

**CONTRACT BETWEEN
CAMPBELL COUNTY SCHOOL DISTRICT #1
AND
VAN EWING CONSTRUCTION, INC.**

1. **Parties.** The parties to this Contract are the State of Wyoming, Campbell County School District #1 (Owner) whose address is 1000 W. 8th Street, Gillette, WY 82717; and Van Ewing Construction, Inc. (Contractor), whose address, for the purposes of this Contract, is 5650 Magnuson Blvd, Gillette, WY 82718.

2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which Contractor shall accomplish all the construction services required (Work) for the Little Powder K-8 (New) school at the in Weston, Wyoming (Project). The Project Site shall be located at 15887 North US HWY 59, Weston, WY 82731 All Work shall be performed pursuant to the Contract and Attachment A, Change Order #1; Attachment B, Notice to Proceed; Attachment C, Notice of Award; which are more fully described in Subsection 10.K below, and are incorporated into this Contract by this reference.

3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). All services shall be completed during the term specified herein. The performance period of this Contract is from the Effective Date through the end of the latest warranty period, December 19 2026 for the new construction and May 27 2027 for the demolition of the existing school. The Contract shall remain in effect until Contractor’s services are completed to the satisfaction of Owner or the Contract is terminated, whichever is earlier.
 - A. The Work to be performed under this Contract shall be commenced within ten (10) calendar days after receiving the Notice to Proceed, and, subject to any authorized extension, substantial completion shall be achieved no later than December 19 2025 for the new construction of the school and May 27, 2026 for the demolition of existing school and reclamation of the existing site.

 - B. Permitting Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the use of additional Contract Time, shall in no way operate as a waiver on the part of Owner of any of its rights under this Contract.

 - C. Nothing in this Contract shall be interpreted or deemed to create a right or expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by Owner, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.

4. **Defined Terms Used in the Contract.**
 - A. **Construction Documents.** Construction Documents include Plans and Specifications dated April 17, 2024, signed by Levi Van Buggenum, Arete Design Group project number 2022 -70, and addendums number 1 – 5, and Attachment[s]

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

TEMPLATE DATE: 7/1/24

[A,B,C] which are incorporated into this Contract by this reference (the "Contract").

- B. **Owner's Designee.** Dave Bartlett, Campbell County School District #1, 1000 West 8th Street, Gillette, WY 82716. All notices required to be provided to the Owner shall be provided to the Owner's Designee.
- C. **Owner's Representative.** Owner's Representative is the entity hired to represent Owner on-site. The district does not have an owner's representative.
- D. **Professional Service Provider.** Professional Service Provider is Karen Kelly of Arete Design Group, 228 East Brundage Street, Suite 100, Sheridan, WY 82801.
- E. **Construction Superintendent.** The Superintendent is Jake Ewing of Van Ewing Construction, Inc., 5650 Magnuson Blvd, Gillette, WY 82718. At all times during the progress of the Work, Contractor shall assign a superintendent thereto. The Superintendent shall be capable of reading and understanding the Contract, including all Construction Documents, and experienced in the type of work being performed. The Superintendent shall not be replaced without written notice to Owner and Professional Service Provider except under extraordinary circumstances. The Superintendent shall be Contractor's representative at the Site and shall have authority to act on behalf of Contractor, including full authority to execute orders or directions given by Owner without delay, and to provide materials, equipment, tools, labor and incidentals promptly, as required. All communications given to or received from the Superintendent shall be binding on Contractor.
- F. **Surety.** The Surety is an entity hired by Contractor at the behest of Owner to assume Contractor's financial responsibility to Owner in the event of Contractor's breach or inability to complete the Work.
- G. **Business Days.** A day in this agreement shall be a business day, Monday through Friday, and excludes State recognized holidays.

5. **Payment.**

- A. Owner agrees to pay Contractor for the services described herein. The total payment under this Contract shall not exceed **Ten Million, One Hundred Sixty-Six Thousand, Six Hundred Eighty-Four Dollars and Zero Cents (\$10,166,684.00)** (Contract Sum). No payment shall be made for services performed before the Effective Date of this Contract. The Total Contract Sum, including the Bid Contract Sum, accepted alternates and unit priced materials and labor, is **Ten Million, One Hundred Sixty-Six Thousand, Six Hundred Eighty-Four DOLLARS AND NO/100* (\$10,166,684.00)**, whereas a deduction by change order of **(\$700,038.00)** for budget alignment items (CO #1) shall be accepted for a new contract price of **\$9,466,646.00**; whereas, the SFD responsibility shall be **\$8,666,646.00** and **\$800,000.00** shall be the district responsibility using other district funds.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

- B. Schedule of Values.** Before submitting an Application for Payment, Contractor shall submit to Owner and Professional Service Provider a schedule of values allocated to various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as Owner and Professional Service Provider may require. This schedule, unless objected to by Professional Service Provider or Owner, shall be used as a basis for reviewing Contractor's Applications for Payment.
- C. Applications for Payment.** Contractor shall submit to Professional Service Provider and Owner an itemized Application for Payment invoice for operations completed in accordance with the schedule of values monthly. Such Application shall be certified, supported by data substantiating Contractor's right to payment, such as copies of requisitions from subcontractors and material suppliers, and reflect retainage.
- (i) Such Applications shall not include requests for payment on account of changes in the Work which have been properly authorized by interim determinations of Professional Service Provider and Owner, but which are not yet included in Change Orders.
 - (ii) Such Applications shall not include requests for payment for portions of the Work for which Contractor does not intend to pay a subcontractor or material supplier, unless such work was self-performed or has otherwise been performed by others whom Contractor intends to pay.
 - (iii) Payments shall be made for materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by Owner, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing between Owner and Contractor. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by Contractor with procedures satisfactory to Owner establishing Owner's title to such materials and equipment or otherwise protecting Owner's interest in the materials, and shall include the costs of applicable insurance, verification expenses, storage, and transportation costs to the Site for such materials and equipment stored off the Site.
 - (iv) Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of Contractor, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Contractor shall

submit with each Application for Payment a Contractor's Affidavit pursuant to Wyo. Stat. § 16-6-1001.

D. Certificates for Payment. Contractor shall submit an Application for Payment to the Professional Service Provider and Owner. Following certification, in whole or part, by Professional Service Provider, Owner shall pay to Contractor the payment amount that the Professional Service Provider and Owner determine is properly due.

- (i) After the Professional Service Provider issues a Certificate for Payment, Owner's acceptance of the Certificate of Payment shall not constitute a final acceptance of the Work included in the Certificate. Such acceptance shall be provisional and subject to Professional Service Provider's and Owner's further evaluation of the Work for conformance with the Contract as the work progresses. Owner's acceptance of a Certificate for Payment shall not be a representation that Owner and/or Professional Service Provider has:
 - (a) Made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
 - (b) Reviewed construction means, methods, techniques, sequences, or procedures;
 - (c) Reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by Owner to substantiate Contractor's right to payment; or
 - (d) Made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

E. Acceptance of Work and Inspection. Contractor shall allow the Professional Service Provider and Owner access to all parts of the Work such that both the Professional Service Provider and Owner may inspect all materials and each detail of the Work and shall furnish them with such information and assistance as required to make a complete and detailed inspection. Payment for Work is conditioned on Professional Service Provider and Owner's inspection of materials on site and acceptance of work as being in accordance with the Construction Documents.

- (i) Contractor, prior to acceptance of the Work, shall remove or uncover such portions of the finished Work as directed by Owner and Professional Service Provider. After examination by Owner and Professional Service Provider, Contractor shall restore the Work to the standard required by this Contract. Should the Work exposed or examined prove acceptable, the uncovering, removing and replacing, recovering, or restoration of the parts removed shall be paid as extra work. Should such work prove defective, it shall be replaced at Contractor's expense.
- (ii) All of the Work which does not conform to the requirements of this Contract, or which was unauthorized, shall be considered unacceptable, and may be ordered to be removed and replaced in an acceptable manner, at

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

Contractor's expense, as determined by Owner. If Contractor fails to comply with any such order, Owner may follow the Contract provisions for issuance of a Stop Work order. Owner may have unauthorized or unacceptable Work removed and may deduct from any monies due or which become due to Contractor all costs of removal and correction.

- (iii) If Owner prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a change order shall be issued to reflect a reduction in the Contract Sum, where appropriate. Owner may condition its acceptance of nonconforming Work upon Contractor's agreement to a longer warranty period for the nonconforming Work.

F. Decisions to Withhold Certification. Professional Service Provider and/or Owner may withhold a Certificate for Payment, in whole or in part, to the extent reasonably necessary to protect Owner, if in Professional Service Provider's and/or Owner's Designee's opinions the requisite representations as to the quality or completion of the Work invoiced cannot be made to Owner or if Contractor makes application for payment for work performed without the approval of the Professional Service Provider and Owner. If Professional Service Provider and Owner do not certify payment in the amount of the Application, Professional Service Provider and Owner shall notify Contractor in writing no later than seven (7) days after receipt of the Application. If Contractor, Professional Service Provider, and Owner cannot agree on a revised amount, Owner shall promptly issue a modified Certificate for Payment for any amount Owner approves. Such a Certificate is not subject to a seven (7) day time requirement. Professional Service Provider and Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify all or part of a Certificate for Payment previously issued, to such extent as may be necessary in Professional Service Provider's or Owner's Designee's opinion to protect Owner from loss for which Contractor is responsible, including loss resulting from acts and omissions because of:

- (i) Defective Work not remedied;
- (ii) Third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Contractor;
- (iii) Failure of Contractor to make payments properly to subcontractors or for labor, materials, or equipment;
- (iv) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (v) Damage to Owner or another contractor;

- (vi) Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- (vii) Persistent failure to carry out the Work in accordance with the Contract. When the above reasons for withholding certification are removed, certification shall be made for amounts previously withheld.

G. Progress Payments. After Professional Service Provider and Owner have issued a Certificate for Payment, Owner shall make payment in the manner and within the time provided in the Contract. The amount of the Progress Payment shall be determined pursuant to Wyo. Stat. § 16-6-702. A retainage of five percent (5%) of the entire Contract Sum shall be withheld until final payment is made to Contractor. If it becomes necessary for Owner to take over the completion of the Contract, all amounts owed Contractor, including the withheld retainage, shall first be applied toward the cost of completion of the Contract, as provided in Wyo. Stat. § 16-6-703.

- (i) Upon receipt of payment from Owner, Contractor shall promptly pay each subcontractor the amount to which said subcontractor is entitled, on account of such subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a like manner.
- (ii) Owner and Professional Service Provider shall not have an obligation to pay nor to effectuate the payment of money to a subcontractor except as may otherwise be required by law.
- (iii) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 5.G(i) and 5.G(ii) above.
- (iv) Neither a Certificate for Payment, a progress payment, partial or entire use, nor occupancy of the Project by Owner shall constitute acceptance of any Work not performed in accordance with the Contract.

H. Final Completion and Final Payment. When the Work is complete and ready for final inspection and acceptance, Contractor shall notify the Professional Service Provider. If, following the completion of a final inspection, the Professional Service Provider determines Contractor has completed the Work, that the Work is acceptable under the Contract, and that the Contract has been fully performed, Owner shall make Final Payment to Contractor. Final Payment constitutes the entire unpaid balance of the Contract Sum, including any amount retained under Subsection 5.G. Final Payment shall be made only as provided in Wyo. Stats. §§ 16-6-116 and 117.

- (i) Final Payment shall not be made until after Contractor files with Owner a sworn statement, as required in Wyo. Stat. § 16-6-117, stating that all claims

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

for material and labor performed under the Contract have been made and paid to all subcontractors and suppliers. Contractor payments shall not be withheld due to claims against Contractor's Surety Bond except as required by Wyo. Stat. § 16-6-117.

- (ii) Contractor shall post notification of requirements to claim bond protection at the job site as required by Wyo. Stat. §16-6-121(f). Contractor shall ensure that its agreement with the Surety shall not relieve the Surety from liability on any bond following Final Payment to Contractor based on Contractor's sworn statement of no disputed claims for material or labor if outstanding material or labor claims or liens exist for which materialmen or laborers properly followed the notification procedures described in Wyo. Stat. § 16-6-121. Owner may seek indemnification from Contractor for any liabilities that result from Contractor's failure to abide by this provision.

6. **Remedies.** The Owner or Contractor may, at its discretion, seek remedies in accordance with this section. This Section is not exhaustive and shall not be interpreted to prohibit the Owner from pursuing additional remedies available to it.

A. **Default.** Owner may seek remedies under this Section for cause constituting Default. Cause constituting Default includes, but is not limited to, circumstances where the Contractor, at any time:

- (i) Refuses or neglects to supply sufficient and properly skilled workers;
- (ii) Refuses or neglects to supply materials of the proper quality;
- (iii) Fails in any respect to follow revised construction schedules;
- (iv) Fails in any respect to complete the Work with promptness and diligence; or fails in the performance of any of the covenants contained herein; or
- (v) Fails to correct such default or neglect with diligence and promptness within one (1) work day of written notice from Owner.

B. **Notice.** Owner shall provide written notice to Contractor detailing the Default for which it may seek a remedy under this section.

C. **Remediation and Termination.** If Contractor fails to remedy the defect or neglect within with diligence and promptness within one (1) work day of written notice from Owner, Owner may, without additional written notice and without prejudice to any other remedy, seek to remedy the defect or neglect pursuant to this Subsection. Owner's remedies shall include but shall not be limited to:

- (i) Providing such additional labor, materials, or services as Owner deems reasonably necessary to ensure timely completion of the Work required by this Contract. If Owner exercises this provision, it shall deduct the cost of

all additional labor, materials, or services procured under this provision from any money then due or thereafter to become due to Contractor under this Contract; or

- (ii) Terminating this Contract for the Work, enter the Site, and taking possession of, for the purpose of completing the Work included under this Contract, all materials, tools, and appliances thereon. Owner may then employ any other person or persons to finish the Work, and provide the materials required under this Contract.

D. Expenses. Owner shall be entitled to recover all of its expenses under this Section, including all labor, materials, and services (whether by Owner or others) and any other cost or expense (including attorneys' fees) or damages incurred as a result of Contractor's Default. If such expense exceeds the unpaid balance of the amount to be paid under this Contract, Contractor shall pay the difference to Owner upon demand.

E. Owner's Right to Perform and Stop Work.

- (i) If Contractor defaults or fails to perform the Work in accordance with the Contract, and fails within twenty (20) days after receipt of written notice from Owner to commence and continue correction of such default or failure to perform with diligence and promptness, Owner may issue a Stop Work Order to make good such deficiencies, or both, until the cause for such order has been eliminated. In such case, an appropriate Change Order shall be issued deducting from the payments due Contractor the cost of correcting all deficiencies. However, this right to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity.

- (ii) If it becomes necessary for Owner to take over the completion of any part of the Contract, all of the amounts owing Contractor, including the withheld retainage, shall first be applied toward the cost of completion of the Contract, as provided in Wyo. Stat. § 16-6-703. If the payments due Contractor are not sufficient to cover such amount, Contractor shall remain liable to Owner for the remainder. [KD1]

F. Contractor's Right to Stop Work or Terminate the Contract. If Owner does not pay Contractor any undisputed amount certified by Professional Service Provider and Owner within forty-five (45) days after the date established in the Contract, then Contractor may, upon seven (7) additional days' written notice to Owner and Professional Service Provider, stop the Work until payment has been received. The Contract term shall be extended appropriately and the Contract amount shall be increased by the amount of Contractor's reasonable costs of shut-down, delay, and start-ups, plus interest at one and one-half percent (1.5%) per month. If the work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

him, or if the Agency should fail to pay to the Contractor forty-five (45) days after Contractor has stopped Work after providing written notice under this section, then the Contractor may, upon thirty (30) calendar days written notice to the Agency, terminate the contract and recover from the Agency payment for the cost of the work actually performed, together with overhead and profit thereon. Profit shall be recovered only to the extent that the Contractor can demonstrate that it would have had profit on the entire contract if it had completed the work. The Contractor may not receive profit or any other type of compensation for parts of the work not performed. In the event Contractor Stops Work without due notice or Stops Work after undisputed claims for payment have been paid, Contractor shall be liable to the Agency for liquidated damages in the manner and amount proscribed in Section 9. O. (i)

- G. Remedies upon Termination.** If this Contract is terminated, Contractor shall not be entitled to receive any further payment under this Contract until the Work is completed. If, at any time prior to Final Payment, Owner becomes aware of evidence of any invoice, bill, lien, or claim (Claim) arising from Contractor's operations under this Contract, or any other agreement between the parties for which Owner, or any property, might be or become liable or subject to, Owner shall have the right to retain, out of any payment then due or thereafter to become due to Contractor, an amount sufficient to discharge such Claim. Upon discovery of such a Claim, Owner shall notify Contractor of the Claim and Owner's intent to withhold payment until satisfaction of the Claim. If Contractor fails to resolve a Claim or provide a bond to protect Owner against such Claim within thirty (30) days after written notice, Owner shall have the right to make payment on such Claim out of funds due or to become due Contractor. If no such funds are available, Contractor shall indemnify Owner for all amounts Owner has in good faith paid in discharging any Claim, including any associated costs and expenses (including attorneys' fees).

7. Responsibilities of Contractor. Contractor agrees to:

- A.** Provide the Work described in this Contract for the Project in accordance with this Contract and all Construction Documents incorporated herein.
- B. Construction Schedules.** Contractor, within ten (10) days of receipt of the Notice to Proceed and prior to the approval of any pay applications, shall prepare and submit to Owner and Professional Service Provider a Contractor's Construction Schedule for the Work (Original Baseline Schedule). The Original Baseline Schedule shall not exceed time limits specified by the Contract and shall provide for expeditious and practicable execution of the Work. Contractor shall preserve a copy of the Original Baseline Schedule for Owner's reference.
- (i) Contractor shall provide an updated Construction Schedule monthly (Progress Schedule) for Owner approval. The Progress Schedule shall, as much as possible, conform to the Original Baseline Schedule.

- (ii) Contractor shall prepare and keep current, for Professional Service Provider's and Owner's approval, a schedule of submittals which is coordinated with Contractor's Progress Schedule and allows Professional Service Provider reasonable time to review submittals.
- (iii) Contractor shall carry on the Work and adhere to the most recent approved Progress Schedule during all disputes or disagreements with Owner or Professional Service Provider unless otherwise notified by Owner or if Contractor is permitted by the provisions of this Contract to stop the Work.
- (iv) Contractor shall cause that its employees and any subcontractors or suppliers shall perform the Work every Business Day until the Work is complete. Contractor shall not stop the Work or close down the Site, nor allow its employees or subcontractors to do so, for any reason other than as set forth in Subparagraph 6.F without the express, written authorization of Owner.
- (v) If, in the opinion of Owner, Contractor is not proceeding with the Work as scheduled and falls significantly behind the most recent approved Progress Schedule, Owner may require Contractor, without additional cost to Owner, to:
 - (a) Increase the number of shifts;
 - (b) Initiate or increase overtime operations, increase the number of work days in the week, including work on holidays and/or weekends as necessary and consistent with Subsection D of this section;
 - (c) Increase the number of construction personnel; or
 - (d) Submit for approval a Recovery Schedule detailing the specific operational changes to be instituted to regain the most recent approved Progress Schedule.

C. Supervision. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. Contractor shall be solely responsible for its means, methods, techniques, sequences, and procedures of construction, except to the extent that specific means, method, technique, sequence, or procedure of construction are shown or indicated in and either expressly required or forbidden by the Contract. Contractor shall ensure that the completed Work complies with the Contract.

D. Labor and Working Hours. Contractor shall provide suitably qualified, competent personnel to complete the Work as required by the Contract. Contractor shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site

or adjacent thereto, and except as otherwise stated in the Contract, all Work at the Site shall be performed during regular working hours, and Contractor shall not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without Owner's written consent (which shall not be unreasonably withheld), unless otherwise required by the Progress Schedule, Contract, or Owner under Paragraph 7.B(iv).

- E. Services, Materials, and Equipment.** Until final acceptance of the Work, Contractor shall have the charge, care, and sole responsibility of the Work, including any materials and equipment, and shall bear the risk of injury or damage to any part thereof by the action of any party, the elements, or other cause. Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work. All materials and equipment incorporated into the Work shall be as specified in the Contract or, if not specified, shall be new and of good quality. Contractor shall bear all expenses to restore all Work that is damaged or destroyed prior to Owner's occupation of the Work. All warranties and guarantees specifically called for by the Contract shall expressly run to the benefit of Owner. If required by Professional Service Provider, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract.
- F. Substitutes.** Requests for substitutions must comply with the Construction Documents.
- G. Subcontractors, Suppliers, and Others.**
- (i) Contractor shall not contract with any subcontractor, supplier, or other individual or entity, as a replacement, against whom Owner has reasonable objection. Contractor shall not be required to employ any subcontractor, supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
 - (ii) Contractor hereby certifies that, as of the Effective Date, it has not entered into any subcontract for any of the Work contemplated under this Contract without prior written authorization of Owner. The Contractor shall ensure that all subcontracts entered into after the Effective Date conform with this Contract and shall provide to each subcontractor a copy of this Contract.
 - (iii) Contractor shall identify all subcontractors, suppliers, or other individuals or entities in advance for acceptance by Owner. Owner's acceptance (either in writing or by failing to make written objection thereto by the date

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

indicated for acceptance or objection in the bidding documents) of any such subcontractor, supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected subcontractor, supplier, or other individual or entity; the Contract Sum shall be adjusted by the difference in the cost occasioned by such replacement; and an appropriate Change Order or Amendment shall be executed. No acceptance by Owner of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Professional Service Provider to reject defective Work.

- (iv) Substitution and New Subcontractors: Contractor shall not at any time substitute any subcontractor in place of any subcontractor previously listed without the prior written permission of Owner and Professional Service Provider. Contractor shall also inform Owner and Professional Service Provider of its use of any additional subcontractor not previously listed or identified. Contractor shall not contract with a subcontractor against whom a reasonable objection has been made.
- (v) Contractor shall be fully responsible to Owner and Professional Service Provider for all acts and omissions of the subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such subcontractor, supplier, or other individual or entity any contractual relationship between Owner or Professional Service Provider and any such subcontractor, supplier or other individual or entity. Nothing in the Contract shall create any obligation on the part of Owner or Professional Service Provider to pay or to see to the payment of any monies due any such subcontractor, supplier, or other individual or entity except as may otherwise be required by laws and regulations.
- (vi) Contractor shall be solely responsible for scheduling and coordinating the Work of subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- (vii) Contractor shall require all subcontractors, suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Professional Service Provider through Contractor.
- (viii) The divisions and sections of the Construction Documents shall not restrict Contractor in dividing the Work among subcontractors or suppliers or delineating the Work to be performed by any specific trade.

- (ix) All Work performed for Contractor by a subcontractor or supplier shall be pursuant to an appropriate agreement between Contractor and the subcontractor or supplier which specifically binds the subcontractor or supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Professional Service Provider. Contractor shall make copies of this Contract available to each proposed subcontractor or supplier prior to the execution of the subcontract.
- (x) Contractor shall comply with the provisions of Wyo. Stats. §§ 16-6-116 and 117, and verify any amount due to or claims made by subcontractors against Contractor. Contractor shall, upon Owner's request and within thirty (30) days, provide to Owner the executed subcontractor lien releases for the period specified in the request.
- (xi) In conformity with Wyo. Stat. § 16-6-103, if Contractor bid the Project as a resident Contractor, Contractor shall not subcontract more than thirty percent (30%) of the Work to nonresident subcontractors. Contractor shall comply with all other resident and other preference requirements, including but not limited to those applicable to labor and materials.

H. Permits and Utility Connections. Contractor shall provide to Owner all construction permits required of Contractor prior to the commencement of the Work. The cost of all local, state, or federal permits and related inspections is the responsibility of Contractor at all times. Contractor shall give all notices and pay all fees necessary or proper to be given or paid in connection with the performance of the Contract, and obtain and pay for all necessary permits, approvals, licenses, and inspections. Before Final Payment, Contractor shall deliver to Owner all licenses, permits, and certifications obtained in accordance with this Section.

I. Use of Site and Other Areas. Contractor shall afford Professional Service Provider, Owner, and any separate contractors reasonable Site access and opportunity for introduction, storage, or staging of their materials and equipment, and performance of their activities.

- (i) Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by laws and regulations and approved by Owner, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to the Site or to any other area, Owner or the occupant thereof, or any adjacent land or areas resulting from its or its subcontractors' performance of the Work.
- (ii) Should any claim be made by Owner or the owner or occupant of any adjacent land or other areas used in accordance with this Subsection because of the performance of the Work, Contractor shall promptly resolve such dispute with the other party.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

- (iii) Contractor shall neither load nor permit any part of any structure to be loaded in any manner that will endanger any structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

J. Record Documents. Contractor shall maintain, in a safe place at the Site, one (1) record copy of all Contract and written interpretations and clarifications in good order and annotated to show changes made to the Project during construction in the format preferred by Owner. Contractor shall update these documents on a daily basis. These record documents together with all approved samples and a counterpart of all approved documents shall be made available to Professional Service Provider and Owner for reference at any time upon request.

K. Review of Contract and Field Conditions by Contractor.

- (i) Before starting each portion of the Work, Contractor shall carefully study the Contract, including the Construction Documents relevant to that portion of the Work, as well as the information furnished by Owner; shall take field measurements of any existing conditions related to that portion of the Work; and shall observe any conditions at the Site that potentially will affect the Work. These obligations are for the purpose of facilitating construction by Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract; however, Contractor shall promptly report any errors, inconsistencies, omissions, or conditions inconsistent with the Construction Documents discovered to Professional Service Provider and Owner in such form as Professional Service Provider may require.
- (ii) Any design errors or omissions noted by Contractor during this review shall be reported promptly to Professional Service Provider and Owner, but it is recognized that Contractor's review is made in Contractor's capacity as a contractor and not as a licensed Professional Service Provider, unless otherwise specifically provided in the Contract. Contractor is not required to ascertain that the Construction Documents are in accordance with applicable laws and regulations, but Contractor shall promptly report any nonconformity discovered by or made known to Contractor to Professional Service Provider and Owner. In the event Contractor knows or reasonably should have known of an error, inconsistency, or omission in the Construction Documents and fails to inform Professional Service Provider and Owner, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had notified Professional Service Provider and Owner.
- (iii) If Contractor believes that additional cost or time is involved because of clarifications or instructions issued by Professional Service Provider in response to Contractor's notices or requests for information pursuant to this Section, Contractor shall request direction from Professional Service

Provider and Owner and shall not proceed in that aspect of the Work until receiving such direction. If Contractor fails to perform these obligations, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to Owner or Professional Service Provider for damages resulting from errors, inconsistencies, or omissions in the Construction Documents or for differences between field measurements or conditions and the Construction Documents unless Contractor recognized, or in the exercise of due diligence should have recognized, such error, inconsistency, omission, or difference and knowingly failed to report it to Professional Service Provider and Owner.

- (iv) Contractor shall review for compliance with the Contract, approve and submit to Professional Service Provider all Shop Drawings, Product Data, Samples, and similar required submittals (Submittals). All Submittals shall be made with reasonable promptness and in such sequence as to cause no delay in the Work, the duties of its subcontractors, the activities of Owner, or any activities of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract and approved by Contractor may be returned by Professional Service Provider for resubmittal.
- (v) By submitting Submittals, Contractor represents that it has determined and verified materials, field measurements and field construction criteria, or will do so, and checked and coordinated the information contained within Submittals with the requirements of the Work and Contract.
- (vi) Contractor shall not perform any portion of the Work for which the Contract requires submission and review of Submittals until the required Submittal has been approved by Professional Service Provider. Contractor shall be solely liable for any Work performed prior to such approval, and shall not be entitled to include such work on an Application for Payment.
- (vii) The Work shall be performed in accordance with approved Submittals, except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by Professional Service Provider's approval of Submittals unless Contractor has specifically informed Professional Service Provider in writing of such deviation at the time of submission and a Change Order or Construction Change Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Submittals by Professional Service Provider's approval thereof.
- (viii) Contractor shall, in writing or on resubmitted Submittals, direct specific attention to revisions other than those requested by Professional Service Provider on previous Submittals. In the absence of such written notice,

Professional Service Provider's approval of a resubmission shall not apply to such revisions.

- (ix) In the event design services are necessary in addition to those provided by Professional Service Provider, the following provisions shall apply:
- (a) Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless Contractor has the necessary professional licensure to carry out the required professional services and unless such services are specifically required by the Contract for a portion of the Work or Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
 - (b) If professional design services or certifications by Contractor's design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract, Owner and Professional Service Provider shall specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all plans, calculations, specifications, certifications, Shop Drawings, and other Submittals prepared by such professional.
 - (c) Shop Drawings and other Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Professional Service Provider. Owner and Professional Service Provider shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Professional Service Provider have specified to Contractor all performance and design criteria that such services must satisfy.
 - (d) Professional Service Provider shall review, approve, or take other appropriate action on Submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract.
- (x) By executing this Contract, Contractor represents that it has visited the Site, including all locations affected; viewed patent conditions; familiarized itself with the local conditions under which the Work is to be performed; and

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

compared observations with the requirements of the Contract, including the Construction Documents. Contractor shall not be excused from performance on the basis of any open and obvious Site condition. Failure to make careful observations of existing conditions at the Site will not result in issuance of a Change Order or Construction Change Directive. If, however, during the course of the Work, Contractor encounters concealed or latent conditions below the surface of the ground or in an existing structure which are (1) at variance with or materially different from the conditions indicated by the Contract, or (2) of a nature not ordinarily encountered or inherent in the Work of the character provided for in this Contract, the Contract Sum and Contract Time may be adjusted by amendment to this Contract.

- L. **Performance and Labor and Material Payment Bonds.** If, during the Contract Time, Change Orders or Construction Change Directives increase the Contract Sum, Contractor shall furnish to the State additional bonding coverage as required by Wyo. Stat. § 9-2-3004(c)(iv)(C), so that a bond of one hundred percent (100%) of the Contract Sum is always provided.

- M. **Cutting and Patching.** Contractor shall be responsible for any cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.
 - (i) Contractor shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor, which consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold from Owner or a separate contractor Contractor's consent to cutting or otherwise altering the Work.
 - (ii) Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of Owner or any separate contractors through cutting, patching, otherwise altering such construction, or by excavation.

- N. **Cleanup.** Contractor shall, at all times, keep the Site free from accumulation of waste materials or rubbish caused by operations.
 - (i) Prior to Substantial Completion of the Work, Contractor shall clean the Site and make it ready for utilization by Owner. At the completion of the Work, Contractor shall dispose of all waste materials and rubbish, remove all tools, appliances, equipment, machinery, materials, and supplies, and restore to original condition all property not designated for alteration by the Contract. Contractor shall dispose of all waste and rubbish in accordance with all applicable laws.
 - (ii) If Contractor fails to clean up during or at the completion of the Work, Owner may issue a Change Order deducting from the payments due to

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

Contractor the cost of correcting the problem, and, if the payments are not sufficient to cover the cost, Contractor shall pay the difference to Owner.

- O. Safety and Protection.** Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- (i) Contractor agrees that if, in the performance of this Contract, it becomes necessary, convenient, or advisable for Contractor to remove, replace, or interfere with any safety device or controls installed by Owner or another contractor, Contractor shall notify and obtain the written authorization from Owner to remove, replace, or interfere with such safety device or controls. Contractor will replace or restore such devices or controls at its own expense as soon as possible to maintain the effectiveness of such safety device or control, and not less than on a daily basis. In the event that safety devices or controls are not replaced or restored, Contractor agrees to reimburse Owner for any expenses Owner incurs in doing so. (“Safety devices or controls” include handrails, temporary fencing, barricades, traffic control devices, signage, and all like objects and devices employed for safety purposes during the Work.).
 - (ii) Contractor shall set up, arrange, coordinate, and obtain all inspections for their work, as required by any authorized Owner or applicable authority having jurisdiction. Arrangements for the inspection of any area, system, or equipment needing testing or inspection prior to being covered up must be made by Contractor in sufficient time to allow for inspection. Contractor shall not cover up any area until the inspections are complete.
 - (iii) Contractor shall take all necessary precautions to ensure the safety of and provide suitable protections to prevent damage, injury, or loss to:
 - (a) All persons on the Site or who may be affected by the Work;
 - (b) All the Work, including materials and equipment to be incorporated into the Work, whether in storage on or off the Site; and
 - (c) Other property at the Site or other areas adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of the Work.
 - (iv) Contractor shall hold weekly safety meetings and, as required by Owner, provide reports of the topics discussed to Owner. Contractor shall make available, upon request of Owner, evidence of not less than weekly scheduled safety inspections performed by qualified personnel for the duration of the Project.

- (v) Contractor shall be solely responsible for the health and safety of its employees, agents, subcontractors, suppliers, and representatives. In addition, Contractor shall take all necessary and prudent safety precautions with respect to the Work and shall fully and timely comply with all safety programs initiated by Owner, as well as with all applicable laws, ordinances, rules, permits, regulations, and orders of any public authority for the safety of persons or property. Owner is not responsible in any manner for the safety of Contractor's work or its employees, agents, subcontractors, suppliers, or representatives.
- (vi) If Contractor fails to correct any procedures, acts, or conditions which Owner or any public authority believes are unsafe within an eight (8) hour period of written notification by Owner or any public authority, Owner may correct the unsafe procedure, act, or condition and deduct from Contractor's payment an amount equal to all costs, direct and indirect, for the correction and remediation. This specifically includes, but is not limited to, the cleanup of construction debris and the replacement or installation of safety devices or controls, including railings or barricades. Contractor's repeated failures to timely and satisfactorily correct unsafe procedures, acts, or conditions as set forth in this Paragraph upon notice from Owner and any public authorities shall constitute a material breach upon which Owner may terminate this Contract without any additional notice to Contractor.

P. Contractor's Cooperation and Supervision of Work.

- (i) Contractor shall be supplied with two (2) paper and one (1) electronic copy of the Contract, including plans and specifications, and shall keep one (1) paper copy set available at the Site at all times.
- (ii) Contractor shall provide sufficient labor to perform the Work. If Contractor fails to provide sufficient labor force, Owner may give Contractor written notice, instructing Contractor to correct the problem within a time period specified in the notice. If the problem has not been corrected within the time specified in the notice, Owner may exercise its Remedies under this Contract as outlined in Section 6.
- (iii) Contractor shall be responsible for the acts and omissions of its employees, agents, subcontractors, suppliers, representatives, and any other persons performing any of the Work under a contract with Contractor. Contractor shall not employ or permit subcontractors to employ on the Project any unfit person or anyone unskilled in the work assigned. Contractor shall take appropriate action to remove any employee, subcontractor, supplier, agent, or representative found to be unfit or unskilled in the work assigned to that person from performing duties. Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors' employees and shall ensure such employees exhibit appropriate

professional behavior. As part of that responsibility, Contractor shall enforce Owner's alcohol-free, drug-free, tobacco-free, harassment-free, and weapon-free policies and zones, and ensure compliance with those policies and zones by Contractor's employees, agents, subcontractors, suppliers, representatives, and all other persons carrying out this Contract. Owner may direct Contractor to promptly remove any person who does not comply with this provision from the Site for the duration of the Contract.

- Q. Site Security Identification.** If requested by the Owner, Contractor shall require all construction workers, whether Contractor's own employees or Contractor's subcontractors, to wear identification tags on the front of their persons during all times while on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

8. Responsibilities of Owner.

- A. Payment.** Owner shall pay Contractor in accordance with Section 5, above.
- B. Communications with Contractor.** Except as otherwise provided herein, Owner shall issue all communications to Contractor through Professional Service Provider and Owner's Designee. Owner shall not give instructions or orders directly to Contractor's employees or to Contractor's subcontractors or material suppliers unless such persons are designated as authorized representatives of Contractor.
- (i) Owner shall promptly make available to Contractor information that affects this Contract and that becomes available to Owner after execution of this Contract.
 - (ii) If Owner becomes aware of any code or safety issues at the Site, Owner shall give written notice to Contractor in sufficient detail and with sufficient time to permit Contractor to take appropriate action to correct the identified issue.
- C. Information Required of Owner.** If available, upon Contractor's request, Owner shall provide the legal description and allow access to all surveys in Owner's possession describing the physical characteristics, easements, and utility locations for the Site. Information or services under Owner's control shall be furnished by Owner with reasonable promptness to avoid delay in the orderly progress of the Work.
- D. Replacement of Professional Service Provider.** In case of termination of Professional Service Provider's agreement with Owner, Owner shall appoint a Professional Service Provider to whom Contractor makes no reasonable objection and who shall assume the status of the former Professional Service Provider under the Contract.

- E. **Schedule Coordination for Work Performed by Owner.** Owner shall work with Contractor in scheduling and performing the Work of the Project being performed by Owner or others, to avoid conflicts or interference in Contractor's Work.
- F. **Modifications.** Owner shall have the discretion, through Professional Service Provider or Owner's Designee, to initiate Modifications. Verbal directives shall not be construed as modifications and all modifications shall be memorialized in writing and signed by Owner prior to the performance of the Work. Modifications include:
 - (i) Major or Significant Changes. Such changes shall be made by written Change Order to this Contract in accordance with Subparagraph 9I and shall be binding on Contractor. Contractor shall carry out such Change Orders promptly.
 - (ii) Minor Changes. Owner and Professional Service Provider shall have authority to order minor changes in the Work that do not involve an adjustment in the Contract Sum or an extension of the Contract Time and that are otherwise consistent with the intent of the Contract. Such changes shall be made at the request of the Contractor and upon written approval of the Owner, which shall be binding on Contractor. Contractor shall carry out such changes promptly.

9. **Special Provisions.**

- A. **Assumption of Risk.** The Contractor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to the Contractor's failure to comply with state or federal requirements and shall be financially responsible for such lost funding. The Owner shall notify the Contractor of any state or federal requirements that may impact the funding of the Project and any determination of noncompliance. Contractor shall also, and does, hereby assume the responsibility for damage to its Work and materials resulting from all risks of physical loss or damage, prior to the completion and acceptance of its Work. Contractor shall, at its own cost and expense, repair or replace any part of the Work or materials damaged or destroyed and obtain insurance to pay for the cost of making any such replacement or repair. Nothing in this provision shall be construed to relieve Contractor of full responsibility for the risk of injury, loss, or damage to materials not yet incorporated in the Work, and to materials, tools, and equipment used to perform the Work.
- B. **Contracts Are Complementary.** What is required by one part of the Contract shall be binding as if required by all. Anything mentioned in the specifications and not shown on the plans, or shown on the plans and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.
- C. **Equipment.** Owner's equipment shall be available to Contractor only at Owner's discretion and on mutually satisfactory terms.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

D. Substantial Completion. Substantial Completion, as defined in Wyo. Stat. § 1-3-110, is the stage in the progress of the Work when the Project or a designated portion thereof is sufficiently complete in accordance with the Contract so that Owner can occupy or utilize the Project for its intended use. For the purposes of this Contract, full or partial occupancy or use of the facility by Owner shall not, in and of itself, constitute or be sufficient for determining Substantial Completion.

(i) All of the following, if applicable, are prerequisites required for Substantial Completion:

(a) Inspection, approval, occupancy, and other permits have been issued by regulatory agencies having jurisdiction and without conditions. Conditional permits do not satisfy Substantial Completion requirements;

(b) All building systems are in place, complete, functional, have been fully started and tested, and finally accepted by the Professional Service Provider. The HVAC system shall be tested and balanced with a preliminary balance report submitted to, and accepted by the Professional Service Provider or Owner, or all of them;

(c) Odor and fume generating activities are complete;

(d) Contractor has submitted draft submittal of Operation and Maintenance (O&M) manuals, the Professional Service Provider has accepted the draft, and Contractor has completed O&M training necessary for the Owner's personnel to maintain operation and occupancy of the facility. Contractor remains liable and responsible for any damage to systems or equipment until Owner receives this information and training; and

(e) The Owner is able to fully occupy and utilize all portions of the Work for its intended use.

(ii) When the Contractor considers that the Work, or a portion thereof that Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to the Professional Service Provider and Owner a comprehensive list of items to be completed or corrected prior to Final Payment (Punch List).

(a) Upon receipt of the Contractor's Punch List, the Professional Service Provider and Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Punch List, which is not substantially complete in accordance with the Contract so that Owner can occupy or utilize the Work or designated portion thereof for its intended use,

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Professional Service Provider or Owner. In such case, the Contractor shall then submit a request for another inspection by the Professional Service Provider and Owner to determine Substantial Completion.

- (b) Contractor shall not receive a Certificate of Substantial Completion unless remaining Punch List items do not represent a hazard or create an adverse impact to the Owner and occupants before the Contractor, its subcontractors, or both complete those items.
 - (c) Failure to include an item on the Punch List does not relieve Contractor of its responsibility to complete all work in accordance with the Contract.
- (iii) When the Work or designated portion thereof is substantially complete, Owner shall direct the Professional Service Provider to prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and fix the time within which the Contractor shall finish all items on the Punch List accompanying the Certificate. Warranties required by the Contract shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- (a) Following receipt of the Certificate of Substantial Completion by both Owner and Contractor, both parties shall provide written acceptance of their respective responsibilities. Contractor shall notify the Surety. Upon further acceptance and consent of Surety, Owner shall make payment of retainage applying to such work or designated portion thereof. Such payment shall be adjusted for work that is incomplete or not in accordance with the requirements of the Contract.

E. Occupancy Before Substantial Completion. Owner reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Site at any time before Substantial Completion, upon ten (10) days written notice to Contractor. Occupancy shall be subject to the following conditions:

- (i) Owner shall use its best efforts to prevent its occupancy from interfering with the performance of Contractor's remaining Work.
- (ii) Contractor shall not be required to repair damage if the damage is caused by Owner's occupancy or use, unless such damage was caused by a

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

TEMPLATE DATE: 7/1/24

condition which Contractor was or should have been aware of and that Contractor failed to disclose.

- (iii) The warranty period for those portions of the Site occupied and equipment utilized by Owner shall start as of the date of actual occupancy or use by Owner.
- (iv) Occupancy or use shall not constitute acceptance by Owner as to either the completed Work or any portion thereof, nor shall it relieve Contractor from full responsibility for correcting defective Work or materials found before final completion and acceptance of all the Work or during the warranty period(s) specified in Subsection 9.V.

F. Occupancy as of Substantial Completion. Owner may, at its sole discretion, occupy the Site as of the date of Substantial Completion. Occupancy shall be subject to the following conditions:

- (i) Occupancy or use shall not constitute acceptance by Owner either of the completed Work or any portion thereof, nor shall it relieve Contractor from full responsibility for correcting defective Work or materials found before final completion and acceptance of all the Work or during the warranty period specified in Subsection 9.V.
- (ii) Contractor shall not be required to repair damage if the damage was caused by Owner's occupancy or use, unless such damage was caused by a condition which Contractor was or should have been aware of and that Contractor failed to disclose.
- (iii) The period of any special warranties required by the Contract for equipment shall start as of the date of occupancy or use by Owner.

G. Correction of Work Before Final Payment.

- (i) All Work which does not conform to the requirements of the Contract, or which was unauthorized, shall be considered unacceptable, and Owner may order such Work to be removed and replaced in an acceptable manner, at Contractor's expense, as determined by Professional Service Provider or Owner. Upon receipt of written notice of such a determination, Contractor shall promptly, and in no case longer than thirty (30) days after receipt, correct all Work that is rejected by Professional Service Provider or Owner or fails to conform to the Contract requirements, whether such defect is observed before or after Substantial Completion, and whether or not the Work is fabricated, installed, or completed. Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for additional services and expenses by Professional Service Provider and Owner.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

- (ii) If Contractor fails to comply with an order to correct defective Work, Owner may issue a Stop Work Order, have unauthorized or unacceptable Work removed, at Contractor's expense, and deduct from any monies due or that become due to Contractor all costs of removal and correction. Contractor shall bear the cost of correcting destroyed or damaged Work of Owner or Owner's separate contractors caused by Contractor's correction or remediation under this provision.
- (iii) If Owner prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate. Such reduction shall be made whether or not Final Payment has been made, and Owner may condition its acceptance of nonconforming Work upon Contractor's agreement to a longer warranty period for the nonconforming Work.

H. Correction of Work After Final Payment.

- (i) Contractor shall, within a reasonable time, but in no case longer than thirty (30) days after receipt of written notice thereof, repair any defects in materials or workmanship, and replace any defective material, or correct any Work not done in accordance with the Contract, which may be discovered within the warranty period, and repair any damage resulting from the repair or replacement of such defects. Such repair and remediation shall be done at Contractor's expense and without cost to Owner. In the event Contractor fails to remedy any such defect within a reasonable time, which in no case shall be longer than thirty (30) days after receipt of such written notice, Owner may remedy such defect itself or proceed to have such defect remedied at Contractor's expense. Contractor shall pay all costs and charges accruing for such Work and any other damages sustained by Owner. Contractor shall bear the costs of correcting destroyed or damaged Work that its correction or removal of Work under this provision causes to the Work of Owner or Owner's separate contractors.
- (ii) Nothing contained in this provision or in any specific warranty required by the specifications, shall operate to relieve Contractor from responsibility, after expiration of the guarantee or warranty period(s), for damages resulting from latent defects, departures from the requirements of the Contract, fraud, or negligence.
- (iii) Nothing in this provision shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract or at law.

I. Change Orders.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

TEMPLATE DATE: 7/1/24

- (i) A Change Order is a written amendment to this Contract directing a change in the Work to be performed under the Contract, adjusting the Contract Sum, and/or adjusting the Contract Time, signed by Owner and Professional Service Provider, and provided to Contractor.
- (ii) Owner reserves the right to order, in writing, changes in the Contract, alterations or additions to the Work, or omission of portions of the Work at any time prior to acceptance of the project, without voiding the Contract.
- (iii) Contractor may submit a Change Order Request; Owner, however, reserves the right to reject any proposed Change Order Request. All Change Order Requests shall be in writing, signed, and provided to Owner and Professional Service Provider. Change Order Requests shall include the reasons for the Request, and clearly state the proposed change in the Work, the sum or length of time requested, or all of the above. A Change Order Request must be made within twenty (20) days after the reason for the Request is discovered. Failure to file a request for a Change Order Request within twenty (20) days constitutes a waiver of any future claim for which a Request could have been made.
- (iv) Upon receipt of a written Change Order Request from Contractor, Owner and Professional Service Provider, shall determine, within ten (10) days after receipt of the Request, whether a Change Order shall be issued. If a Change Order is issued, it shall be in writing, signed, and provided to Contractor no later than ten (10) days after receipt of the request. If a Change Order is not issued, Owner shall, no later than ten (10) days after receipt of its Request, notify Contractor of the denial and the reason(s) why it has denied Contractor's Request.
- (v) Changed work shall be performed in accordance with the original Contract requirements, to the extent those requirements do not conflict with the Change Order.
- (vi) Any change or deviation from the Contract without written authorization will be at Contractor's own risk for which no payment, on a quantum meruit basis or otherwise, shall be made. Contractor expressly waives all equitable claims it might bring and any right to equitable remedies it might seek related to disputes related to Work performed under this Contract.
- (vii) Within forty-eight (48) hours after receipt of a denial of a Change Order Request or receipt of a Change Order from Owner, Contractor may object to the denial of a Change Order or state any objection it has to a Change Order. Disposition of all objections shall be in accordance with Subsection 9.K.
- (viii) Maximum Markup Percentage Allowable on Self-Performed Work. With respect to pricing Change Orders, the maximum Markup Percentage Fee to

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

be paid to any Contractor on self-performed work shall be a single markup percentage not to exceed fifteen percent (15%) of the net direct cost of:

- (a) Direct labor and allowable labor burden costs applicable to the Change Order or extra work;
 - (b) The net cost of material and installed equipment incorporated into the Change Order or extra work; and
 - (c) The net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.
- (ix) Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors. With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to Contractor supervising the lower tier Contractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors. The combined total of maximum Markup Percentage Fee by Contractor and lower tier contractors shall not exceed fifteen percent (15%).
- (x) No Markup on Bonds and Liability Insurance Costs. Change Order cost adjustments due to increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.
- (xi) Direct and Indirect Costs Covered by Markup Percentages. The agreed upon Markup Percentage Fee shall cover Contractor's profit and all indirect costs associated with the change order work. Items to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; Shop Drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools shall also be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase price of less than seven hundred fifty dollars (\$750.00).
- (xii) Deductive Change Orders and Net Deductive Changes. The application of the markup percentages referenced in the Paragraphs 9.I(viii) and 9.I(ix) above will apply to both additive and deductive change orders. In the case of a deductive change order, the credit shall be computed by applying the sliding scale percentages as outlined in Paragraphs 9.I(viii) and 9.I(ix) so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

TEMPLATE DATE: 7/1/24

additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.

- (xiii) Field Orders. Owner may authorize a written or unwritten field order for changes or alterations in the Work that do not involve changes in the unit rates or the Contract Sum and are not inconsistent with the overall intent of the Contract. Alterations which change the character of the Work or materially change the unit costs of the Work shall require a written Change Order signed by Owner and Professional Service Provider.

J. Delays and Extensions of Time/Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, and freight embargoes. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

- (i) Contractor shall consider and include within the Contract Sum the climatic conditions of the location of the Project that may delay the Work. Contractor shall not be granted an extension of Contract Time or amendment of the Contract or Contract Sum for the additional cost of the Project due to a delay in the Work resulting in whole or in part from adverse weather conditions.
- (ii) Where Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of Contractor for reasons other than adverse weather conditions, Contractor may be granted an extension of Contract Time and/or amendment of the Contract Sum for additional cost of the Project as provided in this Contract.
- (iii) Any Change Order Request for extension of time arising out of an event covered under Paragraph 9.J(ii) shall be made in writing to Owner and Professional Service Provider within five (05) days after commencement of the delay; otherwise any claim shall be waived. Such a Change Order Request shall detail the additional time needed resulting from the delay. Owner and Professional Service Provider shall approve only that time reasonably attributed to events covered under Paragraph 9.J(ii). The value of this time shall be calculated by taking the value of general conditions divided by the number of work days.
- (iv) Contractor understands and agrees that no verbal approval of time extension by Owner, Owner's Designee, or other agents of Owner (including the Professional Service Provider), either express or implied, shall be binding upon Owner unless and until such approval is expressly ratified in writing by Owner.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

K. Dispute Procedure. In seeking to resolve any dispute relating to this Contract, Owner expressly reserves its immunity as set forth in Subsection 10.V.

(i) Disputes Prior to Final Completion.

- (a) In the event of a dispute arising between Contractor and Owner, Owner shall interpret the requirements of the Contract and the performance hereunder. If a dispute exists, Contractor shall notify Owner in writing within seven (7) days, providing the details of the dispute. Owner shall, within ten (10) days, interpret the Contract, and notify Contractor in writing whether or not it is entitled to the requested or other remedy regarding the dispute.
- (b) If Contractor is dissatisfied with the determination of Owner, it may, within five (5) days of receiving notice of the determination, request a partnering session. The parties shall have twenty (20) days from the date of the request for the partnering session to discuss and attempt to resolve the dispute. Upon resolution of the issue, a resolution agreement shall be developed by Owner, distributed to both parties, and incorporated into this Contract as an amendment, keeping all of the other original terms and conditions of the Contract intact.
- (c) If the dispute is not resolved within the twenty (20) day time period provided for a partnering session, Contractor may, within seven (7) days, request non-binding mediation, make a modified or amended request for a further partnering session based on the outcome of the first, or notify Owner in writing of any changes to the details of the dispute with Owner. If Contractor opts to renew the partnering session or to changes the details of the dispute, the process shall begin again in accordance with the preceding paragraphs. Non-binding mediation shall occur only upon mutual agreement of the parties, and shall be procedurally accomplished in accordance with the Wyoming Supreme Court's Rules for Civil Procedure, Rule 40. Owner and Contractor shall jointly select a mediator. The parties to the dispute shall bear their respective costs for the mediation. The mediator may give an oral or, if requested, written, non-binding determination of the dispute.
- (d) At the conclusion of the non-binding mediation, the parties may enter into a settlement to be incorporated into the Contract based on the mediator's determination. If either party disagrees with the proposed determination of the mediator and no settlement is pending, Owner's last determination on the issue shall be binding.
- (e) At any time during the dispute resolution, either party may implement the applicable Stop Work Provision, Owner's Right to

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

Perform provision, or other provisions of this Contract to the extent those provisions would normally apply to the subject matter disputed.

(ii) Disputes Following Final Completion. The parties may by mutual agreement attempt to settle disputes through non-binding mediation. Any non-binding mediation conducted pursuant to this Paragraph shall be held in Wyoming in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. A request for non-binding mediation by one party shall be submitted in writing to the other party to this Contract. Any demand for non-binding mediation shall be made after the dispute has arisen. In no event shall the demand for non-binding mediation be made after the date when institution of legal or equitable proceedings based upon such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

L. **Emergencies.** In the event of an emergency affecting the safety of persons or property, Contractor shall take all necessary and proper steps to prevent damage or injury to persons and property. Contractor shall make every reasonable effort to immediately communicate with Owner concerning the emergency. The inability of Contractor to establish communication with Owner shall not relieve Contractor of the responsibility to mitigate injury or damage to persons or property.

M. **Kickbacks.** Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Contractor breaches or violates this warranty, Owner may, at its discretion, terminate this Contract without liability to Owner, or deduct from the Contract Sum or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

N. **Limitations on Lobbying Activities.** By signing this Contract, Contractor certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Contractor or its subcontractors in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.

O. **Liquidated Damages.** If Contractor fails to complete the Work within the time specified in the Contract or within any authorized extension of time under a Change Order, Contractor shall pay to Owner liquidated damages for each calendar day of delay until the Work is completed or accepted. The parties agree that the liquidated damages described below are a fair, reasonable, and appropriate estimate of Owner's foreseeable damages and are not intended as a penalty.

(i) Liquidated damages shall amount to totals based on the following schedule:

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

Contract Range	Daily Liquidated Damages Charge
\$0.00 - \$500,000	\$ 250.00
\$500,001 - \$1,000,000	\$ 500.00
\$1,000,001 - \$2,000,000	\$ 750.00
\$2,000,001 - \$3,000,000	\$ 1,000.00
\$3,000,001 - \$5,000,000	\$ 1,250.00
\$5,000,001 - \$7,500,000	\$ 1,500.00
\$7,500,001 - \$10,000,000	\$ 1,750.00
\$10,000,001 - \$15,000,000	\$ 2,000.00
\$15,000,001 - \$20,000,000	\$ 2,250.00
\$20,000,001 and Greater	\$ 2,500.00

- (ii) Liquidated damages shall be computed beginning the day following the first calendar day specified for Substantial Completion and shall accrue each calendar day until Substantial Completion is achieved. Upon Substantial Completion, Contractor shall have thirty (30) days to achieve Final Completion. If Final Completion is not achieved within that time period, liquidated damages shall begin to accrue again on the thirty-first (31st) day from Substantial Completion.
- (iii) Liquidated damages shall not be charged for any work required to be done by Contractor as a result of a final inspection, providing the work is only cleanup or of a minor nature and Contractor has shown constant effort in completing the Work, as determined by Owner and Professional Service Provider. If deferment of the inspection is necessary due to causes which Owner, in its sole discretion, determines to be beyond the control of and without the fault or negligence of Contractor, liquidated damages shall not be assessed for that period of time.
- (iv) Liquidated damages shall be collected by executing a Deductive Change Order reducing the Final Payment by the amount due in damages. In the event the Final Payment is not sufficient to cover the accrued liquidated damages, Contractor shall remain liable for the remainder of the accrued liquidated damages.

**CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
 AND VAN EWING CONSTRUCTION, INC.
 PROJECT #1176 & 3228**

TEMPLATE DATE: 7/1/24

- P. Monitoring Activities.** Owner shall have the right to monitor all activities related to this Contract that are performed by Contractor or its subcontractors. This shall include, but not be limited to, the right to make Site inspections at any time and with reasonable notice; to bring experts and consultants on Site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and to observe personnel in every phase of performance of Contract related work.
- Q. Nondiscrimination.** Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with its performance under this Contract. Federal Law requires Contractor to include all relevant special provisions of this Contract in every subcontract awarded in excess of ten thousand dollars (\$10,000.00) so that such provisions are binding on each subcontractor.
- R. Nonresident Contractors.** Wyo. Stat. § 17-16-1501 provides that nonresident corporations must be registered with the Wyoming Secretary of State's Office to conduct business in Wyoming. Wyo. Stat. § 27-1-106(a) provides that firms, corporations or employers of any kind who are nonresident employers may be required to provide bonds to the Wyoming Department of Workforce Services. Contractor agrees to abide by these provisions, as applicable, and to contact the Wyoming Department of Workforce Services to obtain proof that it is in good standing with both its Unemployment Tax Division and Worker's Safety and Compensation Division and to provide such proof to Owner upon request.
- S. Payroll Records.** Contractor, and all subcontractors, shall follow Wyo. Stat. § 27-4-410 and keep, or cause to be kept, an accurate payroll record showing the name, address, Social Security number and classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee employed in connection with the Work. The payroll record shall be certified and shall be available for inspection by the Wyoming Department of Workforce Services or Owner at all reasonable hours at the principal office of Contractor. Copies of payroll records shall be furnished to the Wyoming Department of Workforce Services or Owner, upon request. Owner shall reimburse Contractor for the cost of reproduction.
- T. Required Resident Labor.** Contractor shall comply with the residency requirements contained in the Professional Architectural, Engineering and Land Surveying Services Procurement Act (Wyo. Stat. § 9-23-101, *et seq.*). Contractor shall comply with all other resident and other preference requirements, including but not limited to those applicable to labor, materials, and subcontractors.
- U. Shop Drawings, Product Data and Samples.**

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

TEMPLATE DATE: 7/1/24

- (i) Product Data consists of illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
- (ii) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- (iii) Shop Drawings are drawings created by Contractor, or a subcontractor, supplier, manufacturer, or other entity that illustrate construction, materials, dimensions, installation, and other pertinent information for the incorporation of an element or item into the Work.
- (iv) Shop Drawings, Product Data, Samples and similar submittals are not part of this Contract unless specifically incorporated in Subsection 10.K. The purpose of those types of submittals is to demonstrate compliance with Contract. Professional Service Provider shall respond to these submittals as required by the Contract. Submittals which are not required by the Contract may be returned by Professional Service Provider without action.

V. **Warranties.** Contractor warrants to Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise specified, required, or permitted by the Contract, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract.

- (i) Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and unacceptable. Contractor shall replace all such defective and unacceptable materials and equipment at Contractor's expense.
- (ii) If required by Professional Service Provider or Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- (iii) The warranty period relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract may be enforced. The warranty period is not limited to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations, other than specifically to correct the Work. The warranty period is twelve (12) months beginning upon Substantial Completion and survives termination of the Contract under Subsection 10.X. In the event a defect is discovered and remedied under this Subparagraph, the warranty period shall run for twelve (12) months from the date the defect was remedied to the satisfaction of Owner.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

TEMPLATE DATE: 7/1/24

- (iv) Contractor's warranty excludes defects or damage caused by abuse, modification, or improper maintenance or operation by persons other than Contractor, subcontractors, suppliers, or any other individual or entity for whom Contractor is responsible; or normal wear and tear under normal usage.

W. Work Acceptance. Contractor's obligation to perform and complete the Work in accordance with the Contract shall be absolute. None of the following shall constitute an acceptance of Work that is not in accordance with the Contract or a release of Contractor's obligation to perform the Work in accordance with the Contract:

- (i) Observations by Professional Service Provider;
- (ii) Recommendation by Professional Service Provider or payment by Owner of any Progress or Final Payment;
- (iii) Any review and approval of a Shop Drawing or Submittal or the issuance of a notice of acceptability by Professional Service Provider;
- (iv) The issuance of a Certificate of Substantial Completion by Professional Service Provider or any related payment by Owner;
- (v) Use or occupancy of the Work or any part thereof by Owner;
- (vi) Any inspection, test, or approval by others; or
- (vii) Any correction of defective Work by Owner.

X. Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (a) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or (b) unknown physical conditions or an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Professional Service Provider before conditions are disturbed and in no event later than five (5) days after first observance of the conditions. The Professional Service Provider shall promptly investigate such conditions and, if the Professional Service Provider determines that they differ materially, and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment on the Contract Sum or Contract Time, or both. If the Professional Service Provider determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Professional Service Provider shall promptly notify the Owner and Contractor in writing, stating the reasons. If

either Party disputes the Professional Service Provider determination or recommendation, that Party may proceed as provided in Section 9.K.

10. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract, except Construction Change Directives, which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of Owner.
- D. **Audit and Access to Records.** Owner and its representatives shall have access to any books, documents, papers, electronic data, and records of Contractor which are pertinent to this Contract. Contractor shall immediately, upon receiving written instruction from Owner, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of Contractor which are pertinent to this Contract. Contractor shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by Owner.
- E. **Availability of Funds.** Each payment obligation of Owner is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by Owner at the end of the period for which the funds are available. Owner shall notify Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to Owner in the event this provision is exercised, and Owner shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. **Award of Related Contracts.** Owner may award supplemental or successor contracts for work related to this Contract or may award contracts to other

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

contractors for work related to this Contract. Contractor shall cooperate fully with other contractors and Owner in all such cases.

- G. Certificate of Good Standing.** Contractor shall provide to the Agency a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Contractor is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Contractor shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by Contractor in the performance of this Contract shall be kept confidential by Contractor unless written permission is granted by Owner for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Owner within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Owner.
- J. Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by Contractor of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to Owner. Contractor's failure to deliver, either personally or via US Mail, postage prepaid, the originally signed counterpart to Owner within seven (7) days shall be considered a material breach and may result in immediate termination of this Contract by Owner.
- K. Entirety of Contract.** This Contract, consisting of Forty Three (43) pages; Attachment A, Change Order #1, consisting of Twenty Five Page (25) page(s); and Attachment B, Construction Notice to Proceed, consisting of One (1) page(s), Attachment C, Construction Notice of Award, consisting of Nine Pages (9), Construction Documents include Plans and Specifications dated April 17, 2024, signed by Levi Van Buggenum, Arete Design Group project number 2022 -70, and addendums number 1 – 5; which are incorporated into this Contract by this reference (the "Contract"). and any modifications agreed upon between the parties subsequent to the Effective Date of this Contract, represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral.
- (i) With regard to the General Provisions of this Contract, in the event of conflict or inconsistency between the language of Section 10, General

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

TEMPLATE DATE: 7/1/24

Provisions, of this Contract and the language of any attachment or document incorporated by reference, the language of Section 10 shall control.

- (ii) With regard to the project specifications, in the event of conflict or inconsistency, Contractor shall presume, in the following order, that:
 - (a) The language in the most recent modification shall control;
 - (b) The most stringent requirements apply; and
 - (c) Specialized specifications shall take precedence over standard specifications.
- (iii) Should Contractor be unable to determine which conflicting requirements are binding after application of the above principles, Contractor shall seek clarification from Owner as soon as possible.

L. Indemnification. Contractor shall release, indemnify, and hold harmless the State, Owner, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Contractor's negligence or other tortious conduct.

M. Independent Contractor. Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the Owner for any purpose. Consistent with the express terms of this Contract, Contractor shall be free from control or direction over the details of the performance of services under this Contract. Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or Owner or to incur any obligation of any kind on behalf of the State of Wyoming or Owner. Contractor agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to State of Wyoming employees will inure to the benefit of Contractor or Contractor's agents or employees as a result of this Contract. Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

- N. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by electronic mail, regular mail or delivery in person at the addresses provided under this Contract. Any change of address must be provided in writing to both parties.
- O. Notice of Sale or Transfer.** Contractor shall provide Owner with notice of any sale, transfer, merger, or consolidation of the assets of Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If Owner determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of Contractor's obligations under this Contract, then Owner may, at its discretion, terminate or renegotiate the Contract.
- P. Ownership and Return of Documents and Information.** Owner is the official custodian and owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information and documents to Owner in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Owner's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Owner-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Owner confirming the destruction of any such residual Owner-owned data.
- Q. Ownership of Materials.** Except where progress payments have been made for the invoiced value of acceptable materials delivered to the Site but not yet incorporated in the Work immediately upon the performance of any part of the Work, as between Contractor and Owner, title thereto shall vest in Owner; provided, however, the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations hereunder.
- R. Insurance Requirements.**
- (i) During the term of this Contract, Contractor shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
 - (ii) All policies shall be primary over any insurance or self-insurance program carried by Contractor or Owner. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

- (iii) Contractor shall provide Certificates of Insurance to Owner verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
- (iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to Owner. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, Owner may, at Owner’s option, obtain and maintain, at the expense of Contractor, such insurance in the name of Contractor, or subcontractor, as Owner may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to Contractor under this Contract.
- (vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) Owner reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

S. Insurance Coverage. Contractor shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence;
 - (b) \$1,000,000.00 personal injury and advertising injury;
 - (c) \$2,000,000.00 general aggregate; and
 - (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (ii) Workers’ Compensation and Employer’s Liability Insurance. Employees hired in Wyoming to perform work under this Contract shall be covered by workers’ compensation coverage obtained through the Wyoming Department of Workforce Services’ workers’ compensation program, if

statutorily required. Employees brought into Wyoming from Contractor's home state to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program or other state or private workers' compensation insurance approved by the Wyoming Department of Workforce Services, if statutorily required. Contractor shall provide Owner with a Certificate of Good Standing or other proof of workers' compensation coverage for all of its employees who are to perform work under this Contract, if such coverage is required by law. If workers' compensation coverage is obtained by Contractor through the Wyoming Department of Workforce Services' workers' compensation program, Contractor shall also obtain Employer's Liability "Stop Gap" coverage through an endorsement to the CGL policy required by this Contract, with minimum limits as follows:

- (iii) Unemployment Insurance. Contractor shall be duly registered with the Department of Workforce Services and obtain such unemployment insurance coverage as required. Contractor shall supply Owner with a Certificate of Good Standing or other proof of unemployment insurance coverage.
- (iv) Automobile Liability Insurance. Automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of \$1,000,000.00 each accident combined single limit.
- (v) Professional Liability or Errors and Omissions Liability Insurance. Professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from Contractor's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as follows:
 - (a) \$1,000,000.00 each occurrence; and
 - (b) \$1,000,000.00 general aggregate.

The policy shall have an extended reporting period of two (2) years.

T. Prior Approval. This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the State Construction Department, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-3204(b)(iv).

U. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

- V. **Governmental Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the Owner expressly reserves governmental immunity by entering into this Contract and specifically retains all immunities and defenses available to it. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of immunity.
- W. **Taxes.** Contractor shall pay all taxes and other such amounts required by federal, state and local law, including, but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.
- X. **Termination of Contract.** In addition to any other provisions contained herein, this Contract may be terminated, without cause, by Owner upon thirty (30) days written notice. Owner may terminate this Contract immediately for cause if Contractor fails to perform in accordance with the terms and conditions of this Contract. Should Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as Contractor performs its duties and responsibilities. If at any time during the performance of this Contract, in the opinion of Owner, the Work is not progressing satisfactorily or within the terms of the Contract, then at the discretion of Owner and after written notice to Contractor, Owner may terminate this Contract or any part of it. At this termination date, Contractor will be entitled to a pro rata payment for all work accomplished and all construction-ready materials provided and accepted by Owner and all finished documents, data, models and reports prepared under the Contract shall, at the option of Owner, become its property upon payment for services rendered through the termination of the Contract.
- Y. **Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- Z. **Time is of the Essence.** Time is of the essence with regard to all deadlines of this Contract.
- AA. **Titles Not Controlling.** Titles of sections and subsections are for reference only, and shall not be used to construe the language in this Contract.
- BB. **Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228

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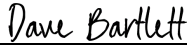
**CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
AND VAN EWING CONSTRUCTION, INC.
PROJECT #1176 & 3228**

TEMPLATE DATE: 7/1/24

- 11. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

CAMPBELL COUNTY SCHOOL DISTRICT #1


DocuSigned by:


 Dave Bartlett, Associate Superintendent of Instructional Support

8/19/2024

 Date

CONTRACTOR

DocuSigned by:


 Jake Ewing, President, Van Ewing Construction, Inc.

8/13/2024

 Date

**CONTRACT BETWEEN CAMPBELL COUNTY SCHOOL DISTRICT #1
 AND VAN EWING CONSTRUCTION, INC.
 PROJECT #1176 & 3228**

ATTACHMENT A

CONSTRUCTION CHANGE ORDER

Change Order No.: **One**
 Contractor: **Van Ewing Construction, Inc.**
 Project Name: **Little Powder Elementary School**
 SFD Project No.: **1176 & 3228**

Scope reduction and budget alignment, commission approved **July 2, 2024** is hereby designated for approval of the following work. See attached documents.

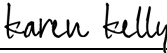
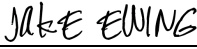
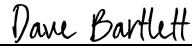
This change order was originated by the following: Check the applicable box:

- Contractor Architect
 District State

I/We do hereby recommend acceptance of the change to the Contractor's Agreement dated **August 7, 2024** which is by this reference, made a part hereof, with an increase , a decrease , no change , of **\$700,038.00**. Contract completion date is extended **0** days, Substantial Completion Date is **November 3, 2025 for the new school and May 26, 2026 for the existing building demolition and site reclamation.**

Original Contract Value:	\$10,166,684.00
Previous increases by Change Order	\$0
Previous decreases by Change Order	\$0
Value after Prior Change Order	\$10,16,684.00
This Change Order: <input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease <input type="checkbox"/> No Change	\$700,038.00
Current Contract Value:	\$9,466,646.00

Persons signing for Architect/Engineer/Contractor hereby swear and affirm that they are authorized to act on Architect/Engineer/Contractor's behalf and acknowledge that the Owner is relying on their representations to that effect. **Principal is not a recognized title and will not be accepted.** By signing this Change Order, the parties certify that they have read and understood it, that they agree to be bound by the terms of the Contract, that they have the authority to sign it. The effective date of this Change Order is the date of the signature last affixed to this page.

Architect	<u>Karen Kelly, Architect</u> Name & Title (Print)	<small>DocuSigned by:</small>  <small>173537E4A244457...</small> <small>Signature</small> <small>DocuSigned by:</small>	8/14/2024 <small>Date</small>
Contractor	<u>Jake Ewing, President</u> Name & Title (Print)	 <small>D26BF2E60949402...</small> <small>Signature</small> <small>DocuSigned by:</small>	8/13/2024 <small>Date</small>
School District	<u>Dave Bartlett, Assoc. Superintendent</u> Name & Title (Print)	 <small>91E3F817CBBE482...</small> <small>Signature</small>	8/12/2024 <small>Date</small>

Van Ewing Construction, Inc.

Attachment A

PO Box 99
Gillette, WY 82717-0099
Ph : 307-682-8085

Change Request

To: Arete Design Group
228 East Brundage
Sutie 100
Sheridan, WY 82801
Ph: 307-672-8270

Number: 1
Date: 7/25/24
Job: 24-017-00 Little Powder School
Phone:

Description: Proposal Request #1 - Value Engineering

We are pleased to offer the following specifications and pricing to make the following changes:

Value Engineering reduction items - See attached PR #1

The total amount to provide this work is \$-700,038.00
(Please refer to attached sheet for details.)

If you have any questions, please contact me at .

Submitted by: Van Ewing Construction, Inc.

Approved by: _____
Date: _____

Van Ewing Construction, Inc.

PO Box 99
 Gillette, WY 82717-0099
 Ph : 307-682-8085

Change Request 1 Price Breakdown
 Continuation Sheet

Description: Proposal Request #1 - Value Engineering

Description	Labor	Material	Equipment	Subcontract	Other	Price
Masonry				\$-118,425.00		\$-118,425.00
Basic Electrical Mat. & Method				\$-233,287.00		\$-233,287.00
HVAC				\$-15,200.00		\$-15,200.00
Landscaping				\$-90,000.00		\$-90,000.00
Metal Window				\$-20,000.00		\$-20,000.00
Window Treatment				\$-7,500.00		\$-7,500.00
Architectural Woodwork				\$-20,000.00		\$-20,000.00
Painting				\$-4,750.00		\$-4,750.00
Playground				\$-150,000.00		\$-150,000.00
Stem Wall & Door				\$-15,450.00		\$-15,450.00
Eliminate Kiln, Projection Screen, Washer & Dryer, Scoreboard				\$-25,426.00		\$-25,426.00

Subtotal: \$-700,038.00

Total: \$-700,038.00