A-E submits a proper invoice to Owner, which shall be paid in accordance with Owner's normal and customary practice of payment of A-E's invoices under this Agreement.

c) Nothing in this paragraph 7, including its subparagraphs, of Article 3.D shall in any way limit Owner's rights and remedies under this Agreement against A-E for any errors or omissions or breaches of any kind related to this Agreement and/or A-E's responsibilities under it.

8. A-E, as part of its Basic Services, will perform a follow-up review and prepare a written report for Owner on apparent deficiencies in construction not later than one (1) month prior to the expiration of the two-year guarantee period of the Project set forth in the contract for construction of the Project.

ARTICLE 4. PROFESSIONAL SERVICES

A. A-E accepts the relationship of trust and confidence established between Owner and A-E by this Agreement. A-E represents that it is fully familiar with the statutes, regulations, and design requirements applicable to public school construction. A-E will exercise its best professional efforts so that all of its work will conform thereto, and will exercise its best skill and judgment and will cooperate with any contractor or CM also employed by Owner in connection with the Project. A-E agrees to perform its work with the skill and judgment of a prudent school architect practicing in California and in an expeditious and economical manner consistent with the interests of Owner.

B. Except with Owner's knowledge and consent, the A-E shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the A-E's professional judgment, impartiality or professionalism with respect to this Project.

C. A-E shall, as part of the basic professional services, furnish, at its expense, the services of structural, mechanical, and electrical engineers, and other necessary design professionals as determined by A-E and acceptable to Owner, properly skilled and licensed in the various aspects of the design and construction of facilities required. Owner does not assume any liability, duty or obligation to A-E's subconsultants or their agents and employees by execution or performance of this Agreement, and nothing in this Agreement shall create any contractual relation between Owner and any subconsultants, or their agents and employees employed by A-E. No subconsultants, agents, employees or other parties are third party beneficiaries of this Agreement. A-E shall be responsible to Owner for the acts and omissions of its employees, subconsultants, and their agents and employees, and other persons performing any of the work under this Agreement.

D. A-E shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of Owner or the operations or procedures of Owner, or any other information specifically designated as confidential by Owner, without the prior written consent of Owner. A-E shall require of its subconsultants similar agreements not to disclose such confidential information.

E. A-E shall review laws, codes, and regulations applicable to A-E's services. A-E shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

F. At its sole cost and expense, A-E shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of its work, including those relating to safety of its employees and subconsultants, hazardous materials, and equal employment opportunities; obtain all permits and licenses necessary for performance of its work; pay all local, state, and federal taxes associated with its work; and pay all benefits, insurance, taxes, and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remuneration paid to A-E's employees. Upon Owner's request, A-E shall furnish evidence satisfactory to Owner that any or all of the foregoing obligations have been fulfilled.

ARTICLE 5. INDEPENDENT CONTRACTOR

A-E shall be an independent contractor, and neither A-E nor any employee of A-E or its subconsultants shall be deemed to be an employee of Owner.

ARTICLE 6. CONFLICTS OF INTEREST

A-E affirms that, to the best of its knowledge, there exists no actual or potential conflict between family, business, or financial interests of A-E and services under this Agreement. A-E agrees to advise Owner of any actual or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement.

ARTICLE 7. ASSIGNMENT AND SUBCONTRACTING

Except as expressly authorized herein, A-E shall neither assign its rights nor delegate its duties under this Agreement without prior written consent of Owner. This prohibition of assignment and delegation extends to all assignments and delegations that lawfully may be prohibited by agreement. A-E shall not subcontract any of the work to be performed or services to be rendered without the prior consent of Owner.

ARTICLE 8. EXTRA SERVICES OF A-E

A. The following services, if necessitated by unusual circumstances and through no fault or neglect on the part of A-E or its subconsultants, shall be paid for by Owner, as provided in Article 10, paragraph F. Additional compensation for Extra Services shall be conditioned upon prior receipt of formal written notice from Owner to perform the work as Extra Services.

1. Contract administration of the repair of fire or other damage to the Project.
2. The selection by A-E at Owner's request of moveable furniture, equipment, artwork, graphics, signage, or articles which are not included in the Contract Documents.

3. Preparation of additional plans or specifications in order to satisfy the requirements of the applicable public authority, provided that the requirement for these additional documents is the result of changes in policy mandated after completion of the Construction Document Phase, and that the extra work is not contributed to by the negligence of A-E.

4. If directed by Owner, the employment of special consultants, the preparation of special delineations and models, and overtime work by A-E's employees.

5. Life cycle costing.

6. Revisions when inconsistent with approvals or instructions previously given by Owner.

7. Project changes after Owner approval.

8. Services related to Contractor defaults.

9. Providing cost estimates in connection with the Project.

10. Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, and preparation of operation and maintenance manuals.

11. Preparation of construction contract change orders which necessitate additional work by A-E, provided that the change order and/or extra work of A-E is not contributed to by the negligence or carelessness of A-E. Compensation for Extra Services necessitated by construction change orders shall be pursuant to Article 10, paragraph F. A-E shall keep accurate records of the time spent during construction with respect to such Extra Services and shall provide monthly statements of the same to Owner during construction. Notwithstanding any other provision of this Agreement, payment to A-E shall be made upon execution of an approved Extra Services change order.

B. In no event shall A-E be entitled to receive compensation for Extra Services if required as a result of A-E's or its subconsultant's negligent acts, errors, omissions, or failure to perform in accordance with this Agreement.

ARTICLE 9. OWNER'S RESPONSIBILITIES

A. Owner shall provide full information as to the requirements and program of the Project, including a specific written program document, realistic budget limitations and scheduling.

B. Owner shall furnish available as-built drawings of existing structures.

C. Owner shall provide all estimating services in conjunction with the Project.

D. Owner shall furnish all inspection and testing services in conjunction with the Project.

E. Owner shall furnish all legal advice and services required for the Project.

F. Owner shall notify A-E of administrative procedures required and name a representative authorized to act in its behalf. Owner shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.

G. During Contractor's two-year guarantee period, Owner shall notify A-E in writing of apparent deficiencies in materials or workmanship.

ARTICLE 10. ARCHITECT-ENGINEER COMPENSATION

A. Professional Services: A-E agrees to perform professional services provided by this Agreement, and Owner agrees to pay A-E for such services in accordance with attached Exhibit A. A-E's compensation for Extra Services shall be calculated as provided in paragraph F, below.

B. Reimbursable A-E Costs/Expenses: Owner recognizes that certain costs and expenses associated with the professional services performed are reimbursable to A-E. Provided that A-E obtains Owner's prior written approval, costs and expenses will be reimbursed to A-E.

C. The following are descriptive categories of work which may be considered for reimbursable costs, provided Owner issues its written approval before the costs are incurred:

1. Expenses of Outside Technical Assistance deemed necessary.
2. Approved reproduction of drawings and specifications in excess of the copies required by this Agreement, at rates prevailing in the community for bulk reproduction, or at other rates approved in advance by Owner.
3. Additional insurance coverage above those coverages identified in Article 15.
4. Approved fees advanced for securing approval of authorities having jurisdiction over the Project.

D. Reimbursement shall be at cost for reproductions, insurance, and fees advanced. Reimbursement for items requiring coordination by A-E shall be reimbursed at one hundred ten percent (110%) of the direct billing.

E. Payments to A-E for reimbursable costs/expenses will be made only after the specific costs/expenses have been incurred and invoicing has been verified by submission of substantiating documentation, such as copies of paid invoices or other documentation confirming that such costs/expenses have been incurred by A-E. All charges incurred under this Agreement shall be due and payable within 30 days of approval of the invoice. Amounts unpaid 30 days after approval of the invoice shall bear interest at the legal rate prevailing. Disputed invoices shall be returned to the A-E within ten (10) working days of receipt.

F. In calculating the amount owing to A-E for Extra Services under Article 8, the parties agree as follows:

1. A-E shall receive Lump Sum fee in the amount shown on approved Extra Services change orders.
2. One hundred ten percent (110%) of the direct billings of consultants performing authorized Extra Services.

ARTICLE 11. PAYMENTS TO THE ARCHITECT-ENGINEER

A. Payments on account of the agreed compensation in Article 10 shall be:

1. Base Drawings Complete - fifteen percent (15%) of total compensation. Billings shall be monthly or lump sum, in arrears, up to fifteen percent (15%) of the total compensation, based upon work completed.

2. Construction Documents Phase:

a) Construction Documents sufficiently complete to be and actually submitted for review by the Division of the State Architect - increase to fifty percent (50%) of the total compensation. Billings shall be monthly or lump sum, in arrears, up to fifty percent (50%) of total compensation, based upon work completed.

b) Construction Documents one hundred percent complete, fully coordinated and quality-controlled by A-E - increase fee to sixty percent (60%) of the total compensation.

c) Review comments from CM and third-party peer review incorporated into documents - increase fee to sixty-five percent (65%) of the total compensation.

d) Construction Documents approved by the Division of the State Architect - increase fee to seventy percent (70%) of the total compensation.

3. Construction Phase:

a) On all or that portion of the Project for which bids have been received and contracts awarded - increase to seventy-five percent (75%) percent of total compensation.

b) Subsequent billings shall be submitted monthly, in arrears, in proportion to the percentage of work certified complete by A-E in response to construction progress payment requests. (Billings shall show, as a separate line item; site visit hours used that month, total used to date and hours remaining.)

c) Construction complete and accepted by Owner - increase to ninety-five percent (95%) of the total compensation.

d) Project documentation forwarded to Owner including record drawings as noted in Articles 16 and 17 and the applicable governmental agencies having jurisdiction - increase to one hundred percent (100%) of the total compensation, notwithstanding A-E's services during the guarantee period as provided by Article 3.D.8. Owner expects that the required documents will be submitted within sixty (60) days of Project acceptance.

B. Payments in event of the following circumstances shall be as set forth below:

1. Deferred Bids: Delay in the award of the contract shall not affect A-E's compensation unless additional services are required.

2. Delayed Completion: Except as provided elsewhere in this Agreement, A-E's compensation shall be paid at the time and in the amount noted, notwithstanding a delay in completion of the Project or the reduction in the final construction cost by reason of penalties, liquidated damages, or other amounts withheld from Contractor.

C. Payments for Basic and Extra Services provided under Article 8 shall be made monthly, in arrears, as services are rendered and expenses incurred.

D. Reimbursement for fees and other expenses shall be made to A-E as incurred, but no more often than monthly.

E. Owner may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment to such extent as may be necessary to protect Owner from loss, including costs and attorneys' fees, on account of (1) defective or deficient work product not remedied; (2) claims filed or reasonable evidence indicating probable filing of a claim or claims; or (3) failure of A-E to make payments properly to its employees or subconsultants.

ARTICLE 12. DEFAULT AND TERMINATION OF AGREEMENT

A. Default: If A-E at any time refuses or neglects to prosecute its work in a timely fashion or in accordance with the Project schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without Owner's consent, or fails to make prompt payment to persons furnishing labor, equipment, or materials, or fails in any respect to properly and diligently prosecute its work, or becomes delinquent with respect to contributions or payments required to be made to any employee benefit programs or trust, or otherwise fails to perform fully any and all of the agreements herein contained, A-E shall be in default.

B. Cure: If A-E fails to cure the default within seven (7) days after written notice thereof, Owner may, at its sole option, take possession of any documents, files (including electronic files), or other materials prepared or used by A-E in connection with the Project and (1) provide any such work, labor, or materials as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to A-E under this Agreement; or (2) terminate A-E's right to proceed with this Agreement.

C. Default Termination: In the event Owner elects to terminate, Owner shall have the right to immediate possession of all plans, specifications, and other work in progress prepared by A-E, whether located at the Project, at A-E's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the design work and provide the materials therefor. In case of such default termination, A-E shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Owner in finishing the Project, such excess shall be paid by Owner to A-E, but, if such expense shall exceed such unpaid balance, then A-E shall promptly pay to Owner the amount by which such expense exceeds such unpaid balance. The expense referred to in the last sentence shall include expenses incurred by Owner in causing the services called for under this Agreement to be provided by others, for attorneys' fees, and for any damages sustained by Owner by reason of A-E's default or defective work, plus a markup of fifteen percent (15%) on any and all such expenses.

D. Owner Default: A-E may terminate this Agreement for cause upon seven (7) days' written notice to Owner for any of the following reasons: (1) Owner fails to timely pay undisputed sums due to A-E; (2) Owner assigns this Agreement or transfers ownership of the Project prior to completion of A-E's services under this Agreement if the assignment or transfer is made without the prior written consent of A-E; or (3) Owner suspends the Project or A-E's services for more than 180 consecutive days. Owner shall have the right to cure the stated ground for termination within the seven (7) day notice period, and, in the event of cure, A-E's notice shall become null and of no further force or effect.

E. Termination for Convenience. In addition to the foregoing right to terminate for default, Owner reserves the absolute right to terminate this Agreement without cause, for any reason whatsoever, upon seven (7) days' written notice to A-E. In the event of such a termination without cause, A-E shall be entitled to payment in an amount not to exceed the contract price which shall be calculated as follows: (1) Payment for any phase of the work then satisfactorily completed and accepted by Owner, according to the percentages set forth in Article 11; plus (2) Reimbursable Costs actually incurred by A-E in connection with performance according to Article 10; plus (3) a portion of the percentage applicable to a phase which is in progress, which bears the same ratio to the total amount to be earned for that phase as the work then completed in that phase bears to the total work to be accomplished in that phase. There shall be deducted from such sums as provided in this section the amount of any payment made to A-E prior to the date of termination of this Agreement. A-E shall not be entitled to any claim or lien against Owner or the Project for any additional compensation or damages in the event of such termination and payment. In addition, Owner's right to withhold funds under Article 11.E shall be applicable in the event of a termination for convenience.

F. Saving Clause: If this Agreement is terminated by Owner for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Article and A-E shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

ARTICLE 13. PERFORMANCE TIME SCHEDULE

A. A-E shall prepare and submit for Owner approval a schedule for the performance of A-E's services. This schedule shall include reasonable allowances for review and approval times required of Owner, performance of services by Owner's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character, or size of the Project requested by Owner, or for delays or other causes beyond the A-E's reasonable control.

B. In the event A-E fails to perform its obligations under this Agreement within the times specified in the approved schedule for its work and thereby delays the Project, Owner may withhold monthly progress payments until all work within the particular phase at issue is completed or the schedule for A-E's work has been recovered. This remedy shall be in addition to, and not in derogation of, Owner's other rights and remedies relating to A-E's default, whether under this Agreement or applicable law.

ARTICLE 14. ACCOUNTING RECORDS OF THE ARCHITECT-ENGINEER

Records of A-E's direct personnel and reimbursable expenses pertaining to any Extra Services on this Project and records of accounts between Owner and Contractor

shall be kept on a generally recognized accounting basis and shall be available to Owner or its authorized representative at mutually convenient times.

ARTICLE 15. INSURANCE TO BE CARRIED BY ARCHITECT-ENGINEER

A-E shall procure and maintain insurance on all of its operations during the progress of its work on the Project, with reliable insurance companies approved by the State of California Department of Insurance and with a Bests' rating of no less than (A-) Level VII, on forms acceptable to Owner, for the following minimum insurance coverages:

A. Workers' Compensation insurance and occupational disease insurance, is required by law, and employer's liability insurance, with minimum limits of \$1,000,000, covering all workplaces involved in this Agreement.

B. Commercial General Liability Insurance, with limits of not less than as indicated in either (1) or (2) as follows: (1) Bodily Injury Liability - \$1,000,000 each person, \$1,000,000 each occurrence; Property Damage Liability - \$1,000,000 each occurrence, \$1,000,000 aggregate; (2) A single limit for Bodily Injury Liability and Property Damage Liability Combined of \$1,000,000 each occurrence and \$1,000,000 aggregate.

1. The insurance shall cover all operations of A-E, including but not limited to the following: (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability; (4) Independent Contractor's Contingent coverages; (5) broad form property damage liability; (6) personal injury liability endorsement; and (7) automobile bodily injury and property damage insurance, including all owned, if any, hired and non-owned equipment.

2. All general liability policies shall name Owner as an additional insured and shall provide that such policy is primary insurance.

C. A-E shall also provide Professional Liability Insurance for the Project, written on a "Claims Made Basis," with limits of liability in amounts not less than \$1,000,000 per claim and \$1,000,000 aggregate, insuring A-E for its own acts and for the acts of all persons for whose acts A-E may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors, or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities for the Project. A-E shall provide Owner proof of professional liability insurance coverage for two years following final completion of Project. All such professional liability policies shall include an endorsement covering the indemnification provisions of Article 21.

D. A-E shall also provide Certificates of Insurance, or other evidence of insurance as requested by Owner, to Owner within ten (10) days after receipt by A-E of

a signed version of this Agreement. The certificates shall provide that there will be no cancellation of coverage without thirty (30) days' prior written notice to Owner.

E. There shall be no reduction or modification of coverage of insurance required by this Agreement without the written consent of Owner.

ARTICLE 16. REPRODUCTION OF DOCUMENTS

A. A-E shall provide, at no expense to Owner, copies of the preliminary plans and Construction Documents for the review and approval of Owner, CM, and applicable state agencies. Owner's requirement is one (1) reproducible master for each item; state agency requirements to be determined and provided by A-E, including any electronic media in a format acceptable to the agencies.

B. A-E shall provide one (1) reproducible master of the final approved Construction Documents including addenda for bidding and construction purposes.

ARTICLE 17. RECORD DOCUMENTS

A. At completion of each Project (or any portion that is constructed as a distinct unit), A-E shall prepare Record Documents and furnish to the Owner one (1) Electronic Copy set of record drawings, one (1) set of electronically marked-up specifications and media showing materials and methods of construction as actually accomplished. The Record Documents shall be prepared by revision of the original drawings using Contractor's and Project Inspector's marked-up record set and any project documents (including but not limited to, Addenda, Field Clarifications, Requests for Information, Architect Supplemental Instructions, Construction Change Directives, and other similar documents) necessary to reflect all changes in the Record Documents and specifications as incorporated into the Project. A-E shall return to Owner the Contractor's and Project Inspector's original marked-up record set (if hard copy used, provide the hard copy along with a scanned copy of same documents) along with the following deliverables:

1. Electronic copy (.pdf) of entire bid set (specifications and drawings, as applicable), including any addenda issued. The electronic copy shall be transmitted electronically to Owner's archives department, through the CM, if any, and shall be sent with a return receipt requested. If A-E does not receive a return receipt or other confirmation of receipt from within two (2) business days of sending the copy, A-E shall follow up to confirm that the files were received.

2. Electronic copy (.pdf) of contractor as-built drawings ("Protection Set"). Prior to scanning, the drawings shall be approved, signed and dated by the Project Inspector. Drawings shall be scanned in color.

a) The Protection Set shall have proper revision clouds indicating areas that were revised and the source of each revision, e.g., RFI #, AB #, etc.

b) In coordination with the Owner and the CM, verify that all approved project documents (e.g., RFIs, ABs, ASIs, CCD, etc.) are scanned and that each of these documents is consolidated into the appropriate, clearly-marked sub-folder and forwarded to CM, if any, and to Owner's archives department.

c) Files transmitted electronically shall be sent either by e-mail with a return receipt requested or personally delivered to the CM, if any, and to the Owner's archives department. If electronic copies are sent by e-mail and A-E does not receive a return receipt or other confirmation of receipt within two (2) business days of sending the copy, A-E shall follow up to confirm that the files were received.

3. One electronic copy of Record Documents to the following standards, delivered on CD-R:

a) Drawing standards such as linetypes, lineweights, fonts and symbols shall be consistent with the DSA approved set;

b) Include text "Record Drawing" on all sheets;

c) Remove all revision deltas and clouds on all sheets;

d) List DSA approval date on all sheets;

e) List DSA application number on all sheets;

f) Identify appropriate design team company name on corresponding sheets;

g) AutoCAD files shall adhere to the following standards:

i) Full drawing package in AutoCAD v2010 executable dwg format;

ii) Include all fonts and plotting lineweights;

iii) Organize dwgs into folders by discipline; and

iv) Include all cross-references; and

h) Complete Specification book(s) with all revised pages inserted.

ARTICLE 18. OWNERSHIP OF DOCUMENTS AND RE-USE OF DOCUMENTS

A. Owner acknowledges that the A-E Construction Documents, including electronic files, are instruments of professional service. Nonetheless, the plans, specifications, estimates, programs, reports, models, and other material prepared by or on behalf of A-E under this Agreement (collectively the "Documents") shall be and

remain the property of Owner, pursuant to Section 17316 of the Education Code, whether the Project is completed or not. All Documents shall be delivered to Owner on the earlier of (1) thirty (30) days after final completion date of the Project, or (2) the date of termination of this Agreement for any reason prior to final completion of the Project. The Documents may be reproduced and/or used by Owner and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes Owner may deem advisable in connection with completion and maintenance of, and additions, modifications to, or modernizations of the Project, without further employment of or payment of any compensation to A-E; provided, however, that if this Agreement is terminated for any reason prior to completion of the Project and if under such circumstances Owner uses, or engages the services of and directs another A-E to use, the Documents to complete the Project, Owner agrees to release A-E from any responsibility for the conformance of the incomplete portions of the Project to the Documents and to hold A-E harmless from any and all liability, costs, and expenses (including reasonable legal fees and disbursements), relative to claims arising out of matters and/or events which occur subsequent to the termination of this Agreement as a result of causes other than the fault or negligence of A-E, or anyone for whose acts it is responsible.

B. Except as otherwise permitted in this Agreement, Owner shall not assign, delegate, sublicense, pledge or otherwise transfer the right to use and re-use the Documents to any other party without the prior written authorization of A-E. However, in addition to the rights to use and re-use the Documents as set forth in this Article 18, Owner shall be permitted to authorize the Contractor or any construction subcontractor, equipment supplier or material supplier to use and reproduce, to the fullest extent necessary, applicable portions of the Documents appropriate to and for use in their work.

C. In the event Owner ever desires to construct all or part of another wholly unrelated Project which would be essentially identical in design to the Project that is the subject of this Agreement, A-E agrees to permit re-use of its design and the corresponding contract documents, subject to payment to A-E of a fair and reasonable re-use fee.

D. Any unauthorized re-use of the Documents by Owner shall be at Owner's sole risk and without liability to A-E. Owner agrees to indemnify and hold harmless A-E against any damages, liabilities or costs, including reasonable legal fees and disbursements, arising from the unauthorized re-use or modification of the Documents. Submission or distribution of the Documents to meet official regulatory requirements or for similar purposes does not constitute an unauthorized re-use of the Documents.

E. A-E shall not re-use the Documents without the prior written consent of Owner. Any unauthorized re-use of the Documents by A-E shall be at A-E's sole risk and without liability to Owner. A-E agrees to indemnify and hold harmless Owner against any damages, liabilities or costs, including reasonable legal fees and disbursements, arising from the unauthorized re-use of the Documents.

ARTICLE 19. DISPUTE RESOLUTION

A. A-E shall give written notice of any claims arising out of or relating to this Agreement within 72 hours of the event(s) giving rise to the claim. Said written notice shall specify the nature, amount and basis of the claim.

B. Mediation. The parties agree that all claims, disputes or controversies between the parties arising out of or relating to this agreement, or breach thereof, ("Claim") shall initially be submitted to non-binding mediation before a mediator mutually agreed upon by the parties. In the event the parties are unable to agree upon the identity of the mediator within fifteen days from the date either party submits a written request to mediate a Claim, the mediator shall be selected and the mediation administered under the Construction Mediation Rules of the American Arbitration Association. The costs and fees of the mediator shall be paid equally by the parties. The parties shall negotiate in good faith in an effort to reach an agreement with respect to the Claim. Neither party shall commence or pursue arbitration or litigation until the completion of mediation proceedings.

C. Arbitration. In the event that a Claim remains unresolved after mediation, pursuant to Public Contract Code section 22200, et seq., the Claim shall be decided by binding arbitration in accordance with Public Contract Code sections 10240-10245.4, and the implementing regulations contained in Title 1 of the California Code of Regulations then in effect. The hearing in any arbitration under this provision shall be held in Sacramento County.

D. It is expressly agreed that no mediation or arbitration shall be initiated prior to the completion of the Project or termination of this Agreement, whichever is earlier.

ARTICLE 20. SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement shall be binding upon Owner and its successors and upon A-E, its partners, successors, executors, and

administrators. Neither this Agreement, nor any monies due or to become due thereunder, may be assigned by A-E without the written consent and approval of Owner.

ARTICLE 21. INDEMNITY

A. A-E shall, with respect to all work which is covered by or incidental to this Agreement, defend, indemnify, and hold Owner harmless from and against any and all liens and claims asserted by firms or individuals claiming through A-E, and claims, liability, loss, damage, costs, or expenses, including reasonable attorneys' fees, expert's fees, awards, fines, or judgments, relating to the death or bodily injury to persons, injury to property, design defects, or other loss, damage, or expense, to the extent that any of the above are contributed to or caused by the negligent acts, errors, or omissions of A-E. A-E's duty shall include the duty to defend the indemnities as required by California Civil Code Section 2778. However, A-E shall not be obligated under this Agreement to indemnify Owner to the extent that the damage is caused by the active or sole negligence or willful misconduct of Owner or its agent or servants other than A-E.

C. A-E shall indemnify, defend, and hold Owner and CM harmless against any claim, suit, or action, or any alleged violation or willful infringement of patent rights, copyrights, or other intellectual property rights which may be made against Owner by reason of the use in connection with or as a part of the Project anything which is now covered by patent, copyright, trademark, or other intellectual property rights, and also against all expenses, including attorneys' fees and expert witness' fees, which Owner may incur in defending or adjusting any such claim, suit, or action.

C. Owner shall defend, indemnify and hold harmless A-E, its officers, directors, employees and subconsultants (collectively "A-E") from and against any and all claims, liability, loss, damage, costs or expenses, including reasonable attorneys' fees, expert's fees, awards, fines or judgments, to the extent caused by Owner's negligent acts, errors or omissions in the performance of its obligations under this Agreement. Owner's duty shall include the duty to defend the indemnitees as required by Civil Code section 2778. However, Owner shall not be obligated under this Agreement to indemnify A-E to the extent that the damage is caused by the active or sole negligence or willful misconduct of A-E or its agents or servants other than Owner.

D. A-E and Owner each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims.

E. The acceptance by Owner or its representatives of any certificate of insurance providing for coverage of any kind shall in no event be deemed a waiver of any of the provisions of this Article 21. None of the foregoing provisions shall deprive Owner or A-E of any action, right or remedy otherwise available by law.

ARTICLE 22. ADDITIONAL PROVISIONS

A. Environmental Impact Reports and/or similar studies are not included in this Agreement and, if required, will be paid for by Owner.

B. The furnishing of available as-built drawings of existing structures is to be the responsibility of owner.

ARTICLE 23. FINGERPRINTING

A. Education Code Section 45125.1 shall apply to this Agreement. The District administrator initiating and/or responsible for this Agreement shall, pursuant to section 45125.1 and District policy and guidelines, determine whether fingerprinting is required of A-E and/or its employees and sub-consultants. Once such determination is made, the administrator shall verify his/her determination on the signature page of this Agreement. If the Administrator concludes fingerprinting is required, the following shall apply:

The A-E shall, prior to commencement of work pursuant to this Agreement, require any person affiliated with A-E (or, in appropriate cases, him or herself) to be fingerprinted by the Department of Justice (DOJ) if that person will have unsupervised access to school campuses. Upon verification from DOJ that those persons fingerprinted have no record of a serious or violent felony, A-E will so certify by signing and submitting the A-E Certification attached as Exhibit E and incorporated by reference. In addition, A-E shall submit the names of those persons who have received clearance and are authorized to have unsupervised access to school campuses on a form as indicated in Exhibit F. Any person whose name is not on the cleared list may not have such access. In that case, A-E must make arrangements with District for appropriate access. No person with a violent or serious felony as reported by DOJ may have access to the school campuses.

B. Failure to comply with this provision, or permitting unsupervised access by an employee whose name has not been cleared by DOJ as certified by A-E, shall constitute grounds for termination of this Agreement.

ARTICLE 24. ENTIRE AGREEMENT

A. All of the agreement between the parties is included herein, and no warranties, expressed or implied, representations, promises, or statements have been made by either party unless endorsed hereon in writing, and no charges or waiver of any provision hereof shall be valid unless made in writing and executed in the same manner as the Agreement.

B. Neither amendments to nor modifications of this Agreement shall be effective unless signed by officials of A-E and Owner having authority equal to or greater than that of the officials signing this Agreement. Owner and A-E hereby agree to the full performance of the covenants contained herein.

Owner and A-E hereby agree to the full performance of the covenants contained herein.

Architect

Wheatland School District

By: _____

By: _____

Print Name _____

**Craig Guensler
Superintendent**

Date: _____

Date: _____

Department of Justice (DOJ) Fingerprinting:

Required

Not Required

Date Received: _____

Board Approval Date: _____

Date: _____

Date: _____

Exhibit A
Project Budget and Fees
Contract Agreement
Between
Wheatland School District
And
A/E Company Name
For
Project Name

Project Construction Budget: \$ _____ .00

A-E Lump Sum Fee: \$ _____ .00

Exhibit B
District Design Standards
Contract Agreement
Between
Wheatland School District
And
A/E Company Name
For
Project Name

The District Design Standards are included by reference only. Design professionals are responsible to obtain a copy of the current Wheatland School District's Design Standards from District representative and carefully review content prior to beginning work. The standards set forth are to be followed during the preparation of the construction documents. A District representative must approve any deviations from these standards.

Exhibit C
Responsibility Matrix
Contract Agreement
Between
Wheatland School District
And
A/E Company Name
For
Project Name

| | OWNER | Project Manager | Const. Manager | A/E | P.I. | G.C. |
|---|---------|-----------------|----------------|---------|------|------|
| Pre-Design Phase | | | | | | |
| Identification and prioritization of projects | Primary | | | | | |
| Conduct project integration exercise | Primary | Assists | | | | |
| Identify primary design professional | Primary | Assists | | | | |
| Prepare primary design professional contract | Primary | Assists | | | | |
| Provide existing record drawings | Primary | Assists | | | | |
| Provide detailed written educational program | Primary | Assists | | Assist | | |
| Initiate detailed scope development | Primary | Assists | | Assist | | |
| Develop detailed written scope for project | Primary | Assists | | Assist | | |
| Provide District Master Specifications & Design Stds. | Primary | Assists | | Assist | | |
| Provide priorities for use of available funding | Primary | Assists | | | | |
| Conduct limited programming exercise at sites which have additional funding | Primary | Assists | | | | |
| Prepare base drawings | Review | Review | | Primary | | |
| Initiate discussions with District M&O staff regarding existing conditions | Assists | Assists | | Primary | | |

| | OWNER | Project Manager | Const. Manager | A/E | P.I. | G.C. |
|--|------------|-----------------|----------------|---------|---------|------|
| Conduct site investigations to gather data on existing conditions | Facilitate | Assists | | Primary | | |
| Investigate DSA status of construction not shown on record drawings | Assists | Assists | | Primary | | |
| Provide available data on hazardous material | Primary | Assists | | | | |
| Develop initial project budget based on complete project scope | Assists | Primary | | Assists | | |
| Design Phase | | | | | | |
| Prepare schematic design drawings | | Review | | Primary | | |
| Review schematic design drawings | Assists | Primary | | | | |
| Prepare design development drawings and specifications | | Review | | Primary | | |
| Review design development drawings and specifications | Assists | Primary | Assists | | Assists | |
| Preparation of final construction documents (Excluding front end docs) | | Assists | | Primary | | |
| Preparation of front end documents | Primary | Assists | | | | |
| Review of final construction documents | Assists | Primary | Assists | | Assists | |
| Cost estimating and budget tracking | Assists | Primary | | | | |
| Maintaining document production schedule | | Assists | | Primary | | |
| Preparation of State funding application documents | Primary | Assists | | Assists | | |
| All required reviews by DSA | | Assists | | Primary | | |
| Quality Control and coordination of documents | | Primary | Assists | Primary | | |
| Third party review for QC and coordination of documents | | Primary | Assists | | | |
| Incorporation of DSA back check comments | | Assists | | Primary | | |
| Packaging bid documents | Assists | Primary | Assists | Assists | | |
| Submittal of documents to State funding agency | Assists | Primary | | Assists | | |
| Tracking of State funding status | Primary | | | | | |
| Bid & Award Phase | | | | | | |
| Reproduction and distribution of bid documents | | Assists | Primary | | | |
| Contractor marketing | Assists | Assists | Primary | Assists | | |

| | OWNER | Project Manager | Const. Manager | A/E | P.I. | G.C. |
|--|---------|-----------------|----------------|---------|---------|---------|
| Pre-bid meeting | Assists | Assists | Primary | Assists | Assists | |
| Addenda | | | Assists | Primary | | |
| Bid opening | Primary | Assists | Assists | | | |
| Recommendation for award | Primary | Assists | Assists | | | |
| Preparation of State funding post-bid documents | Primary | Assists | | | | |
| Draft and issue contracts | Primary | | | | | |
| Review insurance and bonds | Primary | | | | | |
| Issue notice of intent to award | Primary | Assists | | | | |
| Issue notice to proceed | Primary | | Assists | | | |
| Construction Phase | | | | | | |
| Schedule review | | Assists | Primary | | | |
| Submittal review | | | Assists | Primary | | |
| Issuance of Architects Instructional Bulletins | | | Assists | Primary | | |
| Issuance of Requests for Proposal | | | Primary | | | |
| Issue proposed change orders | | | | | | Primary |
| Approval of PCO | Primary | Assists | Assists | Assists | | |
| Issue Construction Change Directive | Assists | Assists | Primary | Assists | | |
| Change order approval | Primary | Assists | Assists | Assists | | |
| Change orders and cost issues | Assists | Assists | Primary | Assists | | |
| Issue request for information | | | | | | Primary |
| Respond to RFI | | | Assists | Primary | | |
| Address all technical issues | Assists | | Assists | Primary | | |
| Oversee construction quality | Assists | | Assists | Assists | Primary | |
| Carry out work on schedule | | | Monitor | | | Primary |
| Prepare progress payment application w/ schedule of values | | | | | | Primary |
| Review as-built drawings | | | Assists | | Primary | |
| Review progress payment applications | | | Primary | Assists | Assists | |
| Interface with staff at occupied site | Primary | | Assists | | | |
| Hazardous material inspection | Primary | | | | | |
| Coordinate moving of staff | Primary | | Assists | | | |
| Construction cleanup | | | Monitors | | | Primary |
| Means, methods and materials | | | | | | Primary |
| DSA required reports | | | Assists | Primary | Primary | Primary |
| Punch list preparation | Assists | | Assists | Primary | Assists | |
| Punch list work completion | | | Monitor | | Monitor | Primary |
| Punch list clearance | | | Assists | Primary | Assists | |
| DSA closeout documents | | | Assists | Primary | Assists | Assists |
| State funding closeout documents | Primary | | Assists | Assists | | |
| Contract closeout documents | Reviews | | Reviews | Reviews | | Primary |

| | OWNER | Project Manager | Const. Manager | A/E | P.I. | G.C. |
|------------------------------------|--------------|------------------------|-----------------------|------------|-------------|-------------|
| Review check-list for completeness | Assists | Primary | Assists | Assists | | |
| Record documents | | | Assists | Drafts | Reviews | Assists |
| Warranty inspection | Primary | Assists | Assists | | | |

Exhibit D
Schedule
Contract Agreement
Between
Wheatland School District
And
A/E Company Name
For
Project Name

| <u>Description of Milestone</u> | <u>Date to Complete</u> |
|--|--|
| 1. Site Surveys and Scope verification | TBD |
| 2. Complete base drawings | TBD |
| 3. Prepare Construction Documents | TBD |
| 4. Submit plans to THE DIVISION OF THE STATE ARCHITECT | TBD |
| 5. Submit complete, coordinated, QC'd plans to District | TBD |
| 6. Incorporate peer review comments | Within two weeks of receipt of comments |
| 7. Complete THE DIVISION OF THE STATE ARCHITECT backcheck and obtain stamp | Within four weeks of receipt of comments |
| 8. Out to Bid | |
| 9. Construction Duration | |

Exhibit E

A-E Certification Contract Agreement

Between

Wheatland School District

And

A/E Company Name

For

Architectural/Engineering Services

Project Name

A-E CERTIFICATION

I, _____, on behalf of _____, certify that, pursuant to Education Code Section 45125.1 and Article 24 of this Agreement, this business entity has conducted the required criminal background check(s) of all persons who will be providing services to the **Wheatland School District** on behalf of this business entity, and that none of those persons have been reported by the Department of Justice as having been convicted of a serious or violent felony as specified in Penal Code sections 667.5(c) and/or 1192.7(c). I understand that this Certification is not to be signed and submitted until I have received clearance from DOJ regarding those persons named.

As further required by Education Code 45125.1, attached hereto as Exhibit F is a list of names of the employees or agents of A-E who will be providing services to **Wheatland School District** and who are required to be fingerprinted as provided in the Agreement. I agree to keep this list current and to notify the **Wheatland School District** of any addition/deletions as they occur.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ___ day of _____, 2014, in _____ County, California.

(Seal of business)

By: _____

[Name of A-E's Authorized Representative]
(Please print)

(Title)

(Signature)

Exhibit G

Contract Agreement

Between

Wheatland School District

And

A/E Company Name

For

Architectural/Engineering Services

Project Name

Project Scope Statement

Project Name Scope Proposal Description Dated: _____