

WASATCH SCHOOL DISTRICT NEW POOL CONSTRUCTION AGREEMENT

TABLE OF ARTICLES

1. THE CONTRACT DOCUMENTS
2. THE WORK OF THIS CONTRACT
3. DATE OF COMMENCEMENT AND COMPLETION
4. CONTRACT SUM
5. PAYMENTS
6. DISPUTE RESOLUTION
7. TERMINATION OR SUSPENSION
8. MISCELLANEOUS PROVISIONS
9. ENUMERATION OF CONTRACT DOCUMENTS
10. INSURANCE AND BONDS
11. SUBCONTRACTORS
12. CHANGE ORDERS/MODIFICATIONS

WASATCH SCHOOL DISTRICT NEW POOL CONSTRUCTION AGREEMENT

AIA Document A101-2007, Standard Form of Agreement between Owner and Contractor as amended as set forth herein.

This NEW POOL CONSTRUCTION AGREEMENT (the "Agreement") is effective as of the 27th day of April, 2016

BETWEEN the Owner:  
Wasatch County School District  
101 East 200 North  
Heber City, UT 84032  
Tele: 435.654.0280  
Fax: 435.654.4714

And the Contractor:  
Westland Construction  
1411 West 1250 South, Suite 200  
Orem, UT 84032  
Tele: 801.374.6085  
Fax: 801.374.6060

The Architect:  
VCBO Architecture  
524 South 600 East  
Salt Lake City, Utah 84102  
Tele: 801.575.8800  
Fax: 801.531.9850

The Owner and Contractor agree as follows.

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract documents shall also include the Project Manual attached hereto as Exhibit A insofar as the Project Manual does not conflict with any provision herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically

indicated in the Contract Documents to be the responsibility of others.

### **ARTICLE 3 DATE OF COMMENCEMENT AND COMPLETION**

§ 3.1 The date of commencement of the work shall be May 15, 2016 with the exception of work required by alternate #4, which shall start May 2, 2016 and be complete by May 16, 2016.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Completion and Owner Occupancy of all Work not later than June 1, 2017, subject to adjustments of this Contract Time as provided in the Contract Documents. Time is of the essence in the timely completion of the Work. Contractor acknowledges that the failure to achieve Completion and Owner Occupancy by June 1, 2017, will result in incalculable and irreparable damage to Owner and that Owner has no adequate remedy at law for such breach. The parties hereto also recognize the delays, expense and difficulties involved in providing a legal proceeding the actual loss sustained by Owner if the Work is not completed on time. Therefore, Contractor agrees to immediately pay to Owner \$1,000.00 for each calendar day or portion thereof that the Project remains uncompleted beyond June 1, 2017.

Contractor further acknowledges that the sums to be paid pursuant to this Section (i) constitute agreed upon and liquidated damages for delay only, and not a penalty; (ii) represent a reasonable and good faith attempt by Owner and Contractor to ascertain the minimum damages that would be suffered by Owner in the event of the failure of Contractor to timely achieve Substantial Completion and Owner Occupancy or complete Punch List Work; and (iii) shall not prevent Owner from pursuing Claims for other non-delay damages, such as costs to complete or remedy defective work.

§ 3.4 Punch List. When the Project has been tested and completed in accordance with the Contract Documents, Contractor shall advise Owner in writing if it believes the Project has achieved Substantial Completion and Owner Occupancy and submit to Owner a list of items to be completed or corrected. The Architect and Owner shall have the right to observe the Work to determine compliance with the Contract Documents. Any defective work shall be completed or corrected by Contractor before Completion and Owner Occupancy shall occur, except that any defective work which Owner, in its sole judgment deems insignificant shall be listed on a completion list (the "Punch List") and shall not affect the achievement of Completion and Owner Occupancy. The failure to include any item on the Punch List does not alter the responsibility of the Contractor to complete the Work in accordance with the Contract Documents. Contractor shall complete all items on the Punch List in accordance with the Contract Documents, including, without limitation, correction of defective work, retesting and inspection, no later than thirty (30) days after notice by Owner of such defective work, or such other period of time as may be agreed to by Contractor and Owner.

§ 3.5 Completion. Contractor shall notify Owner at least thirty (30) days in advance of the anticipated date of Substantial Completion. Owner shall have the right to exclude Contractor and its Subcontractors from the Work after the date of Completion but Owner shall allow Contractor and its Subcontractors reasonable access to complete or correct items on the Punch List

§ 3.6 Final Completion. Final completion shall occur only after:

§13.3.1 the Work has successfully achieved Substantial Completion and Owner Occupancy; and

§13.3.2 all Punch List items have been fully completed by Contractor in accordance with the Contract Documents.

#### **ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eleven Million, Eight Hundred and Thirty-Three thousand dollars. \$11,833,000.00, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternatives, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

Base Bid:	\$11,259,000.00
Alternate 1A	\$ 228,000.00
Alternate 1B	\$ 249,000.00
Alternate 1C	\$ 52,000.00
Alternate 3	\$ 22,000.00
Alternate 4	\$ 23,000.00

TOTAL: \$11,833,000.00

#### **ARTICLE 5 PAYMENTS**

##### **§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1<sup>st</sup> day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule

of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201m-2007, General Conditions of the Contract for Construction;
2. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (5%);
3. Subtract the aggregate of previous payments made by the Owner; and
4. Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

1. Add, upon Completion of the Work, a sum sufficient to increase the total payments to the full amount of the contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
2. Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Omitted

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

1. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Documents A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
2. a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

### **§ 6.2 DISPUTE RESOLUTION/ LITIGATION**

The parties, may, but are not required, to mediate any dispute that arises between them. If the parties elect to mediate the dispute or Claim, the parties shall select a mutually agreed upon mediator, and the parties are not required to use the American Arbitration Association. The Parties hereto consent to exclusive jurisdiction and venue in the courts of Wasatch County, State of Utah to settle any dispute or Claim not otherwise resolved. In the event that either party fails to carry out its obligations hereunder, the party in default shall pay all costs and expenses, including attorneys' fees (including any incurred in connection with any appeal), incurred by the other party in enforcing its rights or in obtaining redress for the breach, whether by filing suit or otherwise.

## **ARTICLE 7 TERMINATION OR SUSPENSION**

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents. Where this Agreement conflicts or is inconsistent with AIA Document A201-2007, the terms of this Agreement shall govern.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at six percent (6%) per annum.

§ 8.3 The Owner's representative:  
Keith Johansen, Business Administrator  
Wasatch County School District  
101 East 200 North  
Heber City, UT 84032  
Tele: 435.654.0280  
Fax: 435.654.4714

§ 8.4 The Contractor's representative:  
Nick Slye  
Westland Construction  
1411 West 1250 South, Suite 200  
Orem, Utah 84058  
Tele: 801.374.6085  
Fax: 801.374.6060

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor as amended as set forth herein.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Bid Drawing	New Wasatch Pool	April 5, 2016	
Addendums	# 1-3		
Project Manual 1	Construction Document	April 5, 2016	1561

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

#### ARTICLE 10 INSURANCE AND BONDS

§ 10.1 The Contractor shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201- 2007.

Type of Insurance: Liability      Limit of liability amount (\$2,000,000.00)

§ 10.2 The Contractor shall obtain payment and performance bonds in the amount of 100% of the full Contract Sum which is \$11,833,000.00.

## **ARTICLE 11 SUBCONTRACTORS**

The requirements set forth in Article 5 of the AIA Document A201-2007, General Conditions of the Contract for Construction apply to this Agreement insofar as they are not inconsistent with the following:

§11.1 Contractor shall be responsible for the management of all Subcontractors and shall administer the construction and installation contracts for the Work using Contractor's best skill and attention in consultation with Owner. Contractor shall supervise and inspect the Work to the extent necessary to determine that the Work is being performed in accordance with the Contract Documents, that all Subcontractors and Sub-Subcontractors are being timely paid, and that no Claims have been filed. Contractor shall give Owner prompt written notice of defective work and shall take all steps necessary to have the Subcontractors correct or remedy such defective work. Any problems with the Work which are brought to the attention of Contractor by Owner shall be promptly and appropriately addressed by Contractor. A written summary of any action taken with respect to any such problems shall be submitted to Owner. Contractor shall schedule and coordinate the Work performed by all Subcontractors on the Project, review all Applications for Payment and certify such Applications for Payment to the Architect and Owner in accordance with the Contract Documents. Contractor shall supervise the completion of punch list items by Subcontractors to ensure that such work is completed in a timely and acceptable fashion, and, in addition to its other rights and remedies hereunder, Owner shall have the right to hold any retainage permitted hereunder to assure such supervision. Contractor shall be and remain primarily and directly liable to Owner for any Work subcontracted. Contractor shall not be allowed any schedule extension or recovery of any added costs due to any delay or default of any Subcontractor. No adjustments in the Contract Sum shall be made which directly or indirectly compensates Contractor or Subcontractors for any incremental cost increases incurred as a result of its delay.

§11.2 All contracts with Subcontractors, including all general or supplementary conditions, shall:

§11.2.1 Be in writing;

§11.2.2 Be subject to the terms and conditions of the Contract Documents insofar as applicable;

§11.2.3 Include satisfactory insurance warranties, guaranties and duties from such subcontractors;

§11.2.4 Provide that such warranties, guaranties and duties shall be for the benefit of, and enforceable by the Owner; and

§11.2.5 Be in form and substance acceptable to Owner and Architect. Such contracts with approved subcontractors are hereinafter referred



§11.3 In the event of the default or breach of warranty by any Subcontractor, Contractor shall promptly proceed, either separately or in conjunction with others, to pursue any available remedies against the Subcontractor so in default. Contractor will promptly advise Owner of the steps it intends to take in connection with any such default. If Contractor does not take such action, Owner, upon three (3) calendar days prior written notice to Contractor, may, at the expense of Contractor, and in the name of Contractor or in its own name, take such action and any other reasonable action involving any such Subcontractor or surety which Owner deems reasonably necessary, and in such event Contractor shall fully cooperate with Owner and shall reimburse Owner for all costs and expenses (including reasonable attorneys fees) incurred by Owner in so doing.

## **ARTICLE 12 CHANGE ORDERS/MODIFICATIONS**

§ 12.1 Owner may, without invalidating this Agreement, at any time by written order issued by Owner's authorized representative, and without notice to Contractor's sureties, make changes in, additions to and omissions from, the Work to be performed and materials to be furnished under the Contract Documents, and Contractor shall promptly proceed with performance as so changed. A Modification shall not in any event entitle Contractor to an increase in the Contract Sum or the Contract Time unless and only to the extent such modification or change causes an increase in cost to Contractor of more \$500 due to additional Work by Contractor. Any increase or decrease in the Contract Sum resulting from such changes shall be agreed upon in advance in writing by the parties hereto; provided, however, that in no event shall the percentage amount of the Fee be increased as a result of the Modification. Except as provided in the foregoing sentence, no increase or decrease in the Contract Price shall be binding on Owner unless agreed upon in advance in writing. No alteration, change, addition or omission shall be made in the Work or in the manner or method of performance of the same, except upon written Modification

§ 12.2 Prior to the issuance of a Modification, Owner may require Contractor to furnish to Owner a detailed breakdown showing the difference in value of the work, labor, services, equipment, and materials altered, added, omitted or changed by the proposed Modification and the effect of such proposed Modification on the Contract Time. The failure of Contractor to promptly commence performance of any Modification, when so directed in writing by Owner, whether or not all terms have been agreed upon, may be deemed by Owner to be a material breach and Contractor held in default of this Agreement.

§ 12.3 Any extension of time needed as a result of a proposed Modification shall be requested by Contractor, in writing, prior to the issuance of the Modification. There shall be no other monetary or time allowance, direct or indirect, to Contractor other than what is specifically written in the Modification, including, but not limited to, delays, suspensions, escalations, impact or other cost factors. Where unit prices are stipulated in the agreement, all adjustments, whether increases or decreases, shall be made in accordance with said units. Said units shall be deemed to include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses. If Owner directs the Modification work to be done by Contractor on a time and material basis, Contractor shall prepare daily time and material invoices which shall be submitted to Owner on a daily basis. No payment shall be made by Owner for holiday or other nonworking time, unless mandated by

union agreement and approved in advance by Owner. Contractor shall in no event be entitled to, nor shall it receive any compensation or allowance for any Modification in an amount greater than that which Owner actually approved by Modification. The issuance of any Modification and payment thereof, prior to completion and acceptance of the Project, shall not preclude Owner from questioning the validity thereof and recouping payment therefor, where, on final settlement, it appears that the Modification work was neither extra nor additional work under a proper interpretation of the Contract Documents. No Modification shall vary, abrogate, avoid, or otherwise affect the terms, conditions and provisions of the Contract Documents except as specifically set forth in the Modification

This Agreement is effective as of the day and year first written above.

Signed:

 Date: 4/26/16  
Mark Davis, WCSD Board President

 Date: 4/29/16  
Nick Slye, Westland Construction