

Board of Education Special Meeting  
Wednesday, March 24, 2021 12:00 PM  
Mountain  
Dundy County Stratton High School  
P.O. Box 586  
400 9th Avenue West  
Benkelman, NE 69021-0586

1. **Call to Order and Notice of Open Meetings Act**

Procedural Item

1. The Board of Education reserves the right to enter into Closed/Executive Session for 1) the protection of the public interest or 2) the prevention of needless injury to the reputation of an individual, and the individual has not requested a public meeting. When making a motion to enter into Closed/Executive Session, the member making such a request should be as specific as possible keeping the previously listed stipulation in consideration.
2. If the Board is in agreement, a motion may be to enter into Closed/Executive Session to 1) discuss a personnel matter or 2) for the prevention of needless injury to the reputation of the individual, or 3) to discuss litigation and for the protection of the public interest.
3. Action Concerning Matters Discussed in Executive Session.

2. **Roll Call**

Procedural Item

3. **Business meeting**

Action Item

A. Classroom addition

Action Item

B. Motion to approve W Designs Associates as the architect/engineer for the new addition at 7.5%. Passed with a motion by Shad Stamm and a second by Jordan Stroup.

- |                      |        |
|----------------------|--------|
| C. Brad Baney:       | D. Yea |
| E. Jason Frederick:  | F. Yea |
| G. Nick Ladenburger: | H. Yea |
| I. Kent Lorens:      | J. Yea |
| K. Toby Marlin:      | L. Yea |
| M. Shad Stamm:       | N. Yea |
| O. Jordan Stroup:    | P. Yea |



## **AGREEMENT**

**THIS AGREEMENT** made and entered into by and between **DUNDY COUNTY - STRATTON PUBLIC SCHOOLS** of Benkelman, Nebraska (hereinafter referred to as the **OWNER**), and **W DESIGN ASSOCIATES, INC.** of McCook/Hastings, Nebraska (hereinafter referred to as the **ARCHITECT/ENGINEER**).

**WHEREAS** the **OWNER** is retaining the **ARCHITECT/ENGINEER** for the purpose of providing professional services for an addition to the High School Building in Benkelman as described below:

The addition of two English Classrooms, a Library/Tech Center and two restrooms as generally detailed in a preliminary plan dated March, 2021.

### **RESPONSIBILITY OF THE OWNER**

The **OWNER** agrees to:

1. Provide accurate information pertaining to their needs and wishes for the facility, and provide required information pertaining to the use and contents in the existing buildings. This should include but not be limited to a list of accessories and equipment to be relocated in the existing facility as well as any other owner supplied items.
2. Review and comment on proposed Plans, Specifications and procedures submitted by the **ARCHITECT/ENGINEER** in a timely manner.
3. Execute a contract with the assistance of the **ARCHITECT/ENGINEER** with the construction Contractor that is awarded the work on the project and to pay all construction contract sums for work properly completed and accepted.
4. Pay all fees for regulatory reviews and construction permits required for the project.

### **RESPONSIBILITY OF THE ARCHITECT/ENGINEER**

1. The **ARCHITECT/ENGINEER** shall work closely with the **OWNER** to develop construction plans and specifications based on Preliminary Plans approved during the Preliminary Planning Phase. This shall include a plan review prior to final completion of the plans by the **ARCHITECT/ENGINEER**.
2. The **ARCHITECT/ENGINEER** shall assist the **OWNER** in the obtaining the bid for the project, including all demolition, earthwork, concrete work, building and finish work.

3. The **ARCHITECT/ENGINEER** shall provide periodic observation during construction to ensure it meets the intent of the plans and specifications.
4. The **ARCHITECT/ENGINEER** shall review monthly contractor pay requests for the **OWNER**, and make payment recommendations.
5. The **ARCHITECT/ENGINEER** shall generally act as the **OWNER'S** agent in dealing with the general contractor. Nothing in this agreement shall be construed to indicate the **ARCHITECT/ENGINEER** is responsible for a contractor's actions or workmanship.

**FEES AND PAYMENTS**

The **OWNER** shall pay the **ARCHITECT/ENGINEER** a total fee of 8-1/4% of the total construction cost for these projects. Any change in scope and/or fee shall only be made by amendment in writing and signed by both parties.

Payments will be made to the **ARCHITECT/ENGINEER** monthly based on the **ARCHITECT/ENGINEER'S** estimated percentage of work completed and using the **ARCHITECT/ENGINEER'S** project cost estimate up to the maximum percentage called out for each phase. Upon receipt of bids the fee will be adjusted based the lowest responsible bid amount.

Construction Documents Phase:	Seventy Percent	(70%)
Bidding or Negotiation Phase:	Fifteen Percent	(10%)
Construction Phase:	Fifteen Percent	(20%)

All payments are due 30 days from the date of billing. Late payments shall be charged interest at a rate of 1% per month.

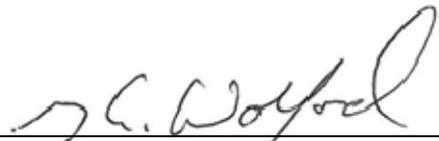
**TERMS AND CONDITIONS**

The attachment including **A. SPECIAL TERMS AND CONDITIONS** and **B. GENERAL TERMS AND CONDITIONS** are hereby made a part of this Agreement.

The **AGREEMENT** entered into on the \_\_\_\_\_ day of March, 2021.

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**Dundy Co. - Stratton Public Schools**  
**P. O. Box 586**  
**Benkelman, Nebraska 69021**




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**W Design Associates, Inc.**  
**McCook/Hastings, Nebraska**

## **A. SPECIAL TERMS AND CONDITIONS**

### **1. ACCESS TO SITE**

Unless otherwise stated, the A/E will have access to the site for activities necessary for the performance of the services at all reasonable hours.

### **2. INDEMNIFICATION**

Owner agrees to indemnify and hold harmless the A/E from and against any and all claims, damages, losses, and expenses arising out of or resulting from the performance of the services under this agreement, provided that any such claim, damage, loss, or expense is not due to the negligent acts, errors, or omissions of the A/E.

### **3. DISPUTE RESOLUTION**

In an effort to resolve any conflicts that arise during the design or construction of the project or following completion of the project, the Owner and the A/E agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. The Owner and the A/E further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

### **4. OWNERSHIP OF DOCUMENTS**

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the A/E as instruments of service shall remain the property of the A/E.

### **5. CODES AND STANDARDS COMPLIANCE**

The A/E shall put forth reasonable efforts to comply with codes, regulations, laws, and statutes in effect as of the execution of this Agreement.

### **6. CONSTRUCTION OBSERVATION**

The A/E shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Owner has not retained the A/E to make detailed inspections or to provide exhaustive or continuous project review and observation services. The A/E does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier, or any other entity furnishing materials or performing any work on the project.

### **7. DELAYS**

The A/E is not responsible for delays caused by factors beyond the A/E's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure

of any governmental or other regulatory authority to act in a timely manner, failure of the Owner to furnish timely information or approve or disapprove of the A/E's services or work product promptly, or delays caused by faulty performance by the Owner or by contractors of any level. When such delays beyond the A/E's reasonable control occur, the Owner agrees the A/E is not responsible for damages, nor shall the A/E be deemed to be in default of this agreement.

### **8. LIMITATION OF LIABILITY**

In recognition of the relative risks and benefits of the project to both the Owner and the A/E, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the A/E and his or her subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the A/E and his or her subconsultants to all those named shall not exceed \$1,000,000.00, or the A/E's total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

### **9. OPINIONS OF PROBABLE COST**

In providing opinions of probable construction cost, the Owner understands that the A/E has no control over costs or the price of labor, equipment, or materials, or over the Contractors' method or pricing, and that the opinions of probable construction cost provided herein are to be made on the basis of the A/E's qualifications and experience. The A/E makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

### **10. SUBMITTALS**

The A/E shall review and approve Contractor submittals, such as shop drawings, product data, samples and other data, as required by the A/E, but only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. The A/E's review shall be conducted with reasonable promptness while allowing sufficient time in the A/E's judgment to permit adequate review. Review of a specific item shall not indicate that the A/E has reviewed the entire assembly of which the item is a component. The A/E shall not be responsible for any deviations from the contract documents not brought to the attention of the A/E in writing by the Contractor. The A/E shall not be required to review partial submissions or those which submissions of correlated items have not been received.

## **B. GENERAL TERMS AND CONDITIONS**

### **1. GOVERNING LAW**

The laws of the State of Nebraska will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of that State.

### **2. STANDARD OF CARE**

Service provided by the A/E under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

### **3. ASSIGNMENT**

Neither party to this Agreement shall transfer, sublet, or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

### **4. TERMINATION**

Either the Owner or the A/E may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days prior written notice. The Owner shall within thirty (30) calendar days of termination pay the A/E for all services rendered and all costs incurred up to the date of termination, in accordance with the Fees and Payments Section of this Agreement.

### **5. SEVERABILITY AND SURVIVAL**

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. Articles A2, A3, A4, and A8 shall survive the termination of this Agreement and shall remain enforceable between the parties.

### **6. AMENDMENT**

This Agreement shall not be amended except by written instrument signed by the parties hereto. This Agreement constitutes the entire and integrated agreement by and between the parties and supersedes any and all prior negotiations, whether written or oral.

- Q. ESSER Funds  
Action Item  
Discussion on use of ESSER Funds

4. **Adjournment**  
Action Item

5. Motion to adjourn at 12:39 PM. Passed with a motion by Nick Ladenburger and a second by Shad Stamm.

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|-----------------------|---------|
| 6. Brad Baney:        | 7. Yea  |
| 8. Jason Frederick:   | 9. Yea  |
| 10. Nick Ladenburger: | 11. Yea |
| 12. Kent Lorens:      | 13. Yea |
| 14. Toby Marlin:      | 15. Yea |
| 16. Shad Stamm:       | 17. Yea |
| 18. Jordan Stroup:    | 19. Yea |