

**Notice of Open Meeting**

Notice is hereby given that in accordance with Section 19.84 (2) of the Wisconsin Statutes, the Board of Trustees of the Kilbourn Public Library will hold an open meeting on the following agenda of Library Business.

**Thursday, May 11, 2017**

**4:30 p.m.**

**at the Kilbourn Public Library**

620 Elm Street

Wisconsin Dells, WI

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1. **Call to Order**
2. **Roll call and introduction of guests**
3. **Public comment period: not subject to discussion**
4. **Approval of minutes of previous meeting**
5. **Library Director's report**
6. **Financial report**
7. **Approval of monthly expenditures**
8. **Committee reports**
  - A. **Columbia County report – Dianne**
  - B. **Sauk County report - Cathy**
9. **Unfinished business**
  - A. **Discussion/Decision on CESA 10 proposal**
10. **New business**
  - A. **Election of Officers**
11. **Items for referral to next meeting**
12. **Set next meeting date and time**
  - A. **Thursday, June 1 or June 8, 2017, 4:30 p.m.**
13. **Adjournment**

**PLEASE BE ADVISED THAT UPON REASONABLE NOTICE, THE CITY OF WISCONSIN DELLS WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES TO AFFORD INDIVIDUALS WITH DISABILITIES AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETING ACTIVITIES.**

**Open Meetings Notice: If this meeting is attended by one or more members of the Wisconsin Dells Common Council or the Lake Delton Village Board who are not members of this committee, and their attendance creates a quorum of the Common Council or the Village Board, this meeting may technically be considered a meeting of the Common Council or the Village Board for the purposes of the Wisconsin Open Meetings Law.**

## CONSTRUCTION MANAGEMENT AGENT AGREEMENT

This CM Agent Agreement ("Agreement") is made as of the 10th day of April 2017 ("Effective Date"), by and between Kilbourn Public Library ("Customer") and Cooperative Educational Service Agency 10 ("CM Agent"), for project management services, as more fully described herein.

### RECITALS

- A. Customer intends to design, develop and construct the construction project identified in Section 1 below and herein referenced to as the "Project."
- B. Customer will enter into separate agreements for the design, engineering procurement and construction work for the Project.
- C. Customer desires to engage CM Agent to perform the services specified in this Agreement ("Services") 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, Customer and CM Agent agree as follows;

#### 1. **PROJECT.**

1.1. Project. The Project is to be performed within the Kilbourn Library facility ("Facility") located in Wisconsin Dells, Wisconsin. The Project is composed of the following major components:

- 1.1.1. Geothermal system optimization
- 1.1.2. Boiler modulating schedule optimization
- 1.1.3. VFD integration and replacement of burned VFD
- 1.1.4. Replacement of burned out pump
- 1.1.5. Replacement of older boilers and update of current pumps
- 1.1.6. DDC system scheduling and updates of temperature controls

#### 2. **CM AGENT'S DUTIES.**

2.1. Duty Of Care. CM Agent shall fully and promptly execute the Services, outlined below, and CM Agent shall use its best skill and judgment at all times and in the most expeditious and economical manner to further the interest of Customer with respect to the Project. CM Agent shall coordinate its Services with others on the Project and shall comply with Customer-approved schedules. CM Agent acknowledges that its Services include specialized consulting expertise to support Customer 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.

2.2. Services. To the extent requested by Customer, CM Agent will perform the following Services with respect to the Project:

### **DETAILED SCOPE OF WORK**

#### **General Tasks**

##### Contracts—CM Agent will:

Provide Customer-protective RFP and contract templates and will write/review both as requested by the Customer. Customer will hold Contract(s) with primary contractor(s); CESA will assist with tracking bonding, insurance, prevailing wage (if required) and tax-free purchasing, and assist Customer on subcontractor compliance with subcontract requirements.

##### Representation— CM Agent will:

Represent the Customer and facilitate at Project meetings with the Designer, subcontractor(s), Consultants, or Customer's School Board as requested by Customer.

##### Safety— CM Agent will:

Review all safety, health and environmental protection measures proposed by each Subcontractor and make recommendations to the Customer and each appropriate Subcontractor with respect to any changes thereto that CESA deems necessary or appropriate.

Facilitate subcontractor compliance with all Federal, State and Local laws as well as request a written Safety Program and Plan (when CESA's Subcontract is used) for compliance with such laws.

CESA RFPs (when used) will require information from subcontractors regarding OSHA agreements and citations in the past 10 years and have them disclosed for review and consideration.

CESA provided subcontracts (when used) ensure site safety plans, immediate notification of reportable safety issues, as well as weekly and monthly safety documentation from subcontractors.

#### **CESA will assist the District (Customer) by completing the following tasks during the identified construction phases.**

##### Design/Specification Phase. CM Agent will:

Provide services that are consistent with all applicable laws and the requirements of easements, licenses, and other pertinent agreements to the extent the foregoing are made known to CESA. This activity shall in no way relieve the Designer or Subcontractor of their legal and contractual responsibilities.

Solicit and review competitive bids to procure a design team that will create a project that meets the needs of the Customer. Supervise design team if requested by Customer.

If any environmental hazards exist CESA will consult on the remediation on the Customer's behalf.

CESA will manage all aspects of environmental issues (including contracting with subs), for an additional fee, if requested by the Customer.

As requested by Customer, review and comment on the Construction Documents, as they are prepared by the Designer. Customer will have final approval of Design.

Upon approval by Customer of design development plans and specifications, CESA will make recommendations regarding alternative solutions whenever design details appear to negatively affect the energy savings, efficiency, or effectiveness of the Project. Final decisions will be the Customer's.

After specifications are created, write and release RFPs.

Assist Customer with soliciting and reviewing competitive bids to determine the best fit for the Customer's needs and to ensure that all requirements of the specifications have been met. CESA will share and discuss the merits, budget implications and answer any other questions regarding bids with any interested members of the Customer. Decisions of the Customer will be final.

Implementation Phase. CM Agent will:

Assist the Customer in its communications with the Designer, subcontractor(s), and Consultant(s); attend regular on-site meetings to review construction progress and to provide appropriate recommendations to the Customer concerning the Customer's decisions on construction matters, including, where necessary, alternative designs or materials; and advise the Customer concerning change orders, submittals, and requests for information.

Assist with and review change orders with Customer and advise on acceptance/denial. Advise Customer concerning the necessity for, scope of and recommended cost of change orders.

Notify the Customer, and the Customer shall notify CESA, if either becomes aware that the work of any subcontractor is not being performed in accordance with the requirements of the Contract Documents. Only the Customer, (or CESA—whomever holds the contract) will have authority, to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is covered, installed or completed. To the extent requested by the Customer, CESA will advise on such additional testing requirements.

Verification Phase. CM Agent will:

Attend on-site review of the Project to confirm substantial and final completion of the construction of the Project, and advise Customer when CESA believes the work under a Project Construction Contract is substantially complete and that a punch list should be prepared.

Coordinate with the Designer in its review of the work to enable the Designer to determine the date of substantial completion. At the substantial completion by subcontractor(s) of the work, CESA shall monitor the Designer in its inspection of the work and preparation of a detailed punch list specifying any items which require completion, installation, correction or repair. CESA will consult with Customer and/or Designer in connection with recommendations for the rejection and replacement of all nonconforming work. In all cases, the final decision to reject or accept work will be the Customer's.

Together with the Designer and Customer, monitor and observe the testing and start-up of all utilities, systems and equipment for the Project as available.

Together with the Designer, CESA will assist the Customer in completing the final close-out of the Project which includes tasks such as: (i) obtaining, or requiring the subcontractor(s) to obtain, all government approvals required for the legal use and occupancy (ii) obtaining all warranties, guarantees, bonds, insurance certificates, installation manuals pursuant to the Project Construction Contracts, (iii) obtaining all affidavits, waivers, and releases the Subcontractor(s) are required to provide pursuant to the Project Construction Contracts to

achieve final completion of the Project, (iv) analyzing all claims asserted by the subcontractor(s) and the Designer, (v) representing Customer at meetings and/or inspections held to resolve problems relating to design, physical condition or operation of the Project to seek enforcement of warranties.

Assist in verifying installation against specifications. CESA will work with Designer and Subcontractor to correct any abnormalities.

Assist in verifying completion of all punch list items.

Assist in verifying that commissioning is completed on all equipment.

Assist in follow up on any system or component that does not perform to expectation until resolved.

**CUSTOMER'S DUTIES.** Customer shall cooperate with CM Agent to facilitate the performance of CM Agent Services. Unless otherwise specified in the scope, Customer shall retain and pay all consultants, contractors, vendors, suppliers and other professionals who shall perform the design, engineering, procurement and construction of the Project. Customer 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 Customer after review and recommendation by CM Agent and approval by Customer.

### 3. **COMPENSATION.**

3.1. CM Agent's Fee. Customer shall compensate CM Agent for the Services ("CM Agent's Fee") at an amount of \$7,400 for a project cost of up to \$50,000. Total Project Cost shall mean all costs, less the 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 the Customer and, (v) any and all change orders. Because Total Project Cost will not be known until Project completion, the Parties agree to a CM Agent's Fee of \$7,400, which shall be paid in accordance with the schedule provided in Section 3.2.

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

3.2.1. Customer shall pay the CM Agent's Fee in four payments, as follows:

50% (\$3,700.00) 10 days after contract commencement, 50% (estimated at \$3,700) 10 days after final commissioning.

3.2.2. The Parties acknowledge that material increases in estimated Total Project Cost may result from change orders that Customer approves during the construction phase of the Project. To ensure that CM Agent is evenly compensated for increased provision of the Services in relation to such change orders, each payment set forth in Section 3.2.1 shall be increased by an amount equal to 5% of the value of any change order approved since the previous payment.

3.3. Reimbursable Expenses. Reimbursable expenses incurred will be reimbursed at net cost, and shall be limited to Project travel as preauthorized by Customer, document reproduction, FedEx or other courier expenses, costs for specialists or consultants engaged at Customer's direction and on behalf of Customer, and other Customer preapproved reimbursable expenses.

3.4. Additional Services. Services in addition to those identified in Section 2 must be authorized in writing by Customer. Customer shall compensate CM Agent for the provision of such additional services shall be on a pre-agreed lump sum basis.

#### 4. **TERMINATION.**

4.1. Termination by Customer for Cause. Customer may terminate this Agreement for cause if CM Agent

4.1.1. Refuses or fails to perform any of the Services with due diligence to the satisfaction of Customer;

4.1.2. 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 Customer gives CM Agent written notice thereof.

4.2. In the event of termination of CM Agent for cause pursuant to Section 5.1, CM Agent shall be paid in accordance with Section 4 of this Agreement for all Services properly performed through the date of termination and all approved Reimbursable Expenses actually incurred through the termination, less any costs incurred by Customer due to the failure or refusal of CM Agent to perform Services in accordance with this Agreement.

4.3. Termination by CM Agent for Cause.

4.3.1. CM Agent may terminate this Agreement if Customer 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 Customer written notice thereof.

4.3.2. In the event of termination by CM Agent for cause pursuant to Section 5.3.1, CM Agent shall be paid in accordance with Article 4 of this Agreement for all Services properly performed through the date of termination, all approved Reimbursable Expenses actually incurred through the termination date and all Termination Expenses. For purposes herein "Termination Expenses" are defined as those reasonable and unavoidable 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.

4.4. Termination by Customer Without Cause. Customer may suspend or terminate the Services of CM Agent or this Agreement, in whole or in part, for Customer's convenience and without cause upon thirty (30) business days' notice. If this Agreement is terminated by Customer for Customer's convenience, CM Agent shall be entitled to payment for Services properly completed and reasonable Reimbursable Expenses incurred up to the date of termination but shall not be entitled to consequential or incidental damages, including, without limitation, lost profits.

#### 5. **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 Customer's name or in CM Agent's name, shall be the property of Customer and shall not be used or released by CM Agent for any other purposes without Customer's written approval.

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

7. **INSURANCE AND INDEMNIFICATION.**

7.1. 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. Customer, and Customer's agents, officers, directors and employees shall be named as additional insured under CM Agent's comprehensive general liability and automobile liability insurance policies. Copies of the actual policies shall be available for Customer's inspection upon reasonable notice to CM Agent.

7.2. Indemnity.

7.2.1. CM Agent shall indemnify and hold harmless Customer and the Customer'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 Customer or Customer's agents or employees.

7.2.2. Customer 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 Customer, anyone directly or indirectly employed by Customer 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 CESA 10 or its agents or employees.

7.3. 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. The maximum liability of each Party to the other under this Agreement shall be an amount equal to the CM Agent's Fee.

7.4. 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 Customer, its officers, directors, shareholders, agents, representatives 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.

8. **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 Customer and CM Agent or CM Agent's employees. Nothing contained in this Agreement shall be construed to mean that CM Agent and Customer 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 Customer.

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

10. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall be binding upon CM Agent and Customer 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. .

11. **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 CUSTOMER:                   KILBOURN LIBRARY BOARD  
KILBOURN PUBLIC LIBRARY  
620 ELM STREET  
WISCONSIN DELLS, WI 53965  
cathyb@dellslibrary.org

IF TO CM AGENT:                   COOPERATIVE EDUCATIONAL SERVICE AGENCY 10  
725 WEST PARK AVE.  
CHIPPEWA FALLS, WI 54729  
(715) 720-2176 OFFICE  
(715) 308-1401 CELL  
ATTN: CHARLIE SCHNEIDER  
charlie@cesa10.k12.wi.us

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.

12. **WAIVER.** No action or failure to act by Customer 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.

13. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding and contract of the parties and supersedes all other agreements, oral or written regarding the subject matter of this Agreement.

This Agreement is made as of the Effective Date.

**KILBOURN LIBRARY BOARD:**

By: \_\_\_\_\_

**CM AGENT:**

By: \_\_\_\_\_

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**April 6, 2017**

Director's Report

**Friends of the Library**

Volunteer report of hours

March hours – 16 volunteers worked 107 hours

**Library statistics for the month of March**

Door Count – 9670

Last year – 8329      Last month – 7414

Computer users – 873

Last year – 882      Last month – 716

Wireless users – 662 users / 5856 sessions

Last year – 602 users/ 4793 sessions      Last month – 595 users / 4884 sessions

Circulation – 7765

Last year – 8111      Last month – 7042

Bookmobile Circulation – 732

Last year – 643      Last month – 582

**March Events**

Saturday programs

3/4 – St. Patricks Day Crafts – 12

3/11 – Lego Day - 21

3/18 - Movie Day – *Moana* - 8

3/25 – Craft Day – Spring Wreath - 8

Book club read *The Aviator's Wife* by Melanie Benjamin. We had 2 attend at FFSC, and 21 at the 2 library discussions.

Starting in April the book discussion at FFSC has been replaced with a Special event day.

Our movie day has become a Book2Movie Day. We will show movies based on books and offer the books the month before for anyone interested in reading the book before watching the movie.

Baseball Essay contest for students in grades 2 -6. Milwaukee Brewers tickets to 2 winners. Jody will send out reminders to teachers and posts on facebook to try to get more essays in before the deadline.

We had some good numbers for some of our Spring Break movies and activities. We had 16 here for the movie on Monday – “Sing” and a total of 27 attend movies during the week. We had a total of 52 participate in activities.

Jody has adjusted the schedule for BabyTime. She has been getting

some toddler aged children so she is starting at 10:45 with some activities geared toward them and then at 11:15 with the babies added for lapsit activities.

We had our first Crocheting & Knitting Event on Monday, March 20. We had 9 people attend. They will be meeting on the 3<sup>rd</sup> Monday of the month on a regular basis.

### **April Events**

Saturday programs

4/1 – Paper Crafts –

4/8 – Lego Day

4/15 - Movie Day – *Tangled: Before Ever After*

4/22 – Craft Day – Spring painting

4/29 – Family Fun Day – May Day & Spring Celebration

Book club is reading *The Miniaturist* by Jesse Burton.

Tweens and Teens are reading and watching *Fantastic Beasts and Where to Find Them* by J.K. Rowling.

The Friends of the Library and the Dells Country Historical Society will be hosting Jake Beard who will share his collection of historical photographs. Tuesday, April 11 at 7:00 p.m.

Frank Fischer Senior Center

Monday, April 3 – Yahtzee – 8 people

Monday, April 10 – Craft Day – card making

Monday, April 17 – Book2Movie Day – *Me Before You*

Monday, April 24 - BINGO