

**CONSTRUCTION MANAGEMENT CONTRACT
BETWEEN OWNER AND CONTRACTOR**

BY THIS AGREEMENT, made this _____, 2019, by and between _____ (“Contractor” herein), and Whiteriver Unified School District, _____ (“Owner” herein). Contractor and Owner agree as follows:

1.1 **CONTRACT DOCUMENTS.** The following constitute the Contract Documents, and they are all fully a part of the Contract as if herein repeated:

- .1 This Construction Management Contract Between Owner and Contractor (“Contract”)
- .2 Exhibit 1 - Contract and General Conditions Between Owner and Contractor (Guaranteed Maximum Price)
- .3 Exhibit 2 - Scope of Work
- .4 Exhibit 3 - Pre-Construction Services Fee Spreadsheet
- .5 Exhibit 4 - General Conditions Costs Spreadsheet
- .6 Exhibit 5 - Project Schedule
- .7 Certificates of Insurance

Any inconsistency between any of the terms of the Contract Documents shall be resolved by giving precedence to the terms of the lowest above-numbered documents. The provisions of all pertinent laws of Arizona are a part of this Contract, having precedence over the Contract Documents.

2.1 **SCOPE OF WORK.** The Contractor shall furnish pre-construction services for the Owner's Project known as Whiteriver High School Additions and Renovations, as described on Exhibit 2. It is anticipated that the Project will be designed and constructed in _____ (___) phase(s), as described on Exhibit 2.

3.1 **CONTRACT AMOUNT FOR PRE-CONSTRUCTION SERVICES.** The Owner shall pay the Contractor the not to exceed sum of _____ Dollars (\$_____), which is the Contract Amount and includes all labor and reimbursable expenses. If either is not totally expended, it will be returned to the Owner. See Exhibit 3.

3.2 **CONTRACT TIME FOR PRE-CONSTRUCTION SERVICES.** The Contract Time shall be _____ (_____) months, as shown on the project schedule, Exhibit 5.

4.1 **OWNER AND CONTRACTOR.** The Owner and the Contractor are those herein defined in this Contract. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

4.2 **MODIFICATIONS.** A Modification is a written amendment to the Contract signed by all parties.

4.3 WORK. The term “Work” includes, without limitation, furnishing all labor, materials, administrative services and supervision necessary to produce the services and construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated or to be incorporated in such construction to complete the Project.

5.1 PRE-CONSTRUCTION SERVICES. Contractor shall provide pre-construction services to Owner as follows:

5.1.1 Contractor shall work with the Architect and Owner to review schematic design, design development and construction drawings for the Project, to evaluate proposed systems and materials, to make recommendations regarding systems and materials which may improve cost effectiveness of the Project or accelerate the schedule.

5.1.2 Contractor shall provide a proposed Project Schedule based upon the schematic design. Project Schedule should show substantial completion dates for the Project no later than set forth on Exhibit 5. Project schedule should include all activities and milestones to take the Project from schematic design to occupancy. Scheduled activities will include meetings, design and construction document time frames, procurement delivery dates, permitting, approvals of authorities, coordination time frames and construction dates.

5.1.3 Contractor shall provide budget development and cost evaluation consisting of estimating, value analysis and life cycle analysis. Estimates shall be prepared at schematic design and design development. Interim estimates shall be prepared any time there is a significant design change. Proposed systems shall be evaluated for first cost, constructability, annual maintenance costs, annual utility costs, life expectancy and schedule impact.

5.2 CONSTRUCTABILITY REVIEW DURING DESIGN DEVELOPMENT AND PRIOR TO CONSTRUCTION DOCUMENT PHASE. Contractor will perform a constructability review, including site accessibility, building siting, structural and finish detailing. This review should include an analysis of types of materials and systems to be utilized on the projects with regard to their impact on the Owner's ability to complete the entire Project in accordance with the Project Schedule.

5.3 SCHEDULE RECOMMENDATIONS. Contractor shall make recommendations regarding benefits to Owner's construction schedule that may be achieved from phasing of the construction. Specific recommendations should be made as to whether or not it would be necessary and/or desirable to break out portions of the Project for early start, such as demolition grading, foundations, and/or underground utilities, to achieve the Project Schedule.

5.4 APPROVALS. Provide assistance in obtaining approvals of authority having jurisdiction over the Project property for building permits, state fire marshal review and other required approvals.

5.5 GUARANTEED MAXIMUM PRICE. Prior to completion of the construction documents, Contractor shall prepare and submit to the Owner a Guaranteed Maximum Price for the Project.

The Guaranteed Maximum Price shall be the price for which that Contractor agrees to construct the Project in accordance with the terms and conditions set forth in the Contract and General Conditions Between Contractor and Owner for Guaranteed Maximum Price attached to this Contract as Exhibit A. Once the Owner has received the Guaranteed Maximum Price for the Project, or any individual phase thereof, the Owner shall have fifteen (15) days to evaluate the price and to accept or reject the Guaranteed Maximum Price. If the Owner accepts the Guaranteed Maximum Price, the Owner will tender to the Contractor, and the Contractor will sign, the Contract and General Conditions Between Owner and General Contractor for construction of the Project at the Guaranteed Maximum Price in the form attached hereto as Exhibit 1 ("GMP Contract"). If the Owner rejects the Guaranteed Maximum Price, this Contract shall terminate upon the completion of construction documents and obtaining of final approvals and permits for the Project. Contractor shall have no further obligation to the Owner for any services after completion of construction documents and issuance of all required approvals.

5.6 PRE-CONSTRUCTION MANUAL. Contractor shall prepare and maintain a pre-construction manual. The manual shall consist of the Project team roster, Project description, schedules, meeting minutes, communications, estimates and value analysis.

5.7 FEE AND GENERAL CONDITIONS. Contractor agrees that the fee for the Project, as defined in the Contract and General Conditions, shall be _____ percent (____%) of all Direct Costs of Construction, as defined in the GMP Contract, and that General Conditions shall not exceed _____ percent (____ %) of the Direct Costs of Construction per month, unless approved by Owner, as set forth on Exhibit 4 hereto.

6.1 INFORMATION AND SERVICES REQUIRED FROM THE OWNER. The Owner shall furnish all surveys describing the physical characteristics, legal limits and utility locations for the site of the Project. Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the work.

6.2 OWNER'S CONSULTANT. The Owner shall issue all instructions to the Architect and Contractor regarding the Owner's requirements for the Project. The Owner may, at its sole option, designate an Owner's Construction Consultant to be present on the site for all or any portion of the Project.

7.1 TAXES. The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law in connection with the performance of this Contract. If the Contractor's principal place of business is not in Arizona, Contractor shall post a bond for taxes in compliance with A.R.S. § 42-1305.02 and furnish evidence of such bond to Owner prior to submitting any application for payment hereunder.

7.2 INDEMNIFICATION. The Contractor shall indemnify and hold harmless the Owner and employees from and against any and all claims, damages, losses and expenses, including reasonable attorneys' fees and other costs incurred, arising out of or resulting from the performance of the work, delivery to the work site of any and all materials to be used in the

work, and any and all other activities connected with the work, to the extent that any such claim, damage, loss or expense:

.1 Is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom; and

.2 If 7.2.1 is caused in whole or in part by any negligent or intentional act or omission of the Contractor, any Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

7.3 In any and all claims against the Owner, Owner's Construction Consultant, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 7.3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

8.1 SEPARATE CONTRACTS. The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract. The Contractor shall afford other contractors reasonable opportunity for the introduction to the site and storage of their materials and equipment thereon and the execution of their work, and shall properly connect and coordinate his work with theirs.

9.1 LAW OF THE PLACE. The Contract shall be governed by the law of the State of Arizona and any other jurisdiction in which the Project is located.

9.2 SUCCESSORS AND ASSIGNS. The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto. Neither party to the Contract shall assign the Contract or any part hereof or sublet it as a whole or in part without the written consent of the other.

9.3 WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

9.4 OWNER'S RIGHT TO COMPLETE THE WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner may, after seven (7) days' written notice to the Contractor, and without prejudice to any other remedy he may have, proceed to make such other necessary and reasonable arrangements to carry out the work in accordance with the Contract Documents, all at the expense of the Contractor, including the Owner's attorneys' fees and other costs.

9.5 LEGAL FEES AND COSTS. Owner shall be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred by Owner in connection with any effort undertaken by Owner to enforce any of the terms of this Contract against Contractor.

10.1 PROGRESS PAYMENTS FOR PRE-CONSTRUCTION SERVICES. On or about the first day of each calendar month during the course of the Contract, the Contractor shall submit to the Owner an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner may require. Payments shall be based upon work actually performed during the preceding calendar month.

10.2 After review of the Application for Payment, and if approved, the Owner shall pay to the Contractor the amount approved. Such payments shall be made within thirty (30) days after receipt of Application for Payment.

10.3 In his Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Owner shall require, all claims for additional compensation against the Owner arising under the Contract Documents, express or implied, or from any cause whatsoever. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims and to permit the Owner to investigate claims as the same may arise. It is expressly covenanted that the Owner shall have no liability on any claim unless such claim was submitted in writing at the time and in the manner required hereby.

10.4 PAYMENTS WITHHELD. The Owner may decline to certify payment and may withhold his Certificate in whole or in part if in his reasonable and substantiated opinion the application exceeds the value of the services provided.

11.1 CONTRACTOR'S INSURANCE. The Contractor shall procure and shall maintain during the Contract insurance of the kind and amount specified herein, the cost of which shall be borne by Contractor. The Contractor shall not commence work under this Contract until he has obtained and secured the Owner's approval of all insurance required herein. All insurance must be written by a company licensed to do business in Arizona during the life of the Contract and acceptable to the Owner.

11.2 COMPENSATION INSURANCE. The Contractor shall procure and shall maintain during the life of this Contract, Worker's Compensation Insurance for all his employees on the Project and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work. In case any class of employees engaged in hazardous work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's general liability insurance for the protection of such of his employees as are not otherwise protected.

11.3 CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE. The Contractor shall procure and shall maintain during the life of this Contract public liability

insurance providing combined single limits of not less than \$1,000,000.00 for anyone event and an aggregate limit of \$1,000,000.00. Property damage liability shall include coverage for explosion, collapse and underground. Proof of coverage shall be received by Owner prior to the commencement of work.

11.4 AUTOMOBILE LIABILITY INSURANCE. Provide Comprehensive Automobile Liability Insurance, including coverage of owned, non-owned and hired vehicles, with limits not less than those stated below:

- .1 Bodily Injury Liability: \$1,000,000.00 each person and \$1,000,000.00 each occurrence;
- .2 Property Damage Liability: \$300,000.00 each occurrence; OR
- .3 \$1,000,000.00 bodily injury and property damage combined single limit.

Liability Insurance may be arranged by Commercial General Liability and Comprehensive Automobile Liability Policies for the full limits required, or by a combination of underlying comprehensive liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability Policy.

11.5 SCOPE OF INSURANCE. The insurance required hereunder shall name the Owner and the Contractor as named insureds and shall provide protection for the Owner and the Contractor against damage which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him.

11.6 PROOF OF CARRIAGE OF INSURANCE. Certificates of the insurance required herein shall be filed with the Owner prior to commencement of work, in a form satisfactory to the Owner. All insurance policies shall include a clause to the effect that the policy shall not be cancelled or reduced, restricted or limited until fifteen (15) days after the Owner has received written notice, evidenced by a return receipt of a registered or certified letter, of the proposed action.

12.1 CHANGE ORDERS. The Owner may order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions. A Change Order must be signed by the Owner and the Contractor. The Contract Amount and the Contract Time may be changed only by Change Order.

For each proposed change, the Contractor shall provide an itemized breakdown of direct costs, identifying in detail all labor, materials, equipment and services required to complete the work; list and extend all respective man hours (or unit hours), labor rates, quantities and price of materials, dimensions used to compute quantities, material units and unit prices, equipment time and rental rates. The cost breakdown format is subject to the approval of the Owner. Proposals from the Contractor shall include separate cost breakdowns as described above from any and all Subcontractors involved with the change.

13.1 **TERMINATION BY THE CONTRACTOR.** If the Work is stopped for a period of sixty (60) days by reason of some act or omission of Owner, then the Contractor may, upon thirty (30) days' written notice to the Owner, terminate the Contract and recover from the Owner payment for all services provided through the date the notice of termination is given.

13.2 **TERMINATION BY THE OWNER.** If the Contractor refuses or fails to supply adequate service in accordance with the Contract, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of any provision of the Contract, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor seven (7) days' written notice, terminate the employment of the Contractor and may finish the work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Amount exceeds the costs of finishing the work, including compensation for consultants' fees, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

13.3 **TERMINATION FOR CONVENIENCE.** Upon thirty (30) days' written notice to Contractor, Owner may, for its convenience and without cause, elect to terminate this Contract. In such event, Owner shall pay Contractor for all work executed, and for costs or expenses necessarily incurred in connection with the work completed to date, and reasonable costs or expenses attributable to such termination. Upon the Owner's termination for convenience during or relating to the Pre-Construction Phase of the Project, Contractor shall not be entitled to any recovery of loss of business opportunity, lost profits or damages other than costs reasonably incurred prior to the effective date of termination.

14.1 **SEVERABILITY.** In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

15.1 **IMMIGRATION LAW COMPLIANCE.** Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal and State immigration laws and regulations related to the immigration status of its employees. Contractor shall obtain statements from its subcontractors of every tier certifying compliance and shall furnish the statements to the Owner upon request. These warranties shall remain in effect through the term of the Contract, and the Contractor and its subcontractors of every tier shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work pursuant to this Contract. I-9 forms are available for download at USCIS.GOV.

The Owner may request, and the Contractor agrees to furnish, verification of compliance from the Contractor or its subcontractors of any tier performing work pursuant to this Contract. Should the Owner reasonably believe or discover that the Contractor or its subcontractors of any tier are not in compliance, the Owner may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and

suspension and/or debarment of the Contractor or its subcontractors. All costs necessary to verify compliance are the responsibility of the Contractor.

IN WITNESS WHEREOF, two (2) identical counterparts of this Contract, each of which shall for all purposes be deemed original thereof, have been duly executed by the parties hereinabove named, on the day and year first above written.

CONTRACTOR:

OWNER:

WHITERIVER UNIFIED SCHOOL
DISTRICT

By _____
Its _____

By _____
Its _____

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