

## **CONSTRUCTION AGREEMENT KID CLINIC BUILDING**

This Construction Agreement (“Construction Agreement”) for the Kid Clinic Building is entered into between **Campbell County Hospital District** (CCH) and **Campbell County School District** (CCSD) (CCH and CCSD individually “Party” and collectively “Parties”) pursuant to W.S. § 16-1-105 and as a supplemental agreement to that certain *Amended Kid Clinic Agreement between the Campbell County School District and the Campbell County Hospital District* (“Amended Agreement”), effective as of the last date that each of the parties have signed this Agreement.

The Parties, under the Amended Agreement, have agreed that they will construct a building located on CCSD property and to be owned by CCSD for operation of the Kid Clinic (“Kid Clinic Building”) under the terms set forth in the Amended Agreement under the terms set forth therein.

In consideration of the mutual promises and agreement set forth herein and to facilitate construction of a building that meets the expectations and requirements of each of the parties and within their expected budgets and timeframes, the Parties agree as follows:

1. The Parties shall each appoint a representative who shall be authorized to make decisions on behalf of each entity during the time in which the Kid Clinic Building is being constructed and until occupancy is granted for the new building (“Authorized Representative(s)”);

2. CCSD, as owner, shall contract with Schutz Foss Architects, PC, Gillette, WY, regarding the architectural responsibilities and services to be provided on the Kid Clinic Building. The Authorized Representatives shall each approve the following design phases: schematic, design development, and construction documents;

3. Prior to the commencement of construction, the Parties shall agree, in writing, to a total project budget. During construction of the Kid Clinic Building, the Parties shall jointly fund, with each contributing one-half, a construction account from which expenses will be paid as they are incurred on the Kid Clinic Building construction. Prior approval of both Parties shall be required before payments are made from the account. It is the Parties expectation that if any initial funding is required to begin construction prior to July 1, 2020, CCSD shall be the party to provide that funding and following July 1, 2020, or as soon thereafter as bids are received, each Party shall contribute to the construction account a total (including any amounts previously paid) one-half of the total contract amount plus any architectural and consulting fees incurred. An additional 7.5% of the contract amount shall be contributed by each Party, as additional contingency, to be adjusted based upon the final construction costs. The project budget and construction account shall not be increased without prior written authorization by the Parties.

4. CCSD shall be the party to contract directly with the construction contractor for construction of the Kid Clinic Building and shall manage construction of the Kid Clinic Building;

5. For any medical operations-related construction decisions required to be made after the construction documents have been executed, CCSD shall consult with the CCH Authorized Representative prior to making any changes;

6. In the event CCH is not able to occupy the Kid Clinic Building for any construction-related reason or if CCSD does not complete construction of the Kid Clinic Building within two years of this Construction Agreement and there is no act of God that prevents completion of construction, in CCH's sole discretion, it may notify CCSD in writing of its withdrawal from this Construction Agreement and the Amended Agreement. In such event CCH shall have no further obligations under either agreement and CCSD shall indemnify and repay to CCH all amounts that CCH paid towards construction of the Kid Clinic Building within six months of CCH's written withdrawal. Failure of CCH to elect remedies under this paragraph shall not waive CCH's right to elect any of these remedies prior to its occupation of the Kid Clinic Building. In such event and upon payment by CCSD to CCH, CCH shall have no interest in or right of use of the Kid Clinic Building.

7. The Parties shall create a standing design and construction review meeting with the Parties each having an Authorized Representative or person chosen by the Authorized Representative present at each of these meetings;

8. The Parties desire to begin construction of the Kid Clinic Building in August of 2020 and will work together toward this goal;

9. Both Parties shall be entitled to copies of all documents related to construction of the Kid Clinic Building, including all plans, contracts, accounting and payment records;

10. Neither Party waives governmental immunity by entering into this Construction Agreement and specifically retains all immunities and defenses available to it pursuant to W.S. § 1-39-101 et seq. and all other applicable law.

11. Each Party to this Construction Agreement shall assume the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.

12. This Construction Agreement shall continue for the term of construction of the Kid Clinic Building plus six months, but not to exceed five years.

13. Nothing in this Construction Agreement shall be interpreted as authorizing either party or its agents and /or employees to act as an agent or representative for or on behalf of the other Party or to incur any obligation of any kind on the behalf of the other Party. This Agreement does not create any partnership between the Parties.

14. Any changes, modifications, revisions, or amendments to this Construction Agreement shall be incorporated by written instrument, executed and signed by all Parties.

15. Each Party's payment obligation is conditioned upon the availability of government funds which are appropriated or allocated for payment of the obligations provided for herein. If

funds are not allocated and available for the construction of the building, this Agreement may be terminated as provided for herein. Each Party shall notify the other Party at the earliest possible time should it be determined that the funds provided for are not available.

IN WITNESS WHEREOF, the duly authorized representative of the Parties has executed this Agreement effective as of the date the final approval and signature.

By: \_\_\_\_\_  
Board Chair, Campbell County Hospital District

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Board Chair, Campbell County School District

Dated: \_\_\_\_\_