

CONTRACT

FOR CONSTRUCTION MATERIALS TESTING & INSPECTION SERVICES

Contract Documents
Materials Testing and Inspection Services

Table of Contents

Materials Testing and Inspection Services

[Agreement](#)

[Exhibit A – Efforts Schedule Unit & Hourly Rate Proposal Sheet](#)

[Exhibit B – Schedule of Values](#)

[Insurance Verification](#)

Agreement

Materials Testing and Inspection Services

AGREEMENT
BETWEEN
Campbell County School District No. 1
AND
Nelson Engineering
WITH
THE WYOMING STATE CONSTRUCTION DEPARTMENT,
SCHOOL FACILITIES DIVISION,
AS A THIRD PARTY BENEFICIARY OF THE AGREEMENT
FOR
THE TESTING AND INSPECTION SERVICES
FOR
Little Powder K-8 (New)

Agreement Table of Contents

Paragraph	Description	Page
ARTICLE 1	GENERAL TERMS	1
1.1	Interested Parties	1
1.1.1	“Owner”	1
1.1.2	“Construction Materials Testing And Inspection Services Provider”	1
1.1.3	“Architect”	1
1.2	Project	1
1.3	Term Of Agreement	1
1.4	Scope Of The Services	1
1.5	Contract Documents	1
1.6	Property Information	2
1.6.1	Legal Description	2
1.6.2	Address And/Or Common Description	2
1.6.3	Property Lines And Access	2
1.7	Time	2
1.8	Compensation	3
1.8.1	Per Unit Test Cost	3
1.8.2	Hourly Fees For Observation And Inspection Of The Work	3
1.8.3	Billing Protocol	3
1.9	Non-Payment For Reimbursable Expenses	3
1.10	Change Orders	3
1.11	Billing And Payment	4
1.12	Insurance And Dispute Resolution	4
1.12.1	Required Coverages	4
1.12.1.1	Certificates Of Insurance	4
1.12.1.2.	Owners Right To Reject	4
1.12.1.3	Sub-Consultants	4
1.12.1.4	Waiver Of Subrogation	5
1.12.2	Limitation Of Liability	5
1.12.3	Indemnity/Statute Of Limitations	5
1.12.4	Warranty	5
1.12.5	Consequential Damages	5
1.12.6	Dispute Resolution	5
1.13	Delays In The Project Schedule	5
1.14	Suspension Of Services	6
1.15	Termination	6
1.16	Limitation Of Payment	6
1.17	Monitor Activities	6
1.18	No Finder’s Fee	6
ARTICLE 2	PROFESSIONAL TESTING SERVICES	7
2.1	Qualifications	7
2.2	General Services	7
2.3	Information Provided By Owner	7
2.4	Legal Right Of Entry	8

Paragraph	Description	Page
2.5	Buried And Above Ground Structures And Utilities	8
2.6	Disposition Of Samples	8
2.7	Deliverables	8
2.7.1	Time	8
2.7.2	Testing Summary	8
2.8	Scope Of Testing And Observation	8
ARTICLE 3	MISCELLANEOUS PROVISIONS	9
3.1	Warranty Of Examination Of Contract Documents And Duty To Update Provided Information	9
3.2	Extent Of Contract	9
3.3	Ownership Of Instruments Of Service And Use Of Construction Documents	9
3.3.1	Instruments Of Service	9
3.3.2	Construction Documents	9
3.4	Governing Law	9
3.4.1	Required Resident Labor	10
3.4.2	Ethics	10
3.4.3	Licensure	10
3.4.4	Taxes	10
3.5	Compliance With Codes And Standards	10
3.6	Permits And Approvals	10
3.7	Public Responsibility	10
3.8	Force Majeure	10
3.9	Independent Contractor	11
3.10	Hazardous Materials Or Toxic Substances	11
3.11	Non-Solicitation Of Agreement	11
3.12	Commencement Of Claims And Causes Of Action	11
3.13	Nondiscrimination	11
3.14	Exclusion Of Persons With Criminal Records	12
3.15	Kickbacks	12
3.16	Conflicts Of Interest	12
3.17	Notices	12
3.18	Severability	12
3.19	No Waiver Or Rights	12
3.20	Warranty	13
3.21	Time Is Of The Essence	13
3.22	Titles Not Controlling	13
3.23	Waiver	13
3.24	Binding Effect	13
3.25	Execution	13
3.26	Entirety Of Contract	13
3.27	Sovereign Immunity	13
ARTICLE 4	CONCLUSION	14

AGREEMENT FOR TESTING AND INSPECTION SERVICES

This Agreement for testing services is made by and between **Campbell County School District No. 1**, hereinafter referred to as “District”, and **Nelson Engineering**, hereinafter referred to as “Construction Materials Testing and Inspection Services Provider.”

The District, Construction Materials Testing and Inspection Services Provider (CMTISP), and the SFD in consideration of the mutual covenants herein set forth, agree as follows:

ARTICLE 1 – GENERAL TERMS

1.1 Interested Parties:

1.1.1 “Owner:” The “Owner” referred to in this Agreement is **Campbell County School District No. 1, 1000 W. Eighth Street, Gillette, WY 82717**, (District), as the primary contracting party, and the Wyoming State Construction Department (SCD), School Facilities Division (SFD), as the third party beneficiary thereof. The SCD is an agency of the State of Wyoming with governance over the design specifications and funding for the capital construction project that is the subject of this Agreement. Significant funding for this Project will be provided by the SCD. Approval of the SCD is required by Wyoming law for significant portions of the responsibilities assigned to the “Owner” by the contract documents. To facilitate the relationship established by law between the District and the SCD, all references to “Owner” in this Agreement shall be read to include the District and the SCD in their respective capacities in the exercise of the powers and responsibilities granted to the District in cooperation with and upon the approval of the SCD. References to the District herein shall include the Board of Trustees and administration of the District and references to the SCD herein shall include the Department as well as all SCD planning, design and construction staff and administration.

1.1.2 “Construction Materials Testing and Inspection Services Provider:” The “Construction Materials Testing and Inspection Services Provider” referred to in this Agreement is **Nelson Engineering, 381 North Main Street, PO Box 1004 Buffalo, WY 82834** (hereinafter referred to a “CMTISP”).

1.1.3 “Architect:” The “Architect” referred to in this Agreement is **Karen Kelly, AIA, Principal and the firm of Arete Design Group, 228 East Brundage, Suite 100, Sheridan, WY 82801**.

1.2 Project: The Project that is the subject of the testing services to be provided by the CMTISP under this Agreement is described as **Materials Testing and Inspection** located at **15887 N. HWY 59, Weston, WY 82731** (hereinafter referred to as the “Project”).

1.3 Term of Agreement: The term of this Agreement will commence on the date when the last required signature is affixed hereto and continuing through the completion of all services to be provided by the CMTISP or termination of the Agreement by one or both of the parties according to the provisions hereof, whichever occurs first in time. The Contract Times will commence to run on the date stated in the Notice to Proceed given by the Owner along with this Agreement.

1.4 Scope of the Services: The CMTISP shall perform building site and/or flat-work, superstructure/underground facility or systems testing services according to local, state, and federal applicable law and regulations in connection with the scope of the Project described in the plans and specifications for the Project that is part of the Construction Documents and the CMTISP Proposal with

the CMTISP Testing Efforts Schedule Unit and Hourly Rate Proposal Sheet - Exhibit "A" for the term of the Project.

1.5 Contract Documents: Owner and the CMTISP agree that the Contract Documents for the Project shall consist of this Agreement and the following documents incorporated into and made a part of this Agreement, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein, to-wit:

1.5.1 CMTISP Proposal with the CMTISP Testing Efforts Schedule Unit and Hourly Rate Proposal Sheet attached hereto as Exhibit "A".

1.5.2 Schedule of Values to be attached hereto as Exhibit "B".

1.5.3 Certificate of Insurance to be attached hereto as Exhibit "C".

1.5.4 Any amendments or modifications of this Agreement made after execution of this Agreement.

1.5.5 The Project Specifications and Addenda, documents, pre-qualification submittals, accounting and construction documents.

1.6 Property Information: The location of the Project and necessary testing services is as follows:

1.6.1 Legal Description: **SENE PT, Lot 15, Block 56, Track 71.**

1.6.2 Address and/or Common Description: **15887 N. HWY 59, Weston, WY 82731.**

1.6.3 Property Lines and Access: Property lines and means of access are shown on the attached drawings set forth in the Contract Documents, plans and specification, including:

1.6.3.1 A site plan showing building locations being considered, property lines, means of access to the site, proposed outline and location of the building(s).

1.6.3.2 A general description of the building type being considered, provided as an attachment hereto.

1.6.3.3 Information regarding existing structures which may be affected by the proposed construction.

1.6.4 Site access is provided by the arrangement checked below:

- The Owner has title to this property and the right of entry for this subsurface investigation.
- The Owner has secured permission from the present owner and tenant for entry to the property for this subsurface investigation, subject to the following conditions:

1.6.4.1 The present owner is: **Campbell County School District #1.**

1.6.4.2 The present tenant is: **Campbell County School District #1.**

1.6.4.3 The CMTISP shall contact the following person(s) in order to schedule site access and make necessary arrangements: (Insert names, addresses and telephone numbers, if any.)

1.7 Time: The specified investigation and testing required of the CMTISP shall be completed and the logs and report(s) delivered to the Owner and the Architect within **ONE (1)** calendar days after written authorization to proceed is received from the Owner, barring circumstances beyond the CMTISP's control which force a delay. In such an instance, the CMTISP will inform the Owner of the cause of the delay.

1.8 Compensation:

1.8.1 Per Unit Test Cost Not to Exceed Amount: The CMTISP's compensation for each unit test required for the Scope of Services under this agreement shall be paid to the CMTISP by the Owner at the per unit test rate for each test identified and specified by the Architect in the CMTISP Testing Efforts Schedule Unit and Hourly Rate Proposal Sheet attached hereto as Exhibit "A" as bid by the CMTISP and accepted by the Owner, provided that the total cost of such test shall not exceed the maximum cost for each unit test set forth in Exhibit "A". The per unit cost set forth in Exhibit "A" include all costs of travel to the Project site, samples, analysis of samples, shipping, report to the Owner and other costs related to the provision of the CMTISP's services per paragraph 1.9 below.

1.8.2 Hourly Fees for Observation and Inspection of the Work: The CMTISP's compensation for observation and inspection of the work required for the Scope of Services under this agreement for each test identified and specified by the Architect in the CMTISP Testing Efforts Schedule Unit and Hourly Rate Proposal Sheet attached hereto as Exhibit "A" shall be paid to the CMTISP by the Owner at the number of hours and hourly rate as bid by the CMTISP and accepted by the Owner in Exhibit "A," provided that the total cost of such observation and inspection services shall not exceed the maximum cost for each specified test set forth in Exhibit "B." The hourly rates set forth in Exhibit "A" include all costs of travel to the Project site, samples, analysis of samples, shipping, report to the Owner and other costs related to the provision of the CMTISP's services per paragraph 1.9 below.

1.8.3 Billing Protocol: The CMTISP shall submit all billing for per unit test costs and hourly fees pursuant to Exhibit "B" that is satisfactory to Owner.

1.9 Non-Payment for Reimbursable Expenses: All costs for CMTISP services shall be included in the per unit test cost and hourly fees. Unit prices and hourly fees submitted shall be inclusive all of subsistence per diem, mileage, clerical time, sample pickup, shipping, processing time, etc. to complete and provide the testing services specified herein.

1.10 Change Orders. Owner may request changes to the Scope of Services by altering or adding to the Services to be performed. If Owner so requests, CMTISP will return to Owner a statement (or supplemental proposal) of the change setting forth an adjustment to the services and unit cost and/or hourly fees for the requested changes. Following Owner's review, Owner shall provide written acceptance. If Owner does not follow these procedures, but instead directs, authorizes, or permits CMTISP to perform changed or additional work, the services are changed accordingly and CMTISP will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to CMTISP at the time of proposal, CMTISP shall so inform the Owner in writing prior to going forward with the provision of services, and upon written authorization from the Owner shall be entitled to a change order equitably adjusting its Services and fee to address such conditions.

1.11 Billing and Payment: The CMTISP shall provide the Owner with a detailed invoice showing tests completed and/or hours incurred, and a monthly budget status report showing all invoices to date indicating the percentage of testing services completed through the most recent invoice submitted. Payments shall be made pursuant to Wyo. Stat. § 16-6-602. The Owner shall pay the CMTISP for services performed in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth herein. An invoice will be submitted by the CMTISP on a monthly basis for the phase of services performed, and shall be due and payable within forty-five (45) calendar days of invoice date. If the Owner objects to all or any portion of an invoice, the Owner shall so notify the CMTISP within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due

that portion of the invoice, if any, not in dispute. Final payment shall not be made by Owner until all deliverables and services are received by the Owner and the Summarization Report of all testing completed for the project certifying that applicable standards have been met has been received by the Owner.

1.12 Insurance and Dispute Resolution: The CMTISP shall provide a list of all insurance coverages in effect on the date of this proposal. For each coverage, this list shall identify the type of coverage, the name of the insurer, the limit of liability and the date of expiration of the applicable policy(ies). The minimum coverages shall be those set forth herein or required by law, whichever is greater. The CMTISP agrees to maintain each insurance coverage specified on the list in effect with identical or greater limits of liability until Substantial Completion of the Project, plus any additional time period specified herein.

1.12.1 Required Coverages: The CMTISP shall secure and maintain such insurance as will protect Owner, including (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over CMTISP's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occurrence / \$2,000,000 aggregate); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance (\$1,000,000 claim/aggregate).

1.12.1.1 Certificates of Insurance: Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to the commencement of services and after each renewal date of the policies listed on the certificates. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least thirty (30) days prior written notice is given to the Owner.

1.12.1.2 Owner's Right to Reject: Owner reserves the right to reject a certificate of insurance if CMTISP's insurance company is widely regarded in the insurance industry as financially unstable. Such determination of instability would include, but not be limited to, insurance companies with less than AVIII rating in the A.M. Best insurance rating guide.

1.12.1.3 Sub-consultants: The insurance requirements set forth herein apply to all subconsultants. It is CMTISP's responsibility to ensure that its subconsultants meet these insurance requirements. Owner has the right to review the certificates of any and all subconsultants used by the CMTISP.

1.12.1.4 Waiver of Subrogation: Owner and CMTISP shall waive subrogation against the other party on all general liability and property coverage.

1.12.2 Limitation of Liability: THE TOTAL AGGREGATE LIABILITY OF CMTISP (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE HIGHER OF \$100,000 OR THE SUM OF THE CMTISP CONTRACT AMOUNT FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CMTISP'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CMTISP'S COMMERCIAL GENERAL LIABILITY POLICY.

1.12.3 Indemnity/Statute of Limitations: CMTISP shall indemnify and hold harmless the Owner, and its board of education, administration, staff, employees and agents, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by the CMTISP's, or its employees', negligent acts, errors, or omissions. Causes of action arising out of CMTISP's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of

limitations shall commence to run not later than the date of CMTISP's substantial completion of services on the project.

1.12.4 Warranty: CMTISP will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale.

1.12.5 Consequential Damages. The Owner expressly reserves the right to claim consequential damages against the CMTISP for claims, disputes or other matters in question arising out of or relating to the subject matter of this Agreement, provided that the total amount paid under any such claim by the CMTISP shall be limited to the higher of \$100,000 or the sum of the CMTISP contract amount.

1.12.6 Dispute Resolution: This Agreement shall be governed by and construed according to Wyoming law.

1.13 Delays in the Project Schedule: In the event that the CMTISP's field or technical work is delayed or interrupted due to causes beyond their control, the CMTISP may submit a request for a Change Order for the labor, equipment and other costs the CMTISP incurs in order to maintain their workforce for the Owner's benefit during an interruption or delay resulting from a non-scheduled standby time, and any attendant costs of demobilization and subsequent remobilization; such request for a Change Order shall be based upon (1) documentation to establishing the scheduling of testing or inspection services and the reason for the delay in the ability of the CMTISP to perform the testing and/or inspection services, and (2) the CMTISP's fee schedule attached hereto as Exhibit "B" and actual costs incurred to be reimbursed pursuant to the terms of this Agreement. Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of the other party, and which could not reasonably have been anticipated or prevented as provided for in the Force Majeure provisions hereof.

1.14 Suspension of Services: Any suspension of the CMTISP's services by the Owner shall extend the time schedule for performance in a manner that is satisfactory to both Owner and the CMTISP. In the event of suspension of services by the Owner, the CMTISP shall be compensated for services performed and charges incurred prior to the suspension date, plus reasonable expenses incurred as a result of such suspension. Reasonable expenses resulting from a suspension of services may include, but shall not be limited to, services and costs associated with preserving and retaining analyses and documents for services performed, rescheduling personnel and/or equipment and issuing necessary or customary notices to appropriate government agencies. Compensation to the CMTISP shall be based upon CMTISP's fee schedule attached hereto as Exhibit "B" and actual costs incurred to be reimbursed pursuant to the terms of this Agreement.

1.15 Termination: Compliance with the CPM schedule is a material term of this Agreement. Failure of the CMTISP to provide services according to the CPM schedule may result in immediate termination of this Agreement by the Owner. In the event of such termination, the CMTISP may be provided notice orally, electronically or in writing, and if orally, shall be provided follow-up written notice. In the event of such termination, CMTISP shall be paid in accordance with the provisions of this Agreement for services rendered to the date of termination.

1.16 Limitation of Payments: Owner's obligation to pay the CMTISP for services rendered pursuant to this Agreement is conditioned upon the availability of state funds which are allocated to pay the CMTISP. If funds are not allocated and available for Owner to pay the CMTISP for these services, Owner may terminate this Agreement at the end of the period for which the funds are available. Owner shall notify CMTISP at the earliest possible time if this Agreement will or may be affected by a shortage of

funds. No liability 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. This provision shall not be construed so as to permit Owner to terminate this Agreement to acquire similar services from another party. The CMTISP shall be paid for all services provided and expenses incurred prior to receipt of any such notification that Owner is terminating the Contract because of a shortage of funds.

1.17 Monitor Activities: Owner shall have the right to monitor all Contract related activities of the CMTISP and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all CMTISP personnel in every phase of performance of Contract related work.

1.18 No Finder's Fees: No finder's fee, employment agency fee, or other such fee related to the procurement of this Agreement shall be paid by either party.

ARTICLE 2 – PROFESSIONAL TESTING SERVICES

2.1 Qualifications: All work shall be performed by qualified personnel under supervision of a Registered Professional Engineer. The CMTISP shall provide the Owner with the names and qualifications of each person that will generally be performing the testing. All reports shall bear the seal of a Wyoming Registered Professional Engineer, employed by the CMTISP firm.

2.2 General Services:

2.2.1 CMTISP's services shall be performed expeditiously and in a manner consistent with professional skill, care, and orderly progress.

2.2.2 CMTISP may have a direct contract with a person or entity to perform a portion of services required by this Agreement. Such subcontract to other consultants is at the CMTISP's sole expense. CMTISP agrees that it is fully responsible to OWNER for negligence, negligent acts and omissions of its subconsultant and their agents, and or persons either directly or indirectly employed by them, as it is for the negligence, negligent acts or omissions of persons directly employed by it. Nothing in the foregoing procedure shall create any contractual relation between OWNER and any sub-consultants employed by CMTISP under the terms of this Agreement. By written agreement, CMTISP shall require each subconsultant, to the extent of the services to be performed by subconsultant, to be bound to CMTISP by the terms of this Agreement, and to assume all obligations and responsibilities which CMTISP, by this Agreement, assumes.

2.2.3 CMTISP shall consult, to the extent required by Owner, with authorized employees, agents, and/or representatives of Owner relative to the construction of the Project. Additionally, CMTISP will cooperate with other professionals employed by Owner for the design of other work related to the Project.

2.2.4 The Owner previously provided to CMTISP all available drawings on the proposed construction Project.

2.2.5 CMTISP shall provide copies of all documents Owner or other appropriate authorities and agencies require for review and approval. Expenses incurred for document reproduction will be borne by CMTISP.

2.2.6 All Project records shall be maintained in a manner consistent with generally accepted accounting principles (GAAP). All records shall be available to Owner or its authorized representatives upon request.

2.3 Information Provided By Owner: The CMTISP shall indicate to the Owner the information needed for rendering of services hereunder, and the Owner shall provide to the CMTISP such information as is available to Owner.

2.4 Legal Right of Entry: The Owner shall provide for the CMTISP's right to enter from time to time the property owned by Owner and/or other(s) in order for the CMTISP to fulfill the scope of services indicated hereunder.

2.5 Buried and Above-Ground Structures and Utilities: In the performance of the scope of services indicated hereunder, the CMTISP will take reasonable precautions to avoid damaging buried and above ground structures and utilities.

2.6 Disposition of Samples: The CMTISP shall dispose of samples taken in the performance of the scope of services indicated hereunder as set forth in the specifications for the Project, or, in the absence of such specification, the standard of care for CMTISP's in the State of Wyoming.

2.7 Deliverables: The test results required under the Scope of Services shall be provided to the Owner as required to meet the Project schedule as directed by the Owner's Project Architect in the manner specified below:

2.7.1 Time: The specified investigation and testing required of the CMTISP shall be completed and the logs and report(s) delivered to the Owner and the Architect within one business day after written authorization to proceed is received from the Owner, barring circumstances beyond the CMTISP's control which force a delay. In such an instance, the CMTISP will inform the Owner of the cause of the delay.

2.7.2 Testing Summary: Preparation and Summarization Report of all testing completed for the project certifying that applicable standards have been met. Provide certified bound reports (4 copies), or, at the Owner's option, electronic files of such reports, to Owner within two (2) weeks notice from the Owner's issuance of the Certificate of Substantial Completion for the Project.

2.8 Scope of Testing and Observation: CMTISP will provide test results and opinions based on tests and field observations only for the work tested or observed. CMTISP shall be responsible to report to the Owner and Contractor and document the CMTISP's observations at the time of the testing or inspection being performed with regard to the compliance by the Owner's contractor with the plans and specifications for the Work of the Project being performed by such contractor. CMTISP will not supervise or direct the work performed by Owner's contractor or its subcontractors and is not responsible for their means and methods.

ARTICLE 3 – MISCELLANEOUS PROVISIONS

3.1 Warranty of Examination of Contract Documents and Duty to Update Provided Information: By signing this Agreement, CMTISP does hereby agree, certify, warrant and represent on behalf of itself,

and agrees to see that each Subcontractor performing the testing services shall also agree, certify, warrant and represent to Owner that their bids have been based on a full and complete examination of the Contract Documents as prepared and provided to CMTISP by the Owner at the time of the execution of the Agreement, including as determined necessary site examination; and that all statements, facts and representations made in all submittal documents and materials are true, correct, accurate, and complete, and may be relied upon by Owner in considering the firm's employment to provide testing services. CMTISP understands it is its responsibility to immediately provide updated and correct information if any of the information changes at any time. Any omission, falsification or misrepresentation made by CMTISP in such documents and materials or any supplement thereto, will be sufficient grounds for failure to employ CMTISP or terminate any contract with Owner. CMTISP by entering into an Agreement with Owner consents and agrees to comply at all times with all Owner policies, regulations, directives, and practices.

3.2 Extent of Contract: This Agreement and the other documents incorporated herein by reference represents the entire and integrated Agreement between Owner and CMTISP and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Owner and CMTISP. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

3.3 Ownership of Instruments of Service and Use of Construction Documents:

3.3.1 Instruments of Service: All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the CMTISP as instruments of service under this Agreement shall remain the property of the Owner.

3.3.2 Construction Documents: The Drawings, Specifications and other documents prepared by the Project Architect and copies thereof furnished to CMTISP are for use solely with respect to this Project. They are not to be used by CMTISP, or the CMTISP's Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the testing services, without the specific written consent of Owner and Project Architect. The Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Project Architect appropriate to and for use in the execution of their Work under the Contract Documents.

3.4 Governing Law: The Contract shall be governed by the laws of the State of Wyoming and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any dispute shall be in the county in which the District's main administrative office is located. Specifically, the CMTISP shall comply with the following laws:

3.4.1 Required Resident Labor: CMTISP agrees to comply with the requirements of Wyoming Statute §16-6-203 for any "Laborers" (as defined in Wyoming Statute §16-6-202 (a)(i)) employed to perform work under this Agreement. CMTISP understands that failure to comply with the Required Resident Labor Statute is punishable pursuant to Wyoming Statute §16-6-206.

3.4.2 Ethics: CMTISP shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, et seq.), and any and all ethical standards governing CMTISP's profession.

3.4.3 Licensure: CMTISP shall be licensed to do business in the State of Wyoming.

3.4.4 Taxes: CMTISP 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.

3.5 Compliance with Codes and Standards: The CMTISP's professional services shall be consistent with sound engineering practices and shall incorporate those publicly announced federal, state, and local laws, regulations, codes and standards that are applicable at the time the CMTISP rendered CMTISP's services. In the event of a change in laws, regulations, etc., of which the CMTISP becomes aware and believes affects their work for Owner, the CMTISP shall inform the Owner of the change and its impact on work already done or to be done, fees and costs involved, and scheduling. If either the Owner or the CMTISP believes the change requires a renegotiation of this Agreement, both the Owner and the CMTISP agree to bargain promptly and in good faith, to permit CMTISP to continue to meet the Owner's needs. If a renegotiated contract cannot be agreed to, Owner and CMTISP agree either party has an absolute right to terminate this Agreement.

3.6 Permits and Approvals: The CMTISP shall assist the Owner in applying for those permits and approvals typically required by law for projects similar to the one for which the CMTISP's services are being engaged. This assistance relates to completing and submitting forms as to the results of certain work included in the scope of services.

3.7 Public Responsibility: The CMTISP affirms the CMTISP's duty of care to the public, in that the public, through its professional engineer registration law, has granted to the CMTISP an exclusive license to perform functions which require engineering skill and knowledge, to protect public health and safety. The CMTISP shall perform all services under this Agreement in a faithful and trustworthy manner and, in this regard, will notify the Owner in writing of any matter of which the CMTISP becomes aware and believes or reasonably should believe requires the Owner's immediate attention to protect public health and safety, or which the CMTISP believes requires the Owner to issue a notice or report to certain public officials, or to otherwise conform with applicable codes, standards, regulations or ordinances.

3.8 Force Majeure: None of the parties hereto shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. 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. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

3.9 Independent Contractor: CMTISP shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of Owner or the State of Wyoming for any purpose. CMTISP shall assume sole responsibility for any debts or liabilities that may be incurred by CMTISP in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing CMTISP or its agents and/or employees to act as an agent or representative of 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. CMTISP agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Owner or State of Wyoming employees will extend to the benefit of CMTISP or CMTISP's agents and/or employees as a result of this Agreement.

3.10 Hazardous Materials or Toxic Substances. Unless otherwise provided in this Agreement, the CMTISP and CMTISP's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

3.11 Non-Solicitation of Agreement. The CMTISP warrants that CMTISP has not employed or retained any company or person, other than a bona fide employee working solely for the CMTISP, to solicit or secure this Agreement, and that CMTISP has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CMTISP any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

3.12 Commencement of Claims and Causes of Action. The Owner and CMTISP shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law.

3.13 Nondiscrimination. CMTISP 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. CMTISP will comply with Title VI of the Civil Rights Act of 1964 (P.L. 83-352) and all requirements imposed by or pursuant to the regulation of the Department of Education (34 C.F.R. Part 100) issued pursuant to the title, to the end that, in accordance with Title VI of the Act and the regulations, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Owner receives federal financial assistance from the Department; and hereby gives assurance that CMTISP will immediately take any measure necessary to effectuate this Agreement. CMTISP further agrees that CMTISP will comply with all applicable requirements of state and local laws, ordinances, and regulations regarding nondiscrimination in employment.

3.14 Exclusion of Persons With Criminal Records: By signing this Agreement, the CMTISP does hereby agree, certify, warrant and represent on behalf of itself, and agrees to see that each subcontractor performing the Work shall not assign any individual or agent to work on a project site located on or adjacent to an existing school building where students, staff and patrons are present any person identified as a registered sex offender under the laws of the State of Wyoming. The CMTISP does hereby agree on behalf of itself, and agrees to see that each subcontractor performing the Work shall authorize and give consent, and by signing an Agreement with the Owner agrees to cooperate in obtaining any additional authorization or consent necessary to assure compliance with this requirement.

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

3.16 Conflicts of Interest: CMTISP shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which results in a disadvantage to Owner or a disclosure which would adversely affect the interests of Owner. CMTISP shall notify Owner of any potential or actual conflicts of interest during the course of the CMTISP's performance under this Agreement. This Agreement may be terminated in the event a conflict of interest arises. Termination of

the Contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the CMTISP shall take steps to insure that the file, evidence, evaluation and data are provided to Owner or its designee. This does not prohibit or affect the CMTISP's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists. A conflict of interest warranting termination of this Agreement includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the Owner, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition, or quo warranty.

3.17 Notices: All notices or invoices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

3.18 Severability: This Agreement is subject to all applicable federal and state laws, rules, and regulations. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance.

3.19 No Waiver of Rights: The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

3.20 Warranty: CMTISP warrants that it has the ability to perform the agreed upon services; it shall provide suitable resources to perform work in accordance with this Agreement; it will provide the agreed upon services on a timely basis; it shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently providing Testing services under similar circumstances; and it is responsible for the prosecution of the Testing services of the Project in accordance with all designs, drawings, specifications, and other services furnished by Owner through the Project Architect for the Project.

3.21 Time is of the Essence: Time is of the essence in all provisions of this Agreement.

3.22 Titles Not Controlling: Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.

3.23 Waiver: The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

3.24 Binding Effect: This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

3.25 Execution: Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

3.26 Entirety of Contract: This Agreement, together with Exhibits "A" through "C," represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

3.27 Sovereign Immunity: CMTISP stipulates that Owner is a political subdivision of the State of Wyoming, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Wyoming and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

ARTICLE 4 – CONCLUSION

This Agreement, including the Contract Documents incorporated herein, shall be binding upon and inure to the benefit of Owner and CMTISP and their respective successors and assigns.

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

CONSULTANT: NELSON ENGINEERING

Brent Bennett	Vice President	<small>DocuSigned by:</small> <i>Brent Bennett</i> <small>D8FEAC2F43BF4CE...</small>	10/11/2024
<hr/> <i>Name & Title (Print)</i>		<hr/> <i>Signature</i>	<hr/> <i>Date</i>

SCHOOL DISTRICT: CAMPBELL COUNTY SCHOOL DISTRICT #1

David Bartlett	Associate Superintendent	<small>DocuSigned by:</small> <i>David Bartlett</i> <small>91E3E617CBBE482...</small>	10/11/2024
<hr/> <i>Name & Title (Print)</i>		<hr/> <i>Signature</i>	<hr/> <i>Date</i>

STATE OF WYOMING, STATE CONSTRUCTION DEPARTMENT, SCHOOL FACILITIES DIVISION:

Shelby Carlson	SFD Administrator	<small>DocuSigned by:</small> <i>Shelby Carlson</i> <small>DF5C9C3CB6B7400...</small>	10/11/2024
<hr/> <i>Name & Title (Print)</i>		<hr/> <i>Signature</i>	<hr/> <i>Date</i>

<small>DS</small> <i>JR</i>	10/1/2024
--------------------------------	-----------