

**NON-EXCLUSIVE CONTINUING CONTRACT BETWEEN OWNER AND CONSULTANT FOR  
PAINTING AND WEATHERPROOFING CONSULTING SERVICES**

THIS AGREEMENT, made this **1<sup>st</sup> day of May, 2018** between The School Board of Sarasota County, Florida (hereinafter called the "Owner") and **Construction Moisture Consulting, Inc.** (hereinafter called the "Consultant") whose address is **4508 Oak Fair Boulevard, Suite 200, Tampa, Florida 33610-7387.**

WHEREAS, the Owner desires to contract with a firm on a continuing contract basis for the providing of **painting and weatherproofing consulting services** (hereinafter referred to as "professional services") for Owner assigned projects;

WHEREAS, the Owner is authorized under Florida law to enter into such continuing contracts and has chosen to use a qualifications based selection process in accordance with Florida Statute 287.055(3), (4) and (5) and School Board Policy 7.71, to select the consulting firms which will be contractually available to provide the necessary professional consulting services for Owner assigned projects;

WHEREAS, the Consultant was one of the entities chosen by the Sarasota County School Board Professional Services Selection Committee, and the Owner and Consultant desire to enter into this Agreement to memorialize the terms under which Consultant will provide professional consulting services on Owner assigned projects during the term of this Agreement;

WHEREAS, Consultant acknowledges that another **two consulting firms** have also been selected to provide professional consulting services on Owner assigned projects and that the Owner has the absolute discretion to designate which projects will be assigned to a particular firm;

In consideration of the mutual covenants contained herein, the Owner and Consultant agree as follows:

**ARTICLE 1**

**TERM OF AGREEMENT AND RIGHT TO TERMINATE**

- 1.1** Subject to the right of termination contained in paragraph 1.2, this Agreement is valid for a period of three (3) years beginning **May 14, 2018** and ending **May 13, 2021** This agreement shall terminate and expire at the end of such three-year period.
- 1.2** In accordance with Florida Statute 287.055(1)(g), this Agreement may be terminated by the Owner, with or without cause, at any time, by Owner providing the Consultant with thirty (30) days-notice of such termination in writing. Termination of this Agreement by the Owner shall not terminate any contractual agreement Owner and Consultant may have with respect to a particular project which had previously been assigned to Consultant, unless the notice of termination so provides.
- 1.3** This Agreement represents the entire agreement between the Owner and the Consultant as to the scope of services contemplated by this Agreement and supersedes all prior negotiations, representations or agreements. However, if, as more specifically set forth herein, a proposal as to a particular project is accepted, the parties' relationship as to that project shall thenceforth be governed by the proposal, the purchase order issued by the Owner for that particular project and the terms of this Agreement.
- 1.4** Consultant acknowledges and understands that the projects contemplated by this Agreement are being constructed on public property owned by the Owner, which property may at various times during construction be occupied by students, teachers, parents and school administrators. Accordingly, in order to secure the property, and otherwise comply with applicable law, the Consultant agrees to the following provisions and also agrees that the failure to comply with any of these provisions may result in the termination of this Agreement:
  - (a) Unauthorized Aliens. Owner considers the employment of unauthorized aliens by the Consultant,

or any of its subcontractors, a violation of Section 274A(e) of the Immigration and Naturalization Act. If it is determined that an unauthorized alien is working on the Project, the Consultant shall take all steps necessary to remove such unauthorized alien from the property and the project. Owner shall have the right to terminate this Contract if the Consultant does not comply with this provision.

- (b) **Possession of Firearms.** Possession of firearms will not be tolerated on the project or the Owner's property. No person who has a firearm in their vehicle may park their vehicle on the Owner's property. Furthermore, no person may possess or bring a firearm on School District property. If any employee/independent contractor of the Consultant, or any of its sub-contractors, is found to have brought a firearm on to the Owner's property, said employee/independent contractor shall be removed and terminated from the project by the Consultant. If a sub-contractor fails to terminate said employee/independent contractor, the Consultant shall terminate its agreement with the sub-contractor. If the Consultant fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor, this Agreement may be terminated by the Owner. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive devise, or any machine gun. Powder actuated construction nailers and fasteners are excluded from this definition.
- (c) **Criminal Acts.** Employment on the project by the Consultant, or any of its sub-contractors, of any employee, or independent contractor, with any prior convictions of any crimes against children, crimes of violence or crimes of moral turpitude will not be tolerated. If it is determined that any person with such criminal history is on the project site, the Consultant agrees to take all steps necessary to remove such person from the project and the property. Owner shall have the right to terminate this Agreement if the Consultant does not comply with this provision.
- (d) **Sexual Predators/Sexual Offenders.** In order to insure that no sexual predators or sexual offenders are working on the project site, Consultant shall perform a query of all its employees/independent contractors working at the project site, and require all of its sub-contractors to perform a query of their employees/independent contractors working at the project site, against the Florida Department of Law Enforcement Sexual Predator/Offender Registry ([www.fdle.state.fl.us](http://www.fdle.state.fl.us)). Any person who is on the Sexual Predator/Offender Registry shall not be allowed on the project, and Consultant shall immediately remove such person from the project and the property. Consultant shall, upon request by the Owner, provide evidence that such queries have been done on all personnel working at the project site. Owner shall have the right to terminate this Agreement if the Consultant, or any sub-contractor, does not comply with this provision.
- (e) **Possession/Use/Under the Influence of Mind Altering Substances.** Possession/use and/or being under the influence of any illegal mind altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, by Consultant's employees/independent contractors or its sub-contractors' employees/independent contractors will not be tolerated on the Owner's property. If any employee/independent contractor is found to have brought and/or used or is under the influence of any illegal mind altering substances as described above on the Owner's property, said employee/independent contractor shall be removed and terminated from the project by the Consultant. If a sub-contractor fails to terminate said employee/independent contractor, the Consultant shall terminate its agreement with the sub-contractor for the project shall be terminated. If the Consultant fails to terminate said employee/independent contractor or fails to terminate the agreement with the sub-contractor who fails to terminate said employee/independent contractor, this Agreement may be terminated by the Owner.
- (f) **Background Screening Requirements.** Consultant agrees that before any of its employees, agents or sub-consultants will be permitted on school grounds while students are present, such employees, agents or sub-consultants will be fingerprinted and have their backgrounds checked as provided by Florida law. Consultant's employees, agents and sub-consultants will coordinate with the Owner to arrange a mutually convenient time for the Owner to conduct the fingerprinting. Consultant agrees to bear the cost of the fingerprinting/background checks. The Owner has the right to refuse entry

onto any school grounds to any individual whose background check does not meet the requirements established by the Owner pursuant to Florida law.

## ARTICLE 2

### SCOPE OF CONSULTANT'S SERVICES

- 2.1** Consultant shall diligently and in a timely manner perform professional consulting services for a variety of minor projects which may be assigned by the Owner's designated representatives.
- 2.2** After assignment of a specific project by the Owner's designated representative, the Consultant will consult with the Owner's representative to determine and define the Owner's requirements and the Consultant's responsibility for such project. The Owner shall identify the project and shall define the responsibility of the Consultant for work performed on the project. Consultant shall then supply Owner's designated representative with a proposal for the work contemplated by the assigned project. The proposal shall include a detailed description of the scope of work, a total price for the work based on the attached fee schedule (Exhibit "A") and, if requested, a completion schedule.
- 2.3** If the Owner accepts the proposal, the Owner shall issue a purchase order for the work. The proposal, the purchase order, and this Agreement shall then govern the relationship between the parties as to the assigned project.
- 2.4** The services of the Consultant may involve design preparation and/or review, inspections, consultations, and recommendations as may be appropriate. As work progresses, and upon completing the professional consulting services at various stages of each project, the Consultant will promptly make written reports of his findings describing the project, work performed and results of such work, together with any pertinent observations that should be brought to the attention of the Owner. Unless otherwise agreed between the parties, the Consultant will furnish one electronic submission of such reports which will be e-mailed directly to the Owner's designated representative, and, when required, one signed and sealed original which shall be delivered to the Owner's designated representative. All reports will become the exclusive property of the Owner and may be used as the Owner determines.
- 2.5** Familiarity and Compliance with Governmental Laws & Requirements
- (a) The Consultant shall be familiar with and comply with applicable state laws, statutes, building codes, rules and regulations and lawful orders of governmental, public and quasi-public authorities and agencies having jurisdiction over any Owner assigned Project or in any way affecting the professional engineering services.
- (b) The Consultant shall be familiar with and comply with Federal laws, rules and regulations that may in any way affect the Work, including but not limited to the following:
- (1) U.S. EPA Asbestos Containing Materials in Schools, final Rule and Notice 40CRF763, Reference 736.99(a)(7);
  - (2) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327, et seq.;
  - (3) Federal Fair Labor Standards Act, 29 U.S.C. Section 201, et seq.;
  - (4) Title VI of the Civil Right Act of 1975;
  - (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, related to discrimination;
  - (6) Americans with Disabilities Act;
  - (7) Anti-Kickback Act of 1986, 41 U.S.C. Section 51;
  - (8) The Hatch Act, 18 U.S.C. 594, 598, 600-605;
  - (9) Uniform Federal Accessibility Standards, 41 C.F.R. Section 101-19.6;
  - (10) Title IX of the Education Amendments of 1972, 20 U.S.C.: 1681-1683 and 1685-1686 prohibiting discrimination on the basis of sex;
  - (11) Comprehensive Alcohol and Alcoholism Prevention Treatment and Rehabilitation Act of

- 1970, 42 U.S.C. 4521-45-94;
- (12) Public Health Service Act of 1912, 42 U.S.C. 290dd-3 and 290ee-3;
- (13) Lead-Based Paint Poison Prevention Act
- (14) Energy Policy and Conservation Act, P.L. 94-163: 42 U.S.C.
- (15) Clean Air Act of 1955, 42 U.S.C. 7401-7642
- (16) Clean Water Act of 1977
- (17) Immigration and Nationality Act, 8 U.S.C. Section 1324a(e) Section 274A(e);
- (18) Records Retention, 34 C.F.R.

- 2.6** When required, all work done by the Consultant will be signed and sealed by a professional registered in the State of Florida.

### **ARTICLE 3**

#### **OWNER'S DESIGNATED REPRESENTATIVE**

- 3.1** The Owner shall designate a representative to act in its behalf as to each project assigned in accordance with this Agreement. This representative, or his/her designee, will assign projects to Consultant, monitor the progress of each assigned project, serve as liaison with the Consultant, receive and process communications and paperwork, examine and approve invoices, reports, estimates, proposals or other documents presented by the Consultant, and represent the Owner in the day-to-day conduct of the project. The Consultant will be notified in writing of the representative and of his/her designee or any changes thereto.

### **ARTICLE 4**

#### **PAYMENTS TO CONSULTANT**

- 4.1** The Owner agrees to pay the Consultant for work completed and reported by the Consultant in accordance with the fee schedule attached hereto as Exhibit "A".
- 4.2** For each project, Consultant agrees to submit an invoice covering the work completed and reported with detail satisfactory to the Owner describing the work performed during the applicable period. Owner agrees to pay said invoices within fifteen (15) days of approval. Consultant agrees that such invoices shall be submitted on a monthly basis.

### **ARTICLE 5**

#### **DISPUTE RESOLUTION**

- 5.1** All claims, disputes and other matters in question between the Consultant and Owner arising out of or relating to this Agreement, any subproject assigned in accordance with this Agreement, or Contract Documents shall be resolved by mediation or litigation in the Circuit or County Court in and for Sarasota County, Florida. Any reference herein to arbitration is deemed void.
- 5.2** Unless a delay in initiating or prosecuting a claim, dispute or other matter in question between the Consultant and Owner arising out of or relating to this Agreement would irrevocably prejudice the Owner or the Consultant, any such matter which is not resolved by direct discussions between the parties shall be submitted to mediation under the Florida Rules of Civil Procedure or such other rules as the parties may promptly agree to employ, before recourse to litigation. The Owner and the Consultant shall, within ten (10) days of the request of either party for mediation, agree in writing as to the identity of the mediator. If the parties do not agree, the Director of Construction Services for the Owner shall designate a mediator from the list of approved mediators for the Twelfth Judicial Circuit in and for Sarasota County, Florida.

- 5.3 The parties agree to conduct and conclude mediation proceedings under this Article within thirty (30) days from the initiation of same by request of one of the parties. In the event that such proceedings have not been successfully concluded with such period, either party shall have the right to initiate further dispute resolution proceedings including litigation.
- 5.4 Provided the parties comply with the requirement of this Agreement for providing notice of the existence of a claim or dispute, no delay in disposing of such claim or dispute while the parties pursue resolution as provided in this Article shall prejudice the rights of either party; however, nothing contained in this Article shall be deemed to relax any requirement for the giving of notice between the parties.

**ARTICLE 6**

**INSURANCE**

- 6.1 The Consultant will secure and maintain such insurance as will protect it and the Owner from claims under Workmen's Compensation Acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of his employees, or of any person other than his employees, and from claims for damages because of injury or to destruction of tangible property, including loss of use resulting therefrom.
- 6.2 Within ten (10) days after execution of this Agreement, the Consultant will furnish the Owner with a Certificate of Insurance indicating the amounts of coverage and containing a provision that the coverage afforded under the policies will not be cancelled until not less than ten (10) days' prior written notice has been given to the Owner, **and shall name the Owner as an additional insured**. The Certificates of Insurance shall contain the following minimum limits:

Limits on Insurance -

Professional Liability	\$1,000,000.00
General Liability	\$1,000,000.00
Vehicle Liability	\$1,000,000.00

**ARTICLE 7**

**MISCELLANEOUS PROVISIONS**

- 7.1 Consultant agrees to indemnify and hold harmless the Owner, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Consultant or other persons employed or utilized by the Consultant in the performance of this Agreement.
- 7.2 The Owner and Consultant respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Consultant shall assign this Agreement without the written consent of the other.
- 7.3 This Agreement shall be governed by the laws of the State of Florida. Sole and exclusive venue of any action brought under or arising from this Agreement shall be in the Circuit or County Court in and for Sarasota County, Florida.
- 7.4 The Consultant warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Consultant) to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation individual or firm (other than a bona fide employee working solely for the Consultant) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

- 7.5 As required by Section 287.058, Florida Statutes, this Agreement may be unilaterally canceled by the Owner for refusal by the Consultant to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 and made or received by the Consultant in conjunction with the Agreement.
- 7.6 It is expressly acknowledged that the Consultant is an independent Contractor and as such, has no authority to act for or on behalf of the Owner or to bind the Owner to any agreement or in any other manner.
- 7.7 In the event either party is required to commence any litigation to enforce the term of this Agreement, or a purchase order issued in accordance with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its attorney's fees incurred in such action, including for trial and appellate proceedings.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SARASOTA COUNTY SCHOOLS**

BY: \_\_\_\_\_  
**Bridget Ziegler, Chair**

**CONSTRUCTION MOISTURE CONSULTING, INC.**

BY: \_\_\_\_\_  
*William P. Cowart*  
**William P. Cowart, ChE**

Its \_\_\_\_\_  
**Vice President**

Approved for Legal Content: 4/22/2016 – MG  
Matthews, Eastmoore, Hardy, Crauwels & Garcia  
Attorneys for The School Board of Sarasota County, Florida  
Signed: MG

## Exhibit "A"

### Construction Moisture Consulting, Inc. / CMC Design Group, Inc.

#### PAINTING AND WEATHERPROOFING CONSULTING SERVICES

May 14, 2018 through May 13, 2021

#### Pricing Schedule Hourly Rates and Reimbursable Expenses:

- Principal in Charge/Project Manager  
(Current Staff Members – William P. Cowart, Jon-Eric Macias) \$160.00 per Hour
- Project Architect (Senior)  
(Current Staff Member – George "Skip Lotwick) \$135.00 per Hour
- Architect  
(No Current Staff Member) \$120.00 per Hour
- Senior Consultant  
(Current Staff Member – Carey A. Hunt) \$120.00 per Hour
- Field Technician  
(No Current Staff Member) \$105.00 per Hour
- CADD/Drafting \$75.00 per Hour
- Assistant Project Manager/Administrative  
(Current Staff Member - Debra Palmer) \$50.00 per Hour
- Field testing performed by Construction Moisture Consulting, Inc./CMC Design Group, Inc. shall be based on the above hourly rates.
- Film, photo processing, additional printing, reprographics, special postage, shipping/courier charges, etc., shall be considered reimbursable expenses at cost with no additional markup.

#### Laboratory Analytical Services Fees:

*The following tests are not meant to be inclusive of all laboratory analyses which may be required and are offered as a sampling of typical testing for chemical/physical/ mechanical properties of construction materials.*

- ASTM D3359 – Adhesion via Tape Test \$75.00 per Test
- ASTM D1475 – Density \$50.00 per Test
- ASTM D1353 – Not-Volatiles via Gravimetry \$125.00 per Test
- ASTM D2370 – Tensile of Organic Coatings \$125.00 per Test
- ASTM D2240 – Durometer Hardness \$50.00 per Test
- Coating Thickness via Optical Microscopy \$75.00 per Test
- Coating Thickness via Scanning  
Electron Microscopy (SEM-EDS) \$150.00 per Test
- Moisture Content via Thermogravimetric  
Analysis (TGA) \$125.00 per Test
- Scanning Electron Microscopy with EDS \$200.00 per Hour
- Fourier Transform Infrared Spectroscopy \$250.00 per Spectrum
- Please note, the Laboratory Analytical Services Fees above are based on current pricing as provided by our supplier of these services and is subject to change. Laboratory Analytical Services Fees shall be considered reimbursable expenses at cost with no additional markup.