

CONSTRUCTION MANAGEMENT AS AGENT AGREEMENT

This Construction Management As Agent Agreement (“Agreement”) is made and entered into effective as of October 1st, 2024 (“Effective Date”) by and between Turtle Lake School District (“Owner”) with principal offices located at 205 Oak St North, Turtle Lake, WI and Cooperative Educational Service Agency 10 (“CESA”) with principal offices located at 725 W Park Ave, Chippewa Falls, WI 54729, for project management services, as more fully described herein.

RECITALS

- A. Owner intends to design, develop and construct the construction project identified in Section 2 below and herein referenced to as the Project.
- B. Owner will enter into separate agreements for the design, engineering procurement, and construction work for the Project.
- C. Owner desires to engage CM Agent to perform the services specified in this Agreement to facilitate the Project, and CM Agent desires to accept such engagement, upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and CM Agent agree as follows:

1. DEFINITIONS.

- 1.1. “Facility” shall mean the TURTLE LAKE SCHOOL DISTRICT facilities located in Turtle Lake, Wisconsin.
- 1.2. “OSHA” shall mean the Occupational Health and Safety Administration.
- 1.3. “Project” shall mean those certain components set forth in Section 2.1 performed within the Facility.
- 1.4. “Reimbursable Expenses” means those certain costs incurred by CM Agent that are limited to Project travel as preauthorized by Owner, document reproduction, FedEx or other courier expenses, costs for specialists or consultants engaged at Owner’s direction and on behalf of Owner, and other Owner preapproved expenses.
- 1.5. “CM Agent” shall mean Cooperative Educational Service Agency 10.
- 1.6. “CM Agent’s Fee” shall mean Owner’s compensation to CM Agent for CM Agent’s services under this Agreement, as set forth in Section 5.1
- 1.7. “Services” shall mean those services CM Agent will provide under this Agreement as further described in Section 3.2 and Exhibit A.

1.8. "Termination Expenses" are defined as those expenses actually incurred and paid by CM Agent, arising directly out of the termination and not otherwise reimbursed or paid to CM Agent under other provisions of this Agreement.

1.9. "Total Project Cost" shall mean all costs, less CM Agent's Fee, incurred to complete the Project, including but not limited to (i) costs of all labor, services, materials, supplies and equipment, (ii) rental charges for temporary facilities, supplied and equipment, (iii) fees and expenses for permits, licenses, design services, testing, and inspections, (iv) any materials purchased directly by Owner and, (v) any and all change orders.

2. PROJECT.

2.1. Project. The Project is composed of the following major components:

2.1.1 Upgrade the existing 6-lane track and events to an 8-lane track. Refer to Cooper Engineering specifications.

Owner and CM Agent may expand the scope of the major components for the Project by mutually agreeing to the same in writing. At such time, Owner and CM Agent shall also mutually agree in writing to changes in CM Agent's Services, if any, relating to the expanded scope as well as CM Agent's compensation therefor pursuant to Section 5.4.

3. CM AGENT DUTIES

3.1. Duty Of Care. CM Agent shall fully and promptly execute the Services in an expeditious and economical manner to further the interest of Owner with respect to the Project. CM Agent shall coordinate its Services with others on the Project and shall comply with Owner-approved schedules. CM Agent acknowledges that its Services include specialized consulting expertise to support Owner in achieving a timely and economical execution of the development and construction of the Project. CM Agent agrees to perform its Services in a manner equivalent in skill, quality and efficiency to reputable, experienced project management companies performing similar services for projects of like size, kind and cost.

3.2. Services. CM Agent will perform the Services set forth on Exhibit A with respect to the Project.

3.3. CM Agent Availability. CM Agent shall ensure that the person(s) primarily responsible for providing the Services on a day-to-day basis will be available on weekdays, except major public holidays.

3.4. Services Not Included. Owner understands and agrees that CM Agent is not acting as an architect, engineer, or general contractor for the Project, but is solely assisting Owner by providing advice, oversight, and monitoring services. CM Agent shall not be responsible for any architectural or engineering work or design, construction schedule, means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, although CM Agent shall assist and consult with Owner with respect thereto. Owner acknowledges that CM Agent is not responsible for the design of the Project. CM Agent agrees that all consultations with and recommendations to Owner shall be made to assist Owner in overseeing and monitoring the Project. Owner acknowledges that CM Agent shall have no liability to Owner whatsoever under this Agreement for any acts or omissions of architects, contractors, or any other associated professionals and/or consultants, including the failure of such parties to efficiently perform services on the Project and in compliance with their agreements executed with Owner.

4. **OWNER'S DUTIES**. Owner shall cooperate with CM Agent to facilitate the performance of CM Agent's Services. Owner shall retain and pay all consultants, contractors, vendors, suppliers and other professionals who shall perform the design, engineering, procurement and construction of the Project.

Owner shall endeavor to provide information, decisions, payments, selections, staff support, review and approvals required under this Agreement in a timely and expeditious manner. All contracts shall be signed by Owner after review and recommendation by CM Agent and approval by Owner.

5. COMPENSATION.

5.1. CM Agent's Fee. Owner shall compensate CM Agent for the Services ("CM Agent's Fee") at the rate of 2% of the Total Project Cost plus hourly billing rates for the necessary consultants. The Parties agree to monthly time and materials billing as well as set progress billing.

5.2. Schedule of Payments of CM Agent's Fee.

5.2.1. Owner shall pay CM Agent's Fee as follows:

Payment 1	Payment 2
4/20/2025	8/20/2025
25% of estimated CM Agent's Fee	25% of estimated CM Agent's Fee

Payment shall be made via check/wire and be directed to:

CESA 10 Accounts Payable
725 West Park Avenue
Chippewa Falls, WI 54729

Owner agrees to issue payment to CM Agent within thirty (30) days after receipt by Owner of an invoice from CM Agent. Owner shall timely make all payments required by this Agreement. Time is of the essence as to all terms of payment. Owner agrees that, in addition to other remedies available to CM Agent, if payment is not timely made, CM Agent shall be entitled to suspend services until payment is properly made, and Owner shall also pay to CM Agent a service charge of one and one-half percent (1.5%) per month on all past due amounts, plus, if not contrary to any law, all costs of collection including attorneys' fees. Time is of the essence with respect to all payments due from Owner.

5.2.2. The parties acknowledge that material increases in estimated Total Project Cost may result from change orders that Owner approves during the construction phase of the Project. To ensure that CM Agent is evenly compensated for the increased provision of the Services in relation to such change orders, CM Agent's Fee shall be increased by an amount equal to 2% of the value of any change order approved plus hourly billing rates for the necessary consultants to complete the work.

5.3. Reimbursable Expenses. Reimbursable Expenses incurred will be reimbursed by Owner to CM Agent at net cost, and shall be due and payable upon receipt of an invoice from CM Agent.

5.4. Additional Services. Services in addition to those identified in Section 3 must be authorized in writing by Owner. Owner shall compensate CM Agent for the provision of such additional services at hourly billing rates on a time and material basis. Payments for Additional Services will be due within thirty (30) days of CM Agent invoicing Owner for same.

6. TERMINATION.

6.1. Termination by Owner for Cause.

6.1.1. Owner may terminate this Agreement for cause if CM Agent fails to comply with any laws, ordinances or rules, regulations or order of a public authority having jurisdiction over the Project; or commits any other material breach of this Agreement, and such refusal, failure or breach continues for seven (7) business days after Owner gives CM Agent written notice thereof, provided such seven (7) business day cure period shall be extended in the event cure of said breach is not reasonably practicable within such period and CM Agent commences and is diligently pursuing cure thereof.

6.1.2. In the event of termination of CM Agent for cause pursuant to Section 6.1.1, CM Agent shall be paid in accordance with Section 5 of this Agreement for all Services performed through the date of termination and all Reimbursable Expenses actually incurred through the termination.

6.2. Termination by CM Agent for Cause.

6.2.1. CM Agent may terminate this Agreement if Owner defaults in its obligation(s) to make payment to CM Agent in the time provided herein and such failure continues for thirty (30) days after CM Agent gives Owner written notice thereof.

6.2.2. In the event of termination by CM Agent for cause pursuant to Section 6.2.1, CM Agent shall be paid in accordance with Article 5 of this Agreement for all Services performed through the date of termination, all Reimbursable Expenses actually incurred through the termination date and all Termination Expenses.

7. **DISPUTES.** If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation shall be resolved through litigation. The exclusive forum and venue of any litigation arising from this Agreement shall be a court of competent jurisdiction in Dane County, State of Wisconsin. In the event a lawsuit is brought to enforce the terms or conditions of this Agreement, the prevailing party shall be entitled to the payment of all costs and fees incurred in bringing or defending against the lawsuit from the non-prevailing party including, but not limited to, reasonable attorneys' fees, court costs, investigation costs and all related expenses. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8. **OWNERSHIP AND AVAILABILITY OF DOCUMENTS AND OTHER MATTERS.** All documents related to the Project, prepared by, for, or under the direction of CM Agent hereunder, whether such documents are prepared in Owner's name or in CM Agent's name, shall be the property of Owner and shall not be used or released by CM Agent for any other purposes without Owner's written approval.

9. **AMENDMENTS.** This Agreement may only be amended in writing signed by Owner and CM Agent.

10. **INSURANCE; INDEMNIFICATION; LIABILITY.**

10.1. **Insurance.** CM Agent shall purchase, at its own expense, and maintain Worker's Compensation Insurance, Comprehensive General Liability Insurance with contractual liability coverage, Comprehensive Automobile Liability Insurance and Professional Liability Insurance from a company or companies

lawfully authorized to do business in the State of Wisconsin. Worker's Compensation Insurance coverage shall be carried consistent with State of Wisconsin statutory requirements. Comprehensive General Liability, Automobile Liability and Professional Liability Insurance coverage shall each be carried in a minimum amount of \$1 million as to any one claim, and \$1 million in general aggregate. Owner, and Owner's agents, officers, directors and employees shall be named as additional insured under CM Agent's comprehensive general liability and automobile liability insurance policies. Upon written request therefor, CM Agent shall provide certificates of insurance to Owner evidencing coverage as required by this Agreement.

10.2. Indemnity.

10.2.1. CM Agent shall indemnify and hold harmless Owner and Owner's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the Services provided that such claim, damage, loss or expense is attributable to bodily injury, or death, or to injury to or destruction of tangible property (other than to the Project itself), but only to the extent caused in whole or in part by negligent acts or omissions of CM Agent, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and in no event shall the preceding indemnification apply to liability to the extent caused by the negligence or willful misconduct of Owner or Owner's agents or employees.

10.2.2. Owner shall indemnify and hold harmless CM Agent and its agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees provided that such claim, damage, loss or expense is attributable to bodily injury, or death, or to injury to or destruction of tangible property, but only to the extent caused in whole or in part by negligent acts or willful misconduct of Owner, anyone directly or indirectly employed by Owner or anyone for whose acts it may be liable, and in no event shall the preceding indemnification apply to liability to the extent caused by the negligence or willful misconduct of CM Agent or its agents or employees.

10.3. Limitation of Liability. Notwithstanding any provision of this Agreement that might be interpreted to the contrary, neither party shall be liable to the other for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of this Agreement. Further, and notwithstanding anything to the contrary, CM Agent shall not be responsible or liable for any delays in the Project schedule or its completion caused by Owner's contractors or their subcontractors. The maximum liability of each party to the other under this Agreement shall be an amount equal to CM Agent's Fee.

10.4. CM Agent's Employee Claims. CM Agent assumes full liability for all personal injury claims suffered by its employees, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretation of said Act or otherwise; and CM Agent shall indemnify and defend Owner, its officers, directors, shareholders, agents, CM Agents and employees from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, sustained as a result of such claims, to the full extent of applicable law.

11. **INDEPENDENT CONTRACTOR.** Nothing contained in this Agreement or in CM Agent's performance of the Services under this Agreement shall be construed as creating an employment relationship between Owner and CM Agent or CM Agent's employees. Nothing contained in this Agreement shall be construed to mean that CM Agent and Owner are joint venturers or partners, it being expressly understood and agreed by the parties that CM Agent, in performing Services under this Agreement, shall be deemed an independent contractor of Owner.

12. **GOVERNING LAW.** This Agreement shall be subject to and governed by the laws of the State of Wisconsin.

13. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall be binding upon CM Agent and Owner and their respective successors and permitted assigns. The parties executing this Agreement each represent that the signatory has the legal authority to bind the entity for which signature is made, and that all necessary corporate authorization for such signature has been duly obtained. Neither party may assign this Agreement without the written consent of the other party hereto.

14. **MARKETING RIGHTS.** Owner hereby authorizes CM Agent to include photographic and/or artistic representations of the Project among CM Agent's promotional and professional materials, which may include Owner's name and the location of the Project. CM Agent shall have reasonable access to the completed Project to make such representations. This Section 14 shall survive termination of this Agreement.

15. **NOTICES.** All notices or other communications required under this Agreement shall be made in writing and deemed properly given if hand delivered, sent by confirmed facsimile transmission or email or sent by FedEx, UPS or other nationally recognized commercial overnight courier as follows:

IF TO OWNER: KENT KINDSCHY, DISTRICT SUPERINTENDANT
TURTLE LAKE SCHOOL DISTRICT
205 OAK ST NORTH
TURTLE LAKE, WI, 54889

IF TO CM AGENT: COOPERATIVE EDUCATIONAL SERVICE AGENCY 10
725 WEST PARK AVE.
CHIPPEWA FALLS, WI 54729
ATTN: BRIAN ANTCZAK

Notices hand delivered or sent electronically shall be deemed received when given, if prior to 3 PM recipient's local time on a business day, otherwise on the next regularly occurring business day. Notices sent by nationally recognized commercial overnight courier shall be deemed received on the business day following deposit.

16. **WAIVER.** No action or failure to act by Owner or CM Agent shall constitute a subsequent waiver of a right or duties afforded under this Agreement or constitute approval or acquiescence of a breach of this Agreement.

17. **EXECUTION; ENTIRE AGREEMENT.** This Agreement may be signed in counterparts which taken together shall constitute the complete agreement. This Agreement may be executed by a party's signature transmitted by facsimile ("fax") or by electronic mail in pdf format ("pdf"), and copies of this Agreement executed and delivered by means of faxed or pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or pdf signatures as if such signatures were originals. This Agreement, including the recitals hereof and exhibits hereto which are incorporated herein by reference, represents the entire understanding and contract between the parties and supersedes all other agreements, oral or written regarding the subject matter of this Agreement. With respect to the foregoing, the parties acknowledge and agree that they may be parties with one another to other ongoing contracts or agreements for the provision of other services, which such contracts or agreements are not modified, changed or merged with this Agreement.

[Signature Page Follows]

This Agreement is made as of the Effective Date.

TURTLE LAKE SCHOOL DISTRICT


Signature

Brent M. Kindschy Superintendent
Printed Name and Title

10-7-24
Date

COOPERATIVE EDUCATIONAL SERVICE AGENCY 10

Signature

Printed Name and Title

Date

Exhibit A
Description of Services

Project Set-up and Procurement

1. Review Project concepts, goals, and objectives.
2. Review and identify critical project elements to track (e.g. quality, cost, schedule, budget).
3. Review site constraints and agency coordination elements for submittal and approval requirements.
4. Facilitate procurement of certain materials and equipment to be incorporated into the Project which Owner and CM Agent observe may involve long lead times to avoid disruption to the Project schedule.

Pre-Construction Services

5. Review architect designs and plans for the Project and present same to Owner for final approval.
6. Assist/advise in the preparation and solicitation of contractors during the prequalification process.
7. Assist/advise Owner on site utilization plan, site safety and security plans, and storage of materials; provided, however, primary responsibility and ultimate liability for the same shall borne by Owner and/or its contractors.
8. Prior to bidding, provide a professional opinion pertaining to probable costs and bid structure as it pertains to alternatives and substitutions.
9. Request information from bidders, contractors, and architects regarding OSHA agreements and citations within the past five (5) years.
10. Assist in the bid review process prior to recommending the successful bidder, with the knowledge that Owner will have the final decision in selecting the bidder for the Project.
11. Assist in contract preparation using Contract Agreement Template provided by CM Agent and negotiation providing guidance and advice pertaining to protection of Owner's interests.
12. Request from architects, contractors, and other pertinent parties a copy of any of their safety programs or plans, and make recommendations to Owner as to the reliability of such programs or plans.

Services During Construction

13. Provide on-site monitoring of construction to resolve minor disparities between architects and contractors and to reject the use of inappropriate means and methods of construction and failure to follow plans/specifications which CM Agent observes.
14. Serve as the liaison between the architect, contractor, and Owner bringing significant or unresolved disparities to Owner with advice as to the appropriate resolution.
15. Attend job site meetings scheduled at mutually agreeable intervals during construction periods and provide overview reports to Owner highlighting areas of concern.

16. Witness quality assurance testing, inspection, and commissioning procedures.
17. Monitor Project for deficiencies and recommend any special testing needed in coordination with architects/engineers.
18. Provide the initial review of all submittals, including shop drawings and samples, and provide guidance and recommendations to Owner regarding acceptance of the same.
19. Provide the initial review of all change orders, working with Owner, contractors and architects to resolve or provide recommendations for approval or denial based upon necessity, cost, and other pertinent variables.
20. Issue field directives to contractors for minor changes in the work CM Agent deems necessary for proper completion of the Project and which are not inconsistent with the design and plans provided that such directives shall not result in increases to the Project timeline or increase the cost of the work in an amount greater than \$5,000. Owner and CM Agent agree that field directives shall be binding, and may be issued by CM Agent without further consent from Owner.
21. Coordinate with contractors who shall ensure the worksite is secured and safe for employees, students, and workers and provide reports to Owner as to the status of same.
22. Oversee general safety compliance of architects, contractors, and/or other pertinent parties working on the Project; however, CM Agent does not assume liability for any noncompliance with state, federal, or industry safety requirements by such parties.
23. Advise Owner on proper management of any environmental hazards that may be identified prior to or during the construction period and, upon Owner's written direction and for an additional fee mutually agreed upon in writing, manage all aspects of environmental issues not addressed by contractors, architects, or other subcontractors on the Project.
24. Assist with hiring of surveyors, special consultants, and testing lab services as required and upon authorization of Owner.
25. Report potential budget and schedule variances, working with contractors, architects, and Owner to develop and provide recovery plans.
26. Provide Project status reports as required, including invoices and payments.
27. In concert with the architects and contractors, develop punch lists and monitor Project close out documents to ensure completeness.
28. Perform other tasks in Owner's best interests relative to reviewing contractors' compliance with designs, plans and appropriate construction methods on the Project.
29. During construction period(s) and at mutually agreeable intervals provide reports of Project progress as compared to the Project timeline and budget status including variances and summary of changes to Project scope, budget, or timeline.
30. Meet with architects, contractors, and Owner as needed to advise Owner on any changes or alterations to original Project design or materials.

Post-Construction Services

31. Assist architects, contractors, and Owner in coordinating with relevant state and municipal officials to review plans, perform inspections, and coordinate the reporting and remediation of any findings.
32. When requested by Owner, and during the initial six (6) month period following substantial completion of the Project, monitor, observe or review the testing and start-up of such utilities, systems, and equipment.
33. Review payment requests of construction contractors for approval and payment, offering recommendations to Owner for withholding or payment.
34. Monitor the receipt of lien waivers for completed work.
35. Receive, review, and verify written guarantee and warranty records for Owner.
36. Assist Owner in performing guarantee and warranty inspections with architects and contractors.
37. Attend meetings and/or inspections at mutually agreeable times when requested by Owner during the initial six (6) month period following substantial completion of the Project, to resolve problems related to design, physical condition, or operation of the Project, or to seek enforcement of warranties.
38. Assist Owner in analysis and resolution of any outstanding claims arising out of the Project for a period of six (6) months following substantial completion of the Project.
39. Assist and provide presentations to school board, committees, and/or other stakeholders of Owner.
40. Assist Owner in final close-out of the Project, including ensuring all government approvals for legal use and occupancy have been met and attending final meetings and inspections of the completed Project.
41. Submit final Letter of Completion and turnover package to Owner.

End of Exhibit A