

AGREEMENT BETWEEN OWNER AND ARCHITECT

For New School and Ancillary Design and Contract Administration

THIS AGREEMENT, made and entered into on this 27th day of January, 2010, by and between the Board of Trustees of Idaho Falls School District No. 91, 690 John Adams Parkway, Idaho Falls, Idaho 83402, (hereinafter Owner), and Architectural Design West, P.C., 255 South 300 West Logan, UT 84321, (hereinafter Architect), as follows:

1. **Project:** Design and Contract Administration of new elementary schools and other, ancillary projects for which Owner has current 35% design, in accordance with the general design criteria to be provided by Owner.

2. **Architect's Services:** Owner is engaging the services of Architect, among other things, to draw plans and specifications for the Project. Architect agrees to provide all normal architectural, mechanical and engineering services required for the project, and is responsible for payment of the same. Owner reserves the right to select the engineering provider(s) to be utilized by Architect. Architect's services shall include all necessary conferences, the preparation of preliminary studies, work drawings, specifications, bidding information and forms, large-scale and full-size detailed drawings, as may be required, the issuance of certificates of payment, the keeping of accounts, supervision of the work, and required inspections as provided in this agreement. In addition, Architect's services shall include preparation of design and as-built drawings, specifications and written opinions in connection with any and all construction changes or requested construction changes pursuant to the terms and limitations set out herein. Identified services to be provided by the Architect are not to be construed as exclusive in nature. It is understood that the Architect shall perform, as a part of this contract, such duties and services as are generally accepted in the industry as a part of Architect's responsibility, whether such items have been specifically set out herein or not.

2.1. Architect shall also provide general administration and supervision of the construction contract, which shall include the following:

2.1.1. Architect shall have primary responsibility for the interpretation of the applicable construction contract documents and supervision of the work necessary to enforce the Architect's compliance with the provisions in this contract. He or a responsible member of his staff shall, at such times as is reasonably necessary, personally visit the Project site to make inspections and observations for purposes of insuring that proper construction standards are met, and to insure that the proper workmanship and materials are used in connection with the construction as is required in the specifications. Architect shall at all times be available personally, or have available a responsible member of Architect's staff to make interpretations and explanations of the construction contract documents, reconciliation of conflicts in the documents, and cooperate with the Construction Manager/Contractor and Construction Manager/Contractor's employees and/or associates on the project in anticipating problems in the process. Architect agrees to have local availability a minimum of two days/week and otherwise as needed by Owner during the construction period.

- 2.1.2. The Architect shall participate in the selection process for Construction Manager/Contractor.
- 2.1.3. The Architect shall ensure that all necessary construction Bonds and insurance are provided to Owner prior to issuance of Notice to Proceed.
- 2.1.4. The Architect shall insure that all Construction Manager/Contractors' provide testing of materials as required by the Project specifications.
- 2.1.5. The Architect shall work with the Construction Manager/Contractor to appraise and approve certificates of payment and maintain necessary records pertaining thereto for work performed.
- 2.1.6. The Architect shall review and approve shop drawings, samples, and other submissions of any Construction Manager/Contractor for conformance with the design concept of the Project and for compliance with the information given in the Architect's documents and specifications.
- 2.1.7. The Architect shall check and make recommendations on all proposals for substitutions to Owner.
- 2.1.8. The Architect shall prepare and recommend change orders for approval by the Owner and/or local and state agencies concerned, and issuance, during the course of construction.
- 2.1.9. Except in the case of change orders, in an amount of less than Five hundred (\$500.00) dollars, the Architect shall not issue, nor shall the Architect have authority to issue, without first obtaining the written approval of the Owner, any change order or other order to any Construction Manager/Contractor or subcontractor employed on the Project that will commit the Owner to pay any amount in excess of the contract price specified in the contract between the Owner and the Construction Manager/Contractor employed by the Owner to construct the Project or in any other way modify such contract between the Owner and the Construction Manager/Contractor or any subcontractor employed by the Owner to construct the Project.
- 2.1.10. The Architect shall confirm date of substantial completion, assemble written guarantees required of the Construction Manager/Contractor, and issue the certificates of final completion and final certificate of payment.
- 2.1.11. The Owner, at its option, may assign a staff inspector to the Project. Such staff inspector will cooperate with the Architect in noting deviation from, or necessary adjustments to, the contract documents, or of deficiency or defects in the construction. The presence of the Owner's staff inspector, however, shall in no way relieve the Architect of the Architect's prime responsibility for supervision of the work and interpretation of the Architect's documents. Architect will provide weekly field observation reports to Owner.

- 2.1.12. Owner agrees to assign an Owner's representative in connection with the construction Project. Such representative will visit the construction site frequently and will direct his communication concerning the progress of the work through the Architect. The Owner's representative will also attend construction meetings, may act as the staff inspector and will generally perform all acts possible to properly coordinate and assist Architect with the construction progress.
- 2.1.13. Architect agrees that periodic construction conferences will be held as more particularly set forth in the contract specifications. Minutes of the construction conferences will be kept by the Owner's representative. Such minutes will be distributed in accordance with the instructions of the Architect to all necessary and appropriate persons.
- 2.1.14. The Architect agrees to cause periodic inspections to be made as more particularly set forth in the specifications to insure that construction standards are properly met during critical phases of construction prior to work being covered up. Architect, in addition thereto, shall make such additional inspections as are reasonably necessary to insure proper workmanship and materials are used in connection with the construction as set forth in the Project contract specifications.
- 2.1.15. The Architect agrees to report to the Owner any significant delays or departures from the design and/or construction scheduling within two (2) working days from the time Architect is put on notice of such delay. As part of such notification, Architect shall determine the cause of such delays or departures from the agreed-upon scheduling, and provide to the Owner updated scheduling dates.
- 2.1.16. Architect agrees to provide to Owner his best estimate of the cost of construction based upon Architect's design of the Project prior to the Project being placed for competitive bidding as required by law. In addition, Architect agrees to provide estimates for the major components or aspects of the overall Project based upon the design criteria provided by the Owner. Such cost estimates, at the option of the Owner, shall be utilized in final determination if the scope and nature of Project will be included in the competitive bidding process as required by law.

3. **Architectural Fees:** Owner shall pay to Architect for the services to be performed pursuant to the terms of this agreement a not to exceed amount as determined by the following schedule.

- 3.1. **First new school** - 3.5% of final construction cost sans costs of change orders as defined in paragraph 3.8.
- 3.2. **Second new School** – 3.25% of final construction costs sans costs of change orders as defined in paragraph 3.8.
- 3.3. **Third and all subsequent new schools** -3.0% of final construction costs sans costs of change orders as defined in paragraph 3.8.
- 3.4. The above values represent maximum fees. The Architect agrees to reevaluate fee percentages on the second and all subsequent new schools with the goal of

lowering the percentages, if practicable, based on actual hours expended on the previous school design.

- 3.5. Fees associated with designs of Ancillary projects (see definition in section 1) will be 3.95% of final construction cost sans costs of change orders as defined in paragraph 3.8. Fees associated with new design not identified herein will be negotiated and added to this agreement prior to commencing design activities.
- 3.6. The above-referenced compensation shall be payable to Architect upon the completion of each individual component of the Project, and as a percentage of the total compensation as follows:
 - 3.6.1. Design Completion to successful plan review: 75% of Total
 - 3.6.2. Construction Phase: 20% of Total
 - 3.6.3. Closeout phase to Punch list completion 5% of Total
- 3.7. That portion payable for supervision and inspection during the construction phase of the Project shall be payable in monthly draws based on monthly statements prepared by Architect and submitted to School District No.91 for payment.
- 3.8. For purposes of the calculation of Architect fees, final construction costs shall not include the cost of any change order that was not requested by owner and identified, in writing, during the change order approval process as applying to Architect fees.

4. **Schedule for Completion of Project Phases:** Phase completion for each project component will be negotiated based on successful bond election. Architect will obtain written authorization to start each new phase.

Phase	Date of Completion
• First New School Design Development through plan review	May 5, 2010
• Subsequent new school designs	As agreed upon by all parties
• Ancillary projects design and construction	As agreed upon by all parties

4.1 Owner has the right, without cause, to terminate this agreement at any time after the Architect completes and submits the design for the first new school. The owner shall have that same right for each subsequent new school or ancillary project.

5. **Duties of Owner:** The Owner shall, so far as the work under this Agreement may require, furnish the Architect with the following information:

- 5.1. A complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining property;
- 5.2. The rights, restrictions, easements, boundaries and contours of the building site, and full information as to sewer, water, gas, and electrical service.

- 5.3. The Owner shall pay for any borings or test pits, or for chemical, mechanical or other tests relating to the Project as required.

6. **Duties of Architect:** Architect's duties and rights in connection with the above-described project are as follows:

- 6.1. **Discipline and Employment:** Architect shall maintain at all times strict discipline among Architect's employees, and Architect agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he or she was employed.
- 6.2. **Payment of Taxes, Procurement of Licenses and Permits:** Architect shall pay all taxes required by law in connection with work on the project in accordance with this agreement including sales, use, and similar taxes, and shall secure all licenses and permits necessary for proper completion of the work, paying the fees for such licenses and permits.
- 6.3. **Geotechnical Reports and Special Inspections:** Architect will provide Owner budget numbers for and make arrangements to have geotechnical reports and special inspections performed.
- 6.4. **Compliance with Construction Laws and Regulations:** Architect shall comply with all laws and ordinances, and the rules, regulations, or orders of all public authorities relating to the performance of the work under and pursuant to this agreement. If any of the contract documents are at variance with any such laws, ordinances, rules, regulations, or orders, Architect shall notify Owner promptly on discovery of such variance.
- 6.5. **Responsibility for Negligence of Employees and Sub-Architects:** Architect assumes full responsibility for the acts, negligence, or omissions of all Architect's employees on the project, for those of Architect's sub-Architects and their employees, and for those of all other persons doing work under a contract with Architect.

7. **Construction Costs:** The construction costs, unless otherwise modified by paragraph 3.8, shall be the total cost to the Owner of all aspects of the Project design or specified by the Architect. It shall not include the estimated costs associated with labor and materials furnished by the Owner. Nor, for purposes of calculating applicable architectural fees as defined herein, shall it include the compensation of the Architect and Architect's consultants or the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner.

8. **Architect's Expenses:** The Architect shall pay all expenses in connection with site planning, site engineering, as well as structural, mechanical and special engineering pertinent to the preparation of the drawings and specifications for their interpretation, and the determination or compliance, as may be required, in the completion of the Project. Architect further agrees to provide the costs of transportation and living incurred by Architect and Architect's staff or associates incurred while traveling in discharge of duties connected with the Project.

9. **Ownership of Documents:** Drawings and specifications relating to Project which is the subject matter of this Agreement, and instruments of service, are the property of Owner, whether the Project for which they are developed is executed or not. As such, the Owner shall be provided

with a complete copy, both written and electronic in native format (e.g AutoCAD .dwg files), of the plans and specifications, signed and stamped as necessary to allow Owner to utilize the plans and specifications at its discretion. The Owner shall have licensure to use these documents for its sole use and shall be the copyright holder of all said documents.

10. **Number of Documents:** The Architect shall provide the Owner, at no expense to the Owner, with at least two (2) copies of all drawings, specifications and other documents required by this Agreement, to be prepared by the Architect and submitted for the Owner's approval. The Architect will provide the Construction Manager/Contractor with 3 complete sets of construction documents. In addition, at the completion of the Project, the Architect shall provide the Owner with three (3) as built working drawings, 1 copy of reproducible electronically stamped AutoCAD drawings, together with three (3) copies of the Project design basis, assumptions and data for structural, mechanical and electrical work. Any and all additional copies of documents relating to the Project requested by Owner shall be provided at a cost of _\$2.75_ per 30 x 42 sheet (\$1.00/sheet if 1000 sheet count).

11. **Binding Nature of this Agreement:** The Owner and Architect each bind himself, his partners, associates, successors, assigns, and legal representatives to the other party to this Agreement, and to the partners, successors, assigns, legal representatives of each other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign, sublet or transfer his interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld.

12. **Termination of Agreement:**

12.1. **Architect's Termination:** Architect may, on fourteen (14) days written notice to Owner terminate this agreement before the completion date specified in this agreement when for a period of thirty (30) days after a progress payment is due, Owner fails to make the payment. On such termination, Architect may recover from Owner payment for all work completed and for any loss sustained by Architect for materials, equipment, tools, or machinery to the extent of actual loss thereon plus loss of reasonable profit, provided Architect can prove such loss and damages.

12.2. **Owner's Right to Terminate Contract:** Should the Architect default in the performance of any of his obligations under this contract, and if on being duly advised in writing by the Owner of said default does not, within a reasonable period of time, correct the identified default, the Owner may terminate the contract, and shall have the right to demand that all work done or partially completed, be delivered to Owner by the Architect. Architect shall have the responsibility to immediately deliver the requested items to the Owner. The Owner shall have the right to complete the work, or any part thereof, or cause the same to be done, and deduct the cost thereof from the total sum that would have been due the Architect had the Project been completed pursuant to the terms of this Agreement. The balance of any amounts owing, if any, after any such allowed deductions, shall be payable to the Architect within a reasonable period of time of the termination of the contract.

13. **Architect's Liability Insurance:** Architect agrees to keep in force at Architect's own expense during the entire period of construction on the project such liability insurance as will protect Architect from claims, under workers' compensation and other employee benefit laws, for

bodily injury and death, and for property damage, that may arise out of directly or indirectly by a sub-Architect. The minimum liability limits of such insurance shall not be less than One Million Dollars (\$1,000,000.)

14. Indemnity and Hold Harmless:

- 14.1. Architect agrees to indemnify and hold harmless Owner it's agents and employees, from and against any and all claims, damages, losses, and expenses, including reasonable attorneys' fees in case it shall be necessary to file an action, arising out of performance of the work herein, that is (a) for bodily injury, illness, or death, or for property damage, including loss of use, and (b) caused in whole or in part by Architect's negligent act or omission, or that of a sub-Architect, or that of anyone employed by them or for whose acts Architect or sub-Architect may be liable.
- 14.2. Owner agrees to indemnify and hold harmless Architect, it's agents and employees, from and against any and all claims, damages, losses, and expenses, including reasonable attorneys' fees in case it shall be necessary to file an action, that is (a) for bodily injury, illness, or death, or for property damage, including loss of use, arising out of modifications to any of the designs procured by Owner under the terms of this agreement to construct additional projects without involvement of the Architect.

15. Arbitration: All claims, disputes, and other matters or conflicts arising out of or relating to, this Agreement or the breach thereof, shall be resolved by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then pertaining unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

- 15.1. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter or conflict or question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other conflict or matter in question would be barred by the applicable legal statute of limitations relating to the same.
- 15.2. No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing the specific reference to this Agreement signed by the Owner, Architect and any other person or entity sought to be joined. Said arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate another agreement with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

- 15.3. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. It is hereby acknowledged and agreed by and between the parties hereto that the courts of the State of Idaho and the laws thereof shall control with respect to this matter.

16. **Miscellaneous Provisions:**

- 16.1. **Entire Agreement:** This Agreement as well as sections 3 (Approach to Project) and 4 (Approach to Energy Conservation) of the Architect's Response to Owner's RFQ, dated 3 August, 2009, represent the entire integrated Agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.
- 16.2. **Energy efficiency:** The design goal for new facilities shall be energy performance 30% better than if the project were constructed to the 2006 International Energy Conservation Code. The Architect shall meet with the Owner during the Schematic and Design Development phases to perform value engineering based on the design requirements to meet the above.
- 16.3. **Third Parties:** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.
- 16.4. **Hazardous Materials:** Unless otherwise provided in this Agreement, the Architect and Architect's consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at **the Project site**, including but not limited to, asbestos, asbestos products, polychlorinated biphenyl (pcb) or other toxic substances. It shall be the duty of the Architect or the Architect's consultants, however, upon discovery of any such hazardous or toxic materials or substances, that the Owner or the Owner's representative be immediately notified and that all necessary actions are undertaken to prevent exposure of persons to such materials or substances.
- 16.5. **Performance of Covenants:** Owner and Architect hereby agree to full performance of the covenants contained herein.
- 16.6. **Modification of Agreement:** Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- 16.7. **Governing Law:** It is agree that this agreement shall be governed by, construed and enforced in accordance with the laws of the State of Idaho.
- 16.8. **Attorneys' Fees and Expenses:** The failure of either party to comply with the terms of this agreement will oblige that party to pay all costs and expenses, including reasonable attorneys' fees and legal expenses, incurred in connection

with the enforcement of this agreement. Costs and expenses include reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. That party shall also pay all court costs and such additional fees as may be directed by the court.

16.9. **Assignment of Rights:** The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

16.10. **Paragraph Headings:** The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement

16.11. **Time is of the Essence:** All times stated in this agreement or in the contract documents are of the essence hereof.

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written as follows:


OWNER:

BOARD OF TRUSTEES OF
IDAHO FALLS SCHOOL DISTRICT NO.91,

By:


David Lent, Chair

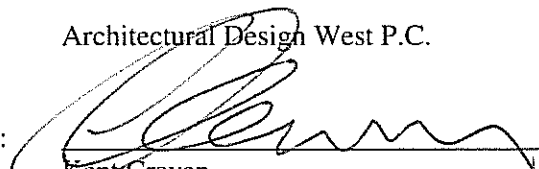
ATTEST:


Clerk of the Board

ARCHITECT:

Architectural Design West P.C.

By:


Kent Craven

INDIVIDUAL ACKNOWLEDGMENT

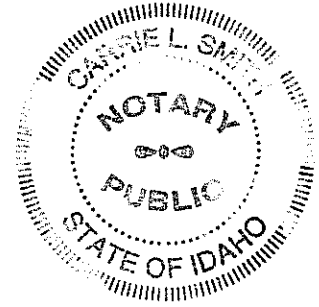
STATE OF IDAHO)
) :SS
County of Bonneville)

On this 9th day of February, ^{DL} ~~2009~~ ^{2010 OKC}, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared **David Lent**, known to me to be the Chair of the

Board of Idaho Falls School District No. 91, Bonneville County, State of Idaho, that executed the instrument or the person who executed the instrument on behalf of said school district, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal, the day and year first above written.

Carrie A Smith
NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls, ID
Commission Expires: 11/20/2010



ACKNOWLEDGMENT BY CORPORATION

STATE OF IDAHO)
 :SS
County of Bonneville)

On this 8th day of February, ~~2009~~ ²⁰¹⁰ ~~2009~~ ²⁰¹⁰, before me the undersigned, a notary public in and for the State of Idaho, personally appeared Kent Craven known or identified to me to be Director of Business Development of Architectural Design West P.C., who executed the instrument on behalf of said entity, and acknowledged to me that such entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand the day and year above written.

Carrie A Smith
NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls, ID
Commission Expires: 11/20/2010

