

**Pulaski Academy and Central School District  
REQUEST FOR PROPOSALS FOR  
CONSTRUCTION MANAGEMENT SERVICES**

**GENERAL INFORMATION/CONDITIONS:**

The Pulaski Academy and Central School District (the “District” or “Owner”) is issuing this Request for Proposals (“RFP”) for the purpose of selecting an appropriate firm to provide post-referendum construction management services to implement Project 2024 (as described herein and sometimes referred to as the “Project”), which will be brought to the voters of the District pursuant to a public referendum to be held on October 8, 2024. The budget for Project 2024 is anticipated to be approximately \$25,000,000.00 in current dollars. The requirements for Project 2024 include full construction management services in accordance with a modified AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser edition (the “Contract”), a copy of which is attached as **EXHIBIT A**.

The District, located in Oswego County, New York, consists of the Pulaski Middle-High School and Lura M. Sharp Elementary School. The Project shall touch each school in the District and has an anticipated Project budget of \$25,000,000. The scope of the work of the Project and associated values shall be determined through the pre-referendum process.

Services included in this RFP are limited to Project 2024, and the award of Project 2024 to the successful proposer does not obligate the District to award any other capital project to said proposer. The District reserves the right to secure construction management services for other capital projects in accordance with its purchasing policy and applicable law.

Firms submitting proposals shall be able to document their experience in providing construction management services to comparable public-school districts. Additionally, proposers shall document their staff capacity and expertise to meet the requirements of the District.

For a responding firm to be considered for engagement, an original plus ten (10) copies of its proposal must be submitted to:

Mr. Tom Jennings  
Superintendent of Schools  
2 Hinman Road  
Pulaski, NY 13142

Envelopes containing proposals must be labeled as follows: **“CONSTRUCTION MANAGEMENT SERVICES PROPOSAL PROJECT 2024”**

The deadline for submission of proposals is **12:00 p.m. on Wednesday, March 13th, 2024**.

Proposers are responsible for submitting their proposals to the appropriate location at or prior to the time indicated in the specifications. **No proposals will be accepted after the designated time or date indicated in the proposal specifications.** Any proposals received after this deadline will be returned unopened to the firm. Delay in mail delivery is not an exception to the timely submission requirement.

The District reserves the right to reject any and all proposals submitted or to accept any proposal which, in the opinion of the District, will be in the best interest of the District.

The submission of a proposal will be construed to mean that the proposer is fully informed as to the extent and character of the services, supplies, materials, or equipment required for the proposer to satisfactorily comply with the specifications. A proposer shall not make any stipulations in its proposal or qualify its proposal in any manner. No proposal will be considered which purports to qualify, limit, amend or omit any requirement of the Request for Proposal.

**TENTATIVE RFP TIMELINE:**

RFP Mailed:	<u>Week of February 12, 2024</u>
Proposal Due Date:	<u>12:00 PM, March 13, 2024</u>
Proposal Review and Evaluation:	<u>March 2024</u>
Interview (at District’s discretion):	<u>March 2024</u>
Board of Education Appointment:	<u>April 2024</u>

Please note that the above listed dates are tentative only. The District reserves the right to revise the timeline as necessary.

**PROJECT OVERVIEW:**

The Project 2024 scope will be determined through the pre-referendum process. Project requirements include full construction management from pre-construction through Project closeout phases described in the Contract and **EXHIBIT B**. Services will include all required preconstruction, construction and close-out services.

**PROPOSED PROJECT SCHEDULE (Project 2024):**

CM Selection	<u>April 2024</u>
Design Phase	<u>Ongoing</u>
NYSED Submission of Plans	<u>June 2025</u>
NYSED Approval of Plans	<u>October 2025</u>
Contract Bidding/Award	<u>December 2025</u>
Construction Phase	<u>July 2026 – September 2027</u>
Final Completion/Closeout	<u>December 2027</u>

**POINT OF CONTACT:**

District RFP documents are distributed by the Business Office. The Architect of Record (King+King) has been designated as Point-Of-Contact on behalf of the District and shall be the only one authorized to make changes or alterations to anything contained in this RFP. Copies of RFP documents obtained from any other source are not considered official copies. Only those perspective proposers who obtain RFP documents from the District’s Business Office will be sent addendum information, if such information is issued.

**Limited requests** for clarification or additional information regarding this RFP are to be submitted in writing prior to the proposal opening. If the written request requires excessive time or the request would create additional work for District staff, it may be denied. **Verbal questions will not be entertained.** Questions may be submitted **via email**. Questions must be submitted at least 72 hours prior to the proposal submission deadline. Any substantive requests for information that are timely received and responded to by the District will be provided to perspective proposers in the form of an addendum.

All questions concerning this proposal shall be sent to:

Craig J. Dailey, Project Manager  
King + King, Architects, llp  
358 West Jefferson Street  
Syracuse, NY 13202  
[Email: cdailey@kingarch.com](mailto:cdailey@kingarch.com)  
315.671.2417

**PROPOSAL COSTS:**

All costs associated with preparing a response to this RFP are the responsibility of the proposer. The District shall not be responsible for any such costs.

**MODIFICATION OR WITHDRAWAL OF PROPOSALS:**

Any proposal may be withdrawn or modified by written request of the proposer, provided such request is received by the Superintendent at the above address prior to the date and time set for receipt of proposals.

**RIGHT TO REJECT PROPOSALS:**

This RFP does not commit the District to award a contract, pay any cost incurred in the preparation of a proposal in response to this RFP, or to procure or contract for construction management services. The District intends to award a contract on the basis of the best interest and advantage to the District, and reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with all qualified proposers, or to cancel this RFP, in part, or in its entirety, if it is in the best interest of the District. The District may select as the successful proposal that, in the District's sole discretion, best meets the District's requirements whether or not that proposal is the lowest priced. No proposer shall have any legal, equitable, or contractual rights of any kind arising out of its submission of a proposal except as and to the extent that the District, in its sole discretion, shall enter into a contract with the proposer that it selects as the successful consultant.

**CONTRACT AGREEMENT:**

The written agreement (a modified C132-2019 Standard Form of Agreement Between Owner and Construction Manager as Adviser) under which the selected consultant will provide services to the District shall be in the form of the attached Contract (attached as **EXHIBIT A**). Fees for service and time schedules are the primary matters for negotiation. The form of the Contract may not be modified by the proposer, and any exception to any provision in the Contract must be submitted with the proposal.

The final Contract form may only be modified by the District in its sole discretion, and will be subject to the approval of the District's Board of Education. The District retains the option of canceling the award if the successful proposer fails to accept such obligations.

**RIGHT TO NEGOTIATE WITH PROPOSERS:**

The District reserves the right to negotiate with all proposers and to enter into a contract for services with the proposer on terms and conditions that are in the District's best interests.

**NEGOTIATED CHANGES:**

In the event negotiated changes occur after the awarding of the Contract, the same pricing policies called for in the original Contract will remain in effect.

## **DURATION OF PROPOSALS:**

Proposals will remain in effect for a period of ninety (90) days from the deadline for submission of the proposal.

## **FORMAT OF PROPOSALS:**

The proposal shall be submitted in a bound format with section dividers corresponding to the sections set forth below. Responding firms are free to submit such additional information that they deem pertinent to establishing their qualifications.

1. Section 1 shall provide the following information about the firm:
  - a. Name, address, telephone and fax numbers of the firm.
  - b. Primary contact person for the firm through the proposal and selection process with telephone, fax, and e-mail contact information.
  - c. A brief overview of the firm describing its construction management experience and philosophy, and its general approach and expertise in the construction management of K-12 educational projects.
2. Section 2 shall provide (i) a detailed statement as to how the firm intends to meet the requirements of the Project, including its specific project approach and management plan and identifying methods and techniques to be used to establish and maintain schedules, budget and cost containment, and (ii) a list of the proposed Project team members, including any proposed consultants, who will fill the key positions indicated in the firm's organizational chart for the Project. Responding firms shall specifically identify the Principal in Charge and the Project Manager, along with anticipated roles of these persons. This section shall also include brief resumes of key individuals identifying tenure with the firm and descriptions of relevant project experience with the firm. Identify whether past projects were with the proposing firm or with previous employment. Responding firms shall not propose any individual with less than five (5) years of relevant experience.
  - a. As part of the proposal include an example of budget, schedule, change order and RFI reporting, daily job reports and any other management tools which record project events or expedite the project.
3. Section 3 shall provide a list/description of similar completed New York State K-12 educational projects for which the firm has performed comparable construction management services. The list shall specify the services performed and, for each of at least five (5) examples, (i) provide contact information for the client and prime contractors on the project and (ii) describe the project scope, total construction cost, completion date, and location.
4. Section 4 shall provide a list of qualifications that the firm believes would be beneficial to the District in the execution of this Project. The responding firm shall describe specific additional competencies beyond the requirements of this RFP that may benefit the District.
5. Section 5 shall provide a brief, written description of how the firm has managed similar projects. The responding firm shall also include information as to whether the project was timely completed, whether significant problems occurred that affected project performance, and how the firm handled any conflicting issues, project communications, and construction administration with regard to similar projects.

6. Section 6 shall provide a comprehensive, five-year summary of the firm's litigation, arbitration and negotiated/settled history with previous clients. This section shall also identify the firm's insurance carrier.
7. Section 7 shall outline graphically (Organizational Chart) the firm's proposed team structure indicating key positions within the firm, as well as involvement by sub-consultants. This section shall also provide sub-consultants' addresses and telephone numbers, and a brief description of the scope of services to be performed by each sub-consultant and their experience with K-12 education-related construction projects.
8. Section 8 shall describe Project controls that will ensure that the firm can meet the Project schedule and that the Construction Documents will be complete and fully coordinated.
9. Section 9 shall be the proposer's fee proposal for CM Basic Services. List your fee structure separately for the pre-referendum work and the post-referendum scope of services. The pre-referendum fee is to be stated as a fixed dollar amount. The fee for post-referendum services shall be stated as either (1) a lump sum, inclusive of all direct personnel expenses, overhead and profit or (2) a percentage of the Cost of the Work, inclusive of all direct personnel expenses, overhead and profit.
  - a. Use the following schedule assumptions in your compensation fee proposal:
    - Anticipated Preconstruction Phase
      - 12-months
    - Anticipated Construction Phase
      - 15-months
    - Anticipated Close-Out Phase
      - 2-months

Identify the types of personnel and the estimated durations each will be dedicated to the Project for each of the Project phases. Also provide a proposed staffing schedule which includes hours based on the Project timeline.

- b. Payments for additional services may be based on hourly rates and such rates shall be presented for all personnel assigned to the Project. By way of example:

<b><u>Job Title</u></b>	<b><u>Hourly Rate</u></b>
Principal	\$ _____
Project Manager	\$ _____
Assistant Project Manager	\$ _____
Project Superintendent	\$ _____
Assistant Superintendent	\$ _____
Estimator	\$ _____

- c. Reimbursable expenses shall be in accordance with AIA Document C132-2009 and set forth in the fee proposal as follows:

Estimated Reimbursable expenses for the Project: (\$\_\_\_\_\_)

Responding firms shall provide a comprehensive, line item summary as to anticipated reimbursable expenses for each phase indicating both the item and estimated expense.

## **INSURANCE REQUIREMENTS:**

No proposer shall commence work for the District until it has obtained all the insurance required herein, submits certificates of insurance and applicable endorsements to the District, and such insurance coverage and amounts have been approved by the District. The failure of the District to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the District. Approval of the insurance by the District shall not relieve or decrease the liability of the proposer. Proposer acknowledges that failure to obtain such insurance on behalf of the District constitutes a material breach of contract. The successful proposer shall indemnify the District for any applicable deductibles or self-insured retentions.

The required limits of liability coverage shall be:

1. **Commercial General Liability** – a proposer must maintain a policy of commercial general liability insurance with policy limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate (per project and per location) for bodily injury and damage to property.
2. **Automobile Liability** – a proposer must maintain automobile liability insurance covering “Any Auto” with a Combined Single Limit of \$1,000,000.
3. **Workers’ Compensation and NYS Disability** – a proposer must provide statutorily required Workers' Compensation Insurance, Employers’ Liability and NY State Disability Insurance for all employees in accordance with the requirements of the laws of New York. Proof of Workers’ Compensation coverage must be on the approved specific form, as required by the NYS Workers’ Compensation Board. ACORD certificates are not acceptable.
4. **Professional Liability** – a proposer shall procure and maintain professional liability insurance covering liability the proposer and of its consultants arising out of negligent acts, errors, or omissions in the rendering of the professional services in the minimum amount of \$2,000,000 per claim and in the aggregate. If written on a “claims-made” basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for three years following the completion of work. If the proposer is providing environmental services, the errors & omissions policy must be endorsed to include coverage for these services. Coverage is to be provided by the proposer for the consulting services being performed directly or through sub-consultants.
5. **Umbrella Liability** – a proposer shall procure and maintain umbrella liability insurance coverage over its Commercial General Liability, Automobile Liability and Professional Liability policies (on a follow form basis) in the minimum amount of \$5,000,000 per claim and in the aggregate.

All insurance companies shall have an “A-“ or better rating by AM Best with a Financial Standing of “VIII” or better. All insurance companies shall be admitted and licensed to conduct business in New York State. A New York licensed and admitted insurer is required.

Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the proposer hereby agrees to effectuate the naming of the District, its board members, officers, employees and agents as an unrestricted additional insured on the proposer’s insurance policies on a primary and non-contributory basis, with the exception of workers' compensation and professional liability policies. The proposer’s liability policies shall contain a 30-day notice of cancellation clause that shall provide that the District shall be notified not less than 30 days prior to the cancellation, amendment, non-renewal, and changes to the subject insurance policies. The General Liability, Automobile and Workers Compensation policies shall include a waiver of subrogation in favor of the District. All required endorsements are to be attached to the

certificate of insurance. The District shall be listed as additional insured by using endorsement CG 2026 or equivalent. The decision to accept an endorsement rest solely with the District. Proof of insurance coverage shall be provided on ACORD 25, ACORD 855 NY and New York State approved form for Workers' Compensation. If so requested, the successful proposer shall provide copies of the required policies, forms and endorsements. There will be no coverage restrictions and/or exclusions involving New York State Labor Law statutes or gravity related injuries. No policies containing escape clauses or exclusions contrary to the District's interests will be accepted.

### **EXPECTED SCOPE OF SERVICES**

The services the successful proposer shall provide for the Project shall be set forth in the Contract and as attached as **EXHIBIT B**.

### **CRITERIA FOR EVALUATING PROPOSALS:**

The District's Superintendent will receive all proposals. An evaluation committee composed of District administration, staff and Board members will review the proposals received and will further evaluate them, using the criteria listed below.

Each proposal will be evaluated according to the quality of the product, the qualifications and experience of the proposing firm, response to the District's requirements, the ability of the proposer's team to work in a compatible manner with the District's representatives, and the proposer's fee. Evaluation may also include conferring with selected clients of proposing firms and meeting with those firms selected to review their proposals. It is the intent of the District that the selection criteria and ranking of proposers will serve only to assist the District in its selection of a firm, and the District reserves the right to select a firm that it determines in its sole discretion to be in the best interests of the District.

The District reserves the right to conduct any investigation of the qualifications of any proposer that it deems appropriate or request additional information from any proposer. Failure by a proposer to timely provide any additional information requested by the District may, in the sole discretion of the District, be cause for the rejection of the proposer's proposal.

The consensus of the evaluation committee may be that more than one firm shall be considered as a finalist. The committee may request presentations by firms and/or oral or written responses to request additional information. Following review of this information, District may continue discussions with one or more firms for the purpose of discussing terms and conditions of the service. The selected firm will be an independent contractor of the District.

The District reserves its rights to examine any other criteria and take the same under consideration and to reject any firm or proposals despite its compliance with these criteria if it determines that to do so would be in its best interests. The selection process will be a qualification-based selection. Responding firms will be evaluated on the following criteria:

- Actual firm experience in the management of construction projects of K-12 educational facilities in multi-building school districts.
- Knowledge of and experience with N.Y.S. Education Department procedures regarding the management of construction projects and other state and federal laws affecting the operations of public-school districts.
- Extent of services offered, and depth and extent of overall resources that can be put to use by the District for this Project.
- Qualifications and commitment of key individuals.
- Evidence of strong client/contractor relationships.

- Success with similar projects substantiated by client and user references.
- Clarity of internal project management approach.
- Ability to respond to Owner input and requirements.
- Description of any special tools or methodologies, especially cost control and scheduling, which can influence project success of construction document production.
- Fee structure.

The District reserves the right to reject any and all proposals submitted, to waive informalities or irregularities, to request additional information from all proposers, and to negotiate with one or more of the finalists regarding the terms of the engagement. The District intends to select the firm(s) that, in its opinion, best meets the District's needs.



**Exhibit A**

AIA Document C132-2019 Standard Form of Agreement  
between Owner and Construction Manager as Adviser

[Attached]

**Exhibit B**

Scope of Construction Management Services

[Attached]

DRAFT

# AIA® Document C132™ – 2019

## Standard Form of Agreement Between Owner and Construction Manager as Adviser

**AGREEMENT** made as of the « » day of \_\_\_\_\_ in the year Two Thousand Twenty-Four  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:

(Name, legal status, address, and other information)

Pulaski Academy and Central School District  
2 Hinman Road  
Pulaski, NY 13142

and the Construction Manager:

(Name, legal status, address, and other information)

for the following Project:

(Name, location, and detailed description)

Pulaski Academy and Central School District – 2024 Capital Project

Pre-Referendum, Preconstruction and Construction related services for the Pulaski Academy and Central School District in connection with a capital improvement project that is anticipated going to a referendum vote in October 2024.

The Architect:

(Name, legal status, address, and other information)

King + King Architects LLP  
358 West Jefferson Street  
Syracuse, NY 13202  
315.671.2400

The Owner and Construction Manager agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

To be determined through the pre-referendum process.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

To be determined through the pre-referendum process.

§ 1.1.3 The Owner's budget for the Project:

*(Provide total and, if known, a line item breakdown.)*

\$25,000,000.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Submission to NYSED -	June 2025
Bidding/Contract Award -	December 2025

**.2 Construction commencement date:**

July 2026

**.3 Substantial Completion date or dates:**

September 2027

**.4 Other:**

Closeout - December 1, 2027

**§ 1.1.5** The Owner intends the following procurement method for the Project:  
(Identify method such as competitive bid or negotiated contract.)

Competitive bidding with multiple prime contracts in accordance with the NYS General Municipal Law.

**§ 1.1.6** The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:  
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

Competitive bidding with multiple prime contracts in accordance with the NYS General Municipal Law with the phasing of the construction of the Project to be determined.

**§ 1.1.7** The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

**§ 1.1.8** Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A

**§ 1.1.9** The Owner identifies the following representative in accordance with Section 5.5:  
(List name, address, and other contact information.)

Tom Jennings  
Superintendent of Schools  
Pulaski Academy and Central School District  
2 Hinman Road  
Pulaski, NY 13142

**§ 1.1.10** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address, and other contact information.)

N/A

**§ 1.1.11** The Owner shall retain the following consultants and Contractors:  
(List name, legal status, address, and other contact information.)

**.1 Land Surveyor:**

To be determined

**.2 Geotechnical Engineer:**

To be determined

**.3 Civil Engineer:**

Provided as part of the Architect's Basic Services

**.4 Contractors, as defined in Section 1.4:**

To be determined in accordance with NYS General Municipal Law

**.5 Separate Contractors, as defined in Section 1.4:**

To be determined in accordance with NYS General Municipal Law

**.6 Other, if any:**

*(List any other consultants retained by the Owner.)*

To be determined

**§ 1.1.12** The Construction Manager identifies the following representative in accordance with Section 2.5:  
*(List name, address, and other contact information.)*

**§ 1.1.13** The Construction Manager's staffing plan as required under Section 3.3.3 shall include:  
*(List any specific requirements and personnel to be included in the staffing plan, if known.)*

**§ 1.1.14** The Construction Manager's consultants retained under Basic Services, if any:  
*(List name, legal status, address, and other contact information of any consultants.)*

**§ 1.1.15** The Construction Manager's consultants retained under Supplemental Services:

**§ 1.1.16** Other Initial Information on which this Agreement is based:

The Owner and Construction Manager acknowledge that this Project is subject to approval by voter referendum and that, if the referendum is unsuccessful, the Owner will have no authority to go forward with the Project. The parties further agree that, if the referendum vote is unsuccessful or if the Owner does not proceed with the Project for any reason, the Owner shall have no financial obligations to the Construction Manager, except for compensation for Pre-Referendum services, and all provisions of this Agreement shall be null and void unless otherwise agreed to in writing by the parties. If the referendum is successful and if the Owner proceeds with the Project, the terms of this Agreement shall apply thereto.

The Owner's Request for Proposal – Construction Management Services ("RFP") and the Construction Manager's Proposal are incorporated herein by reference.

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Construction Manager's services, schedule for the Construction Manager's services, and the Construction Manager's compensation.

**§ 1.3** The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

**§ 1.4** The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Construction Manager and Architect. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Construction Manager and Architect.

**§ 1.5** The Construction Manager and Owner agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing and shall cooperate with each other and with the Architect in furthering the Owner's interests. The Construction Manager shall exercise its skill and judgment in furnishing construction administrative and management services, and shall perform its Services in an economical and timely manner. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among all Project participants.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

**§ 2.1** The Construction Manager shall provide the services as set forth in this Agreement.

**§ 2.1.1** The Construction Manager understands and recognizes that the responsibilities set forth in this Agreement include the responsibilities set forth in the RFP and the Construction Manager's Proposal, which are incorporated herein by reference. Where there are differences between the descriptions or delineation of services or responsibilities set forth herein and those set forth in the RFP or Proposal, the Construction Manager shall provide or abide by the better quality of, or the greater quantity of, services and responsibilities for the benefit of the Owner.

**§ 2.2** The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care, the orderly progress of the Project, and the interests of the Owner, as made known to the Construction Manager. The Construction Manager shall visit the construction site(s) and familiarize itself with the requirements of the Project. The Construction Manager shall provide professional construction management services on the Project. The Construction Manager represents that it is knowledgeable in public school construction and shall furnish the Construction Manager's reasonable skill and judgment and agrees to cooperate with the Architect in furthering the interests of the Owner.

**§ 2.2.1** The Construction Manager shall provide professional construction management services on this Project. Such services include substantial discretion and authority to plan, schedule, approve, coordinate, manage and direct the Project within the parameters of the Contract Documents. The Construction Manager acknowledges that the Owner is relying on the Construction Manager's skill and care in connection with its services on the Project. Services provided by the Construction Manager and its consultants will be performed in accordance with applicable federal, state and local laws, codes, rules, regulations and ordinances as they pertain to construction management. The Construction Manager is responsible for the services provided under this Agreement whether provided directly by the Construction Manager or by consultants, if any, retained by the Construction Manager.

**§ 2.2.1.1** The Construction Manager represents that it is knowledgeable in school construction and shall exercise reasonable care and skill to comply with and see that all Contractors (and subcontractors) comply with applicable federal and state laws, as well as any applicable codes, rules, regulations and specifications adopted by the New York State Education Department ("SED") and/or any other agency with authority over construction or renovation of school facilities.

**§ 2.2.1.2** The services of the Construction Manager are not intended to replace or duplicate those of the Architect, Contractors and testing and inspection agencies engaged by or through the Owner, and at all times, require cooperation among all parties, including the Construction Manager.

**§ 2.3** The Construction Manager shall provide its services in conjunction with the services of an Architect. The Construction Manager shall not be responsible for actions taken by the Architect.

**§ 2.3.1** The Construction Manager shall supply and commit sufficient personnel (both management and otherwise) to the Project to monitor the Work, record the conditions(s) of the Project and the progress of the Work, and to otherwise perform its obligations under this Agreement.

**§ 2.3.2** The Construction Manager shall have adequate clerical staff skilled in the construction field to maintain the Project Documents in an orderly manner and to provide timely and accurate correspondence, written meeting minutes, inspection records, daily logs, as well as organized photographic documentation of the progress of the Work.

**§ 2.4** The Construction Manager shall coordinate its services with those services provided by the Owner, the Architect, the Contractors, and the Owner's other consultants and Separate Contractors. The Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Architect, and the Owner's other consultants and Separate Contractors unless the Construction Manager knew or reasonably should have known from a review of the services, information or reports that they were inaccurate or incomplete in a material way. The Construction Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

**§ 2.5** The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. As part of its Basic Services, the Construction Manager's designated representative or Project team members shall attend meetings with the Owner's designated representative, Board of Education, the Architect, the Contractors, SED, and any other meetings reasonably requested by the Owner relating to the Project.

**§ 2.6** The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Construction Manager's proposed key staff members, the Owner may reply to the Construction Manager in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager shall not change its key staff members without the Owner's consent, which shall not be unreasonably withheld or delayed.

**§ 2.7** Except with the Owner's knowledge and prior written consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

**§ 2.8** The Construction Manager shall maintain the following insurance until termination of this Agreement. The Construction Manager acknowledges that the failure to obtain and maintain such insurance constitutes a material breach of this Agreement. All insurance companies shall have an "A-" or better rating by AM Best with a Financial Standing of "VIII" or better. All insurance companies shall be admitted and licensed to conduct business in New York State. A New York licensed and admitted insurer is required..

**§ 2.8.1** Commercial General Liability with policy limits of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate on a per project basis for bodily injury and property damage; \$2,000,000 Products and Completed Operations; \$1,000,000 Personal and Advertising Injury; \$100,000 Fire Damage; and \$10,000 Medical Expense. The Comprehensive General Liability insurance policy shall include: Premises Operations without exclusion of X, C and U coverage; Products and Completed Operation; Personal Injury Liability including advertising liability; Contractual; Broad Form Property Damage including Completed Operations. Products and Completed Operations coverage must be maintained for three (3) years after final payment. There shall be no exclusions relating to New York State Labor Law or municipal operations. Waiver of subrogation in favor of the Owner shall be added or endorsed to such policy. The Commercial General Liability policy shall utilize Additional Insured form CG 2010 and CG 2037, or their equivalent, and shall attach endorsements to the certificate of insurance.



**§ 2.8.2** Automobile Liability covering owned, hired, borrowed and non-owned vehicles operated by the Construction Manager with policy limits of not less than \$1,000,000 combined single limit (each accident) and aggregate for bodily injury and property damage. Waiver of subrogation in favor of the Owner shall be added or endorsed to such policy.

**§ 2.8.3** The Construction Manager shall provide umbrella or excess liability insurance on a follow form basis over the Commercial General Liability, Automobile Liability and Professional Liability insurance policies with limits not less than \$5,000,000 each occurrence and \$5,000,000 in the aggregate. Waiver of subrogation in favor of the Owner shall be added or endorsed to such policy.

**§ 2.8.4** Workers' Compensation at statutory limits and Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit. Waiver of subrogation in favor of the Owner shall be added or endorsed to such policy. Statutory Workers' Compensation (C-105.2 or U-26.3); and NYS Disability Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A person seeking an exemption must file a CE-200 Form with the state. The form can be completed and submitted directly to the WC Board online.

**§ 2.8.5** Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than \$2,000,000 per claim and in the aggregate. Coverage is to be provided by the Construction Manager for services being performed directly or through sub-consultants. If written on a "claims-made" basis, the effective date must pre-date the inception of the contract or agreement. The Professional Liability policy shall be continued in effect for three years following final payment to the Construction Manager.

**§ 2.8.6 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

**§ 2.8.7** The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.8, including all required endorsements attached thereto. The certificates will show the Owner (including its Board of Education, employees, officers, administrators, and volunteers) as an additional primary insured on a non-contributory basis on the Commercial General Liability, Automobile Liability, and umbrella or excess policies. The Commercial General Liability, Automobile Liability and Excess Liability insurance policies shall be endorsed with a 30-day cancellation notice to be sent to the Owner.

**§ 2.9** If requested by the Owner, the Construction Manager shall assist the Owner, Architect, and other Project participants in establishing building information modeling and digital data protocols for the Project using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

**§ 2.10** A centralized electronic document management system will be used on the Project, and the Construction Manager shall be responsible for managing and maintaining the centralized electronic document management system.

**§ 2.11** The Construction Manager shall retain all Project related documents and information it receives, and the Owner and Architect shall have access to the documents and information. The Construction Manager shall transmit the documents and information to the Owner at final completion.

**§ 2.12** The Construction Manager hereby represents to the Owner the following:

- .1 The Construction Manager is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services required and perform its obligations hereunder so long as there is prompt and consistent payment by the Owner for services properly rendered;

- .2 The Construction Manager is able to furnish any of the materials, supplies and labor required to complete the services required hereunder and perform all of its obligations hereunder and has sufficient experience and competence to do so;
- .3 The Construction Manager is authorized to do business in the State of New York and properly licensed, if necessary, by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the services required hereunder and the Project itself;
- .4 The Construction Manager's execution of this Agreement and its performance thereof is within its duly authorized powers; and
- .5 The Construction Manager's duly authorized representative has visited the Project, familiarized itself with the local conditions under which the services required hereunder are to be performed and correlated its observations with all of the requirements of the Contract Documents.

The Construction Manager agrees said representations in this Section 2.12 shall survive the execution and delivery of this Agreement.

**§ 2.13** Prompt written notice shall be given by the Construction Manager to the Owner and Architect if the Construction Manager becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. However, this provision shall not require the Construction Manager to notify the Owner of minor defects which are dealt with by the Architect or Construction Manager on a routine continuing basis.

### **ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES**

#### **§ 3.1 Definition**

The Construction Manager's Basic Services consist of those described in this Article 3 or otherwise defined in this Agreement as Basic Services, and include usual and customary Preconstruction and Construction Phase Services. Services not set forth in this Article 3 are Supplemental or Additional Services. The Owner, Construction Manager, and Contractors may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

**§ 3.1.1** Throughout the Project, the Construction Manager shall attend all necessary meetings with the Owner, its representatives, the Architect or others to explain the scope of the work and provide supporting information to enhance the Owner's understanding and acceptance of the Project, the approval of any agencies or boards involved with the Project, or any other purposes deemed reasonably necessary by the Owner.

**§ 3.1.2** The Owner's approval, acceptance, use of or payment for all or any part of the Construction Manager's services hereunder shall in no way diminish or limit the Construction Manager's obligations and liabilities or the Owner's rights, except to the extent expressly stated herein.

**§ 3.1.3** All notices required to be made in writing hereunder shall be given, made or served by (i) mailing the same by registered or certified mail, return receipt requested, or by overnight or express mail service or (ii) by delivering the same by hand or by messenger or courier service. Notices may be given by the Owner's or Construction Manager's agents and attorneys on the Owner's or Construction Manager's behalf, as the case may be, and the effective date of all notices shall be: (i) the date of delivery or the date such delivery is refused, if delivery is by hand, messenger or courier service, (ii) if mailed by an overnight or express mail service, the first business day following deposit with such service, or, (iii) if mailed by certified or registered mail, the third business day following deposit in the mail. For purposes of this paragraph, the term "business day" shall be any day which is not a Saturday, Sunday or holiday observed by the federal or state government.

**§ 3.1.4** The Construction Manager shall deliver to Owner by electronic or other means, with reasonable promptness after receipt thereof, copies of all written communications received by the Construction Manager from any and all persons with respect to any significant or material delays, defaults or increased costs, actual or potential.

#### **§ 3.2 Pre-Referendum and Preconstruction Phase**

**§ 3.2.1** The Construction Manager shall perform the following pre-referendum services: (1) assist the Owner and Architect in the pre-referendum process including, but not limited to, meeting with the Owner, preparing presentations for and attending meetings with administration, staff, Board of Education and community, report regularly on progress, budgets and schedule; (2) identify key project activities, including design, SED approvals, bidding, legal and financial, and prepare a preliminary schedule with milestone dates and responsibilities identified;

(3) investigation and analysis of the work to be included in the Project; (4) assist the Architect with educational space programming issues; (5) assist the Owner in defining parameters of Project scope to assure that instructional programming needs and budgetary constraints are aligned; (6) perform budgeting and scheduling, including evaluation of alternative design concepts and approaches to each project from the standpoints of construction, cost and schedule; (7) provide conceptual and schematic estimates as a tool to guide Project decisions; (8) provide budgets for conceptual and schematic designs that include incidental costs; (9) assist in the SEQRA process; (10) produce cash flow projections; and (11) assist the Owner with the development of an action plan and strategies for a successful referendum and attend public meetings as required.

**§ 3.2.1.1** The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

**§ 3.2.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, and shall advise the Owner of any need or advisability of securing any tests, analyses, studies, reports, or consulting services in connection with the development of the Project.

**§ 3.2.3** The Construction Manager shall prepare, and deliver to the Owner, for the Owner's approval, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work. The Construction Manager shall periodically update the Construction Management Plan, for the Owner's approval, over the course of the Project.

**§ 3.2.4** The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that affect the Project's timely completion. The Project schedule shall include assignment of work areas and sequence of the Work, as well as the Owner's activities and the Architect's activities. The Project schedule and its updates shall indicate proposed activity sequences, durations, and milestone dates for receipt and approval of pertinent information, preparation and procession of shop drawings and samples, and date(s) of Substantial Completion.

**§ 3.2.5** The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered in advance of construction, obtaining the required reviews and approvals of authorities having jurisdiction over the Project, and the occupancy requirements of the Owner.

**§ 3.2.6** Based on the preliminary design and information prepared or provided by the Architect and other Owner consultants, the Construction Manager shall prepare, for the Architect's review and Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques, including the establishment of sufficient contingency to reasonably anticipate the development of the Project's design documents. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

**§ 3.2.7** The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements (including logistical planning for hauling and deliveries, site access, mobilization, lay-down and staging areas for construction), selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; sequencing for phased construction; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 3.2.8** The Construction Manager shall review recommendations for systems, materials, or equipment for the impact upon cost, schedule, sequencing, constructability, and coordination among the Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts.

**§ 3.2.9** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. At minimum, one detailed estimate shall be provided at the completion of Schematic, Design Development and Construction Documents Phases. The Construction Manager shall include in the estimate those costs to allow for further development of the design, bidding or negotiating, price escalation, and market conditions. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action. The Construction Manager acknowledges that the Owner and Architect are entitled to rely upon the accuracy of the Construction Manager's estimates of the Cost of the Work for planning and estimating purposes.

**§ 3.2.10** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that the design, or details, adversely affect cost, scope, schedule, constructability, or quality of the Project.

**§ 3.2.11** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

**§ 3.2.12** The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

**§ 3.2.13** The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts for Construction. The Construction Manager shall review the Drawings and Specifications and make written recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction. The Construction Manager acknowledges that the Project and Work entail multiple bids and contracts and construction management services extend to all such bids and contracts required by the Owner to complete the Project.

**§ 3.2.14** The Construction Manager shall make recommendations about, and coordinate the ordering and delivery of, materials in support of the schedule, including those that must be ordered in advance of construction, and shall also monitor the Contractors to ensure that Contractors, where necessary, expedite and coordinate the ordering and delivery of such materials.

**§ 3.2.15** The Construction Manager shall assist the Owner in selecting, retaining, and coordinating the professional services of surveyors, geotechnical engineers, special consultants, and construction materials testing required for the Project.

**§ 3.2.16** The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

**§ 3.2.17** The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

**§ 3.2.18** Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval for conformance with the Referendum Scope of Work and the Project budget. In the event the latest estimate of the Cost of the Work exceeds the Owner's budget, the Construction Manager shall, as part of its Basic Services, provide and make recommendations to bring the estimate within the Owner's budget.

**§ 3.2.19** The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall assist the Owner and the Architect with the development of the Bidding Documents, which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall issue Bidding Documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of Bidding Documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

**§ 3.2.20** The Construction Manager shall submit a list of prospective bidders to be invited to submit bids in the public bidding process for the Architect's review and the Owner's approval.

**§ 3.2.21** The Construction Manager, with the assistance of the Architect, shall review bids, and prepare bid analyses, assist in the investigation of bidder responsibility, and make recommendations to the Owner for the Owner's award of Contracts for Construction or rejection of bids.

**§ 3.2.22** The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing Contracts for Construction. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

**§ 3.2.23** The Construction Manager shall assist the Owner and the Architect in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

**§ 3.2.24** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

### **§ 3.3 Construction Phase**

**§ 3.3.1** The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below. The Construction Manager shall also assist the Owner and Architect with the review, revision and coordination of AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition (the "General Conditions"), that will be included in the Contract Documents as issued for bidding, and will coordinate its on-site administration with those General Conditions, including without limitation:

- .1 coordinate any utility interruptions with the Owner;
- .2 on-site, day-to-day observation of work;
- .3 collect all bonds and insurance certificates from the Contractor and forwards same to the Owner;
- .4 coordinate all site stored material locations and contractor staging;
- .5 greets, escorts and logs all authorized visitors to the Project site and prevents unauthorized visitors from entering the Project site to the extent reasonably possible with on-site staff;
- .6 maintain a daily log of activities on the Project site(s);
- .7 log and maintain all Project samples on site;
- .8 maintain documentation and photographs of Project progress;
- .9 coordinate punch list inspections and execution of punch list items;
- .10 close out all contracts.

The Construction Manager shall, prior to the Construction Documents being issued for bidding, advise the Owner if any revisions to the General Conditions expand or otherwise affect any services under this Agreement. Absent such



advice, the Construction Manager waives any claim that modifications to General Conditions in the Construction Documents have any effect on its services under this Agreement.

**§ 3.3.2** Subject to Section 4.2 and except as provided in Section 3.3.30, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

**§ 3.3.3** The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

**§ 3.3.4** The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractors in accordance with the latest approved Project schedule and the Contract Documents. The Construction Manager's responsibility to coordinate shall not be construed as requiring the Construction Manager to have control over the means, methods, techniques, sequences or procedures in connection with the Work of each of the Contractors, as these are solely the responsibility of the Contractors.

**§ 3.3.4.1** The Construction Manager shall receive certificates of insurance from the Contractors and forward them to the Owner, with a copy to the Architect, and shall monitor all coverages to determine they are current and in compliance with the requirements for insurance on the Project.

**§ 3.3.5** The Construction Manager shall compile, coordinate, monitor, and update the Project schedule based on information and input received from the Owner, Architect, and Contractors, including the construction schedules provided by the Contractors. The Project schedule shall utilize the critical path method of scheduling, and shall incorporate the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall identify those activities and events which are on the critical path. The Project schedule shall include assignment of work areas and sequence of Work, Owner activities, and Architect activities. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect. The Construction Manager shall then hold a meeting with all Contractors impacted by the construction schedule milestone(s) not being met and shall coordinate the various work activities to have the Contractors back on track to meet the milestones set forth in the construction schedules and the Project schedule.

**§ 3.3.5.1** The Construction Manager shall make recommendations to the Owner and the Architect concerning whether requests for extensions of the Contract Time should be granted and the effect such extensions would have on the Project.

**§ 3.3.5.2** The Construction Manager shall advise the Owner and the Architect promptly after learning or discovering delays or potential delays in the Project schedule or construction schedule. The Construction Manager shall recommend to the Owner courses of action to endeavor to prevent, minimize or recover from delays.

**§ 3.3.6** The Construction Manager shall schedule and conduct weekly meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors. The Construction Manager shall also attend meetings of the Owner's Board of Education as requested by the Owner's Superintendent of Schools or his designee, as well as meetings of the health and safety committee as required by Part 155 of the Commissioner's Regulations.

**§ 3.3.7** In accordance with the Contract Documents and the latest approved Project schedule, and utilizing information from the Contractors, the Construction Manager shall review, analyze, schedule and coordinate the overall sequence of construction and assignment of space in areas where the Contractors are performing Work.

**§ 3.3.8** The Construction Manager shall coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Architect.

**§ 3.3.9** The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled. The Construction Manager shall observe each of the Contractors and determine, in conjunction with the Architect, whether their work complies with the respective contract with the Owner, and the Construction Manager shall promptly and regularly report to the Owner and Architect regarding such determinations. Disputes with a Contractor relating to the execution or progress of the Work or the interpretation of the requirements of the Contract Documents (except interpretations of the drawings and specifications which shall be referred to the Architect) shall be referred to the Construction Manager who may make such recommendations to the Owner as the Construction Manager may deem necessary for the proper execution and timely progress of the Project. The Owner, at its discretion, shall take whatever action it deems necessary.

**§ 3.3.10** The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual costs and budgeted or estimated costs.

**§ 3.3.11** The Construction Manager shall develop cash flow reports and forecasts for the Project, and advise the Owner as to variances between actual and budgeted costs on a monthly or more frequent basis as may be necessary at the Owner's reasonable discretion.

**§ 3.3.12** The Construction Manager shall maintain accurate and complete accounting records that contain, among other things, the following information for each Contractor: original Contract Sum; approved changes to date; pending changes; potential changes; authorized Work performed under unit costs; additional Work performed on the basis of actual costs of labor and materials; and other Work requiring accounting records. The Construction Manager shall establish accounting procedures that coincide with the procedures used by the Owner. The Construction Manager shall also assist the Owner, upon request, with the development and completion of any and all reports required by SED with respect to the Project.

**§ 3.3.12.1** The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Contractors for progress and final payments.

**§ 3.3.12.2** Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1** Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2** Where there is more than one Contractor responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor; and (2) forward the Contractors' Applications for Payment to the Architect.

**§ 3.3.12.3** The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified to the Architect and that all necessary lien waivers and prevailing wage certifications have been

duly received by the Construction Manager from the Contractors and/or Subcontractors for the period covered by the Applications for Payment.

**§ 3.3.12.4** The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, procedures, or sequences for a Contractor's own Work; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment; or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

**§ 3.3.13** The Construction Manager shall review the safety programs developed by each of the Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager, nor shall it relieve each Contractor of its obligations, duties and responsibilities for safety. The Construction Manager shall obtain a copy of each Contractor's safety programs, shall review such programs periodically during the construction meetings, and shall bring any observed deficiencies to attention of the Contractors and the Owner by written communication. The Construction Manager is not responsible for identifying unsafe practices of the Contractors, Subcontractors, agents or employees of the Contractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager, and the Construction Manager's failure to stop unsafe practices shall not relieve the Contractors, Subcontractors, agents or employees of the Contractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager of its responsibility for safety. If the Construction Manager observes any unsafe practices by a Contractor or those for whom the Contractor is responsible, the Construction Manager shall immediately advise the Contractor of the practice the Construction Manager believes to be unsafe and, if not corrected by the Contractor, promptly notify the Owner for Owner action.

**§ 3.3.14** The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.22.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

**§ 3.3.15** The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's breach of this Agreement and its negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work except those persons or entities retained by the Construction Manager.

**§ 3.3.16** The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise. The Construction Manager shall respond to or take other appropriate action in response to any requests for information within no more than three (3) days of receipt.



**§ 3.3.17** The Construction Manager, in consultation with the Owner and Architect, shall develop and implement as system for reviewing and processing of Change Orders. The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner. After change orders or construction change directives are prepared and signed by the Architect, the Construction Manager shall submit same to Owner for approval and execution. The Construction Manager has no authority to order any work whether represented in proposed Change Orders or not unless it first obtains written authorization from the Owner, and no alterations or changes in the plans or specifications shall be made without the written approval of the Owner. If, however, during the course of the Work, an emergency condition arises, endangering life or property, and it is not possible to obtain written authorization from the Owner in time to address the emergency, the Construction Manager shall have the authority to order such emergency work as may be necessary to alleviate the condition.

**§ 3.3.18** The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims.

**§ 3.3.19** Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect within five (5) days of receipt thereof those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Contractors, the Owner, or the Architect. The Contractors shall not commence any Work relating to the submittals unless the submittal has been approved by the Architect.

**§ 3.3.19.1** The Construction Manager shall prepare and maintain logs depicting the submittals, action upon or response to Contractor submittals, requests for information, substitution requests, change order proposals or requests, closeout requirements and warranty submissions. Copies of such logs shall be periodically provided to the Owner as information relative to the progress of the Project and Contractor compliance with the Contract Documents.

**§ 3.3.20** The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect.

**§ 3.3.20.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractors by the Contract Documents, the Construction Manager shall review those submittals for sequencing, constructability, and coordination impacts on the other Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts.

**§ 3.3.20.2** Should a Contractor fail to make a submittal or resubmittal (necessitated by the Architect's prior submittal rejection) and that failure could reasonably lead to a delay of the Work as set forth in the Project Schedule, the Construction Manager shall notify, in writing, the Owner and Architect of the facts and circumstances surrounding the matter and assist the Owner in taking steps necessary to compel the Contractor to make an acceptable submittal in a timely manner.

**§ 3.3.21** The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

**§ 3.3.21.1** The Construction Manager shall collect, review for accuracy, and compile the Contractors' daily logs; and include them in the Construction Manager's reports prepared and submitted in accordance with section 3.3.21.2.

**§ 3.3.21.2** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports;
- .11 Photographs to document the progress of the Project;
- .12 Status reports on permits and approvals of authorities having jurisdiction; and
- .13 Any other items the Owner may require:

The Construction Manager shall take digital photographs of the progress of the Work, which in its professional skill and judgment, are properly representative and sufficient to document the Work and protect the Owner's interests. With respect to said photographs, the Construction Manager shall document the date, time and description of what is depicted in the photograph.

**§ 3.3.21.3** In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractors' work force reports;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

N/A

**§ 3.3.22** Utilizing the documents provided by the Contractors, the Construction Manager shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, Architect, and Contractors. Upon completion of the Project, the Construction Manager shall deliver them to the Owner.

**§ 3.3.23** The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

**§ 3.3.24** With the Owner's maintenance personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

**§ 3.3.25** When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with that Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

**§ 3.3.26** When the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Architect shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractors. The Construction Manager shall coordinate the correction and completion of the Work, including the development of a closeout schedule, inspections, testing, start-up procedures, training, warranty processing and occupancy. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall perform an inspection to confirm the completion of the Work of the Contractors and make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection. The Construction Manager shall assist the Architect in conducting the final inspection of the Work.

**§ 3.3.26.1** The Construction Manager shall schedule, monitor and documents the testing, calibration and start-up of all equipment and building systems.

**§ 3.3.26.2** The Construction Manager shall coordinate closeout activities, including the completion or correction of the Work, submittal of all closeout documents, resolution of change orders and recommendations for payment of retainage.

**§ 3.3.27** The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractors: (1) certificates of insurance and endorsements; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other closeout documentation required of the Contractors under the Contract Documents, including warranties and similar submittals. With respect to the Contractors' insurance requirements, the Construction Manager shall monitor all coverages to determine they are current and that all required supporting documentation is received as to coverages, minimum limits, endorsements and certificates of insurance.

**§ 3.3.28** The Construction Manager shall coordinate receipt, and delivery to the Owner, of other items provided by the Contractors, such as keys, manuals, and record drawings. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment, or a final Application for Payment and final Certificate for Payment, upon the Contractors' compliance with the requirements of the Contract Documents.

**§ 3.3.29** Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written amendment to this Agreement signed by the Owner and the Construction Manager.

**§ 3.3.30** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance. When applicable, the Construction Manager and Architect shall assist the Owner in having warranty work performed by the appropriate party or parties (e.g., Contractors, manufacturers, etc.). Such assistance may include, but is not limited to, notifying the appropriate persons or entities of their warranty obligations.

**§ 3.3.31** Final completion shall, in all events, follow Substantial Completion and shall mean the completion of all items on the punch list in conformance with the Contract Documents and submission of close-out documents as outlined in the General Conditions and/or Specifications, as reviewed and approved by the Architect and the following conditions have been met: (1) all incomplete or defective work and all punch list items are completed to the satisfaction of the Architect and Owner; (2) all as-built drawings and operating manuals, warranties and guaranties required by each Contractor's contract have been submitted and approved by the Architect and Owner; and (3) all financial releases have been submitted by each Contractor and approved by the Architect and Owner.

**§ 3.3.32** The Construction Manager will assist in resolving disputes among Contractors.

**§ 3.3.33** If any employee assigned by the Construction Manager to the Project is not acceptable to the Owner, such employee shall be replaced by the Construction Manager within 15 working days of the Owner's objection in writing.

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services, unless so identified in this Agreement as Basic Services, but may be required for the Project. The Construction Manager shall provide the listed Supplemental Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Construction Manager is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Construction Manager's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Construction Manager or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility (Construction Manager, Owner or not provided)
§ 4.1.1.1 Measured drawings	Not provided
§ 4.1.1.2 Tenant-related services	Not provided
§ 4.1.1.3 Commissioning	Not provided
§ 4.1.1.4 Development of a commissioning plan	Not provided
§ 4.1.1.5 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.6 Furniture, furnishings and equipment delivery, and installation coordination	Not provided
§ 4.1.1.7 Furniture, furnishings and equipment procurement assistance	Not provided
§ 4.1.1.8 Assistance with site selection	Not provided
§ 4.1.1.9 Assistance with selection of the Architect	Not provided
§ 4.1.1.10 Furnish land survey	Not provided
§ 4.1.1.11 Furnish geotechnical engineering services	Not provided
§ 4.1.1.12 Provide insurance advice	Not provided
§ 4.1.1.13 Provide supplemental Project risk analysis and mitigation strategies	Not provided
§ 4.1.1.14 Stakeholder relationships management	Not provided
§ 4.1.1.15 Owner moving coordination	Not provided
§ 4.1.1.16 Coordination of Owner's Separate Contractors	Not provided
§ 4.1.1.17 Other Supplemental Services	Not provided

### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Construction Manager's responsibility is provided below.

*(Describe in detail the Construction Manager's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

N/A

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

N/A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Construction Manager as provided in Section 11.2.

## **§ 4.2 Construction Manager's Additional Services**

**§ 4.2.1** The Construction Manager may provide Additional Services after execution of this Agreement, without invalidating this Agreement. The Construction Manager shall not be entitled to additional compensation from the Owner unless agreed to in advance, in writing by the Owner as to the scope of Additional Services and amount of the additional fee. It is the Construction Manager's responsibility to notify the Owner in writing when Additional Services are necessary and to secure written authorization to proceed from the Owner. The Construction manager shall not be entitled to any Additional Services compensation due to the fault of the Construction Manager. The Construction Manager recognizes and understands that portions of the Project may be delayed as a result of issues arising from the necessity of obtaining approvals from SED. The Construction Manager shall not be entitled to compensation for Additional Services as a result of any delay caused by issues arising out of receiving such approvals, nor shall any suspension of the Project by virtue of such a delay constitute grounds for termination under Article 9 of this Agreement.

**§ 4.2.2** Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following Additional Services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity or the Owner's schedule, except for services which were caused in whole or in part by the actions, omissions, or neglect of the Construction Manager or due to causes within the control of the Construction Manager. Services necessitated by sections 6.4 and 6.6 shall not be considered additional services;
- .2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner;
- .4 Intentionally omitted;
- .5 Intentionally omitted;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or
- .8 Assistance to the Initial Decision Maker, if other than the Architect.

**§ 4.2.3** To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Construction Manager's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Construction Manager of the Owner's determination. The Owner shall compensate the Construction Manager for the services provided prior to the Construction Manager's receipt of the Owner's notice:

- .1 Providing assistance to the Initial Decision Maker in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work, unless the same was caused by the failure of the Construction Manager to perform its obligations under this Agreement.
- .2 Services required in an emergency to coordinate the activities of a Contractor or Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.15.

**§ 4.2.4** Except for services required under Section 3.3.30, Construction Phase Services provided more than 120 days after the date of Substantial Completion of the Work, through no fault of the Construction Manager, shall be compensated as Additional Services to the extent the Construction Manager incurs additional cost in providing those Construction Phase Services.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall with the assistance of the Architect provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria; special equipment;



systems; and site requirements. Notwithstanding the foregoing, the Construction Manager acknowledges that it is retained to assist the Owner in developing the final program, proper requirements, objectives, and schedule, as part of its Basic Services.

**§ 5.2** The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 5.3** The Owner acknowledges that accelerated, phased, or fast-track design and construction provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

**§ 5.4** The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified. The Owner shall provide the Construction Manager with a copy of the scope of services in the agreement executed between the Owner and Architect, and any further modifications to the Architect's scope of services in the agreement.

**§ 5.5** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services. It is understood that there will be some decisions that will be beyond the authority of the designated representative and that require review and/or action by the Owner's Board of Education; in such circumstances, it is acknowledged that making the required decision may take a longer period of time.

**§ 5.6** Unless provided by the Construction Manager, the Owner shall, upon request from the Construction Manager, furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.7** Unless provided by the Construction Manager, the Owner shall, if requested and reasonably required by the scope of the Project, furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.8** The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

**§ 5.9** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

**§ 5.10** The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Construction Manager in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.11 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Construction Manager shall assist the Owner in selecting, retaining and coordinating the necessary persons or entities to perform such tests, inspections, and reports required by law or the Contract Documents.

§ 5.12 The Owner shall furnish all legal and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner shall not be required to provide any such services to the extent they would constitute services for the exclusive or predominant benefit of the Construction Manager or would not further the Owner's needs or interests with respect to the Project.

§ 5.13 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services. The Owner's failure or omission to so notify shall not relieve the Construction Manager of its duties under this Agreement. Nothing contained in this Section or elsewhere in the Contract Documents imposes an express, implied or other duty on the Owner to review the Architect's Instruments of Service to ascertain any errors, omissions or inconsistencies in those Instruments of Service or to ascertain any fault or defect in the Construction Manager's services.

§ 5.14 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.15 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.16 Before executing the Contracts for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contracts for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.17 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractors to provide the Construction Manager access to the Work wherever it is in preparation or progress.

§ 5.18 Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce lien rights.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect and its consultants, the compensation of the Construction Manager and its consultants, the costs of furniture, fixtures and equipment, the costs of the land, rights-of-way, financing, legal fees, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.1.1 For purposes of this Agreement, the Project Cost shall be the total cost to the Owner of the Project, including, but not necessarily limited to, the Cost of the Work, the compensation of the Architect and its consultants, the compensation of the Construction Manager and its consultants, the cost of other Project representation, costs of land, rights-of-way, financing, and all other costs associated with the Project. The Construction Manager acknowledges that the Owner is bound by law to maximum Project expenditure not to exceed the approved Referendum Amount.

**§ 6.2** In entering this Agreement, the Construction Manager acknowledges that a fixed limited budget has been established by the owner for the Cost of Work for the Project and that this budget is of cardinal importance. The Construction Manager shall consult with the Architect to determine what materials, equipment, component systems, and types of construction will be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternates in the Contract Documents in accordance with the Owner's budget. Evaluations of the Owner's budget for the Cost of the Work, and the estimates of the Cost of the Work prepared by the Construction Manager, represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials; or equipment; the Contractors' methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Construction Manager. Notwithstanding the foregoing, the Owner and Architect are entitled to rely on the estimates of the Cost of the Work prepared by the Construction Manager.

**§ 6.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 6.4** If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, as part of its Basic Services and in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, including establishing alternates that may be rejected or accepted to keep the total cost within the Referendum Amount, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

**§ 6.5** If the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.1.1;
- .3 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

**§ 6.6** If the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work pursuant to Section 6.5.3, or if the bids or proposals received from the prospective Contractors, in the aggregate, exceed the Owner's budget for the Cost of the Work, and the Owner chooses to revise the Project program, scope, or quality to reduce the Cost of the Work, the Construction Manager shall cooperate with the Owner and Architect to develop the necessary revisions, update the cost estimate, and rebid the Project. The Construction Manager will perform the services described in Sections 6.4 and 6.6 without additional compensation.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Construction Manager shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages,



except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2019, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** Notwithstanding the limits of any insurance provided or maintained by the Construction Manager, and to the fullest extent allowed by law, the Construction Manager agrees for itself, and to cause its subcontractors, to indemnify, defend and hold harmless the Owner and its respective agents, officers, employees, board members or directors from and against any and all claims of third parties resulting in liabilities, losses, obligations, fines, liens, penalties, actions, judgments, damages, costs (including, without limitation, reasonable attorneys' fees and expenses incurred in connection therewith and in the enforcement of this indemnification), charges, expenses and demands of whatever kind in connection with or arising from or out of the following: (i) any negligent, willful or wrongful act, or negligent errors or omissions, resulting in bodily injury (including death), personal injury or property damage by the Construction Manager, the Construction Manager's subcontractors, their respective officers, employees, servants, agents, suppliers, invitees, successors and assigns; (ii) any breach of this Agreement; or (iii) any statutorily imposed liability for injury to employees or failure to comply with any laws or regulations affecting the Construction Manager's services. The Construction Manager's duties and obligations pursuant to this paragraph shall survive the termination or expiration of this Agreement.

**§ 8.1.4** In the event of any dispute between the Owner and the Construction Manager or the Construction Manager and any other person with respect to the Project, the Construction Manager shall continue to perform its duties under this Agreement without interruption or delay, pending the resolution of the dispute and the Construction Manager shall not directly or indirectly stop or delay the performance of the Project. In the event of a dispute between the Owner and the Construction Manager, the Owner shall continue payments to the Construction Manager pursuant to this Agreement, except for any item(s) in dispute.

**§ 8.1.5** Unless otherwise required by law, any claim made by the Construction Manager arising out of any alleged act or omission by the Owner, its Board of Education, officers, agents or employees in the execution or performance of this Agreement shall be made against the Owner and not against any member of the Board of Education, trustee, officer, agent or employee. No Board member, trustee, officer, agent or employee of Owner shall have any personal liability whatsoever pursuant to or by reason of this Agreement.

## **§ 8.2 Mediation**

**§ 8.2.1** If claim, dispute or other matter in question arises out of or related to this Agreement, the parties shall endeavor to settle the dispute first through direct discussion between their designated representatives. The representatives shall meet promptly in a good faith effort to resolve the dispute. If the designated representatives are unable to reach a resolution within 15 calendar days of the referral of the matter to them, the matter may, with the written consent of the Owner and Architect, be submitted to non-binding mediation before a mutually agreed upon mediator. Any such mediation shall be completed within 30 days of submission and each party shall cooperate in the process.

**§ 8.2.2** Intentionally omitted.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Oswego County, New York, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction located in Oswego County

☐ Other: (Specify)

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 This Agreement may be terminated by either party should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination (termination “for cause”). The party seeking termination shall give the other party written notice of its intent to terminate for failure to substantially perform with information identifying the item(s) of substantial non-performance. If the non-performing party fails to correct or take substantial actions to correct all items within seven (7) calendar days’ of receiving the written notice, the Agreement may be terminated upon further written notice delivered to the non-performing party.

§ 9.1.1 The Owner may terminate this Agreement upon not less than seven (7) days’ written notice to the Architect for the Owner’s convenience and without cause (termination “without cause”).

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager’s services. The Construction Manager’s time schedules shall be equitably adjusted. If the suspension exceeds 90 days, the Construction Manager’s fees for the remaining services shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 120 consecutive days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven (7) days’ written notice.

§ 9.4 Persistent failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination, except to the extent the non-payment is based on the Construction Manager’s breach, negligence or non-performance, provided, however, that any payments withheld will be directly related to only those issues in dispute between the parties.

§ 9.5 In the circumstances constituting substantial non-performance set forth in Section 9.4, the Construction Manager may, upon seven (7) days’ written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full, less disputed items described in Section 9.4, is received by the Construction Manager within seven (7) days of the date of the notice, the suspension shall take effect upon seven (7) days additional notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services to the extent such suspension was proper and warranted.

§ 9.6 In the event of termination by the Owner without cause, as set forth above, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, provided that the Construction Manager delivers all existing Project records held in its files or otherwise to the Owner in a useful and organized manner.

§ 9.7 Upon termination for cause by the Owner, the Construction Manager shall not be entitled to any further payments, and the Owner shall be entitled to all of its rights and remedies provided by law or under this Agreement.

§ 9.8 If, after notice of termination for cause, it is determined for any reason that the Construction Manager was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued without cause by the Owner pursuant to Section 9.1.1.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of New York. Any action by either party arising out of this Agreement shall be commenced in New York State Supreme Court in the County of Oswego.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2019, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term “Work” shall include the work of all Contractors under the administration of the Construction Manager and the Architect.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement, except that the Owner may assign this Agreement to a lender providing financing for the Project if the

lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Construction Manager by the Owner prior to the assignment.

**§ 10.4** If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

**§ 10.5** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Construction Manager.

**§ 10.6** Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**§ 10.7** The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall provide professional credit for the Architect and the Contractors in the Construction Manager's promotional materials for the Project. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

**§ 10.8** If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) as required by law, including the Freedom of Information Law.

**§ 10.9** The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

**§ 10.10** No failure by either party to insist upon the performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by either party and no breach thereof shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Agreement with regard to any other breach, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**§ 10.11** To the extent permitted by law, all rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**§ 10.12** This Agreement, including the exhibits specifically identified herein, constitutes the entire agreement between the parties and incorporates all prior understandings in connection with the subject matter hereof. This Agreement may be modified only in writing signed by both parties.

**§ 10.13** The captions or headings in this Agreement are intended for convenience and for reference purposes only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

**§ 10.14** The Construction Manager, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the Owner, and that it will not, by reason hereof, make any claims, demand or application for any right or privilege applicable to an officer or employee of the Owner, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

**§ 10.15** The Construction Manager agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. The Construction Manager agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized representatives of the Owner, and further agrees to provide necessary staff support in the performance of such audit. The Construction Manager agrees to maintain for a period of three (3) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this Agreement; however, this period shall be extended beyond three (3) years for any and all records and information pertaining to unresolved questions and matters that have been brought to the Construction Manager's attention.

**§ 10.16** The Construction Manager agrees to comply with all New York laws that may be applicable to this Agreement, and to require similar compliance from its subcontractors and consultants.

## **ARTICLE 11 COMPENSATION**

**§ 11.1** For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

**§ 11.1.1** For Pre-Referendum Phase Services in Section 3.2:

*(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)*

« »

**§ 11.1.2** For Preconstruction and Construction Phase Services in Sections 3.2 and 3.3:

*(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)*

« »

**§ 11.2** For the Construction Manager's Supplemental Services designated in Section 4.1.1, and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Construction Manager as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

As mutually agreed in writing between the Owner and Construction Manager. No Supplemental Services are to be provided without prior written agreement between the Owner and the Construction Manager as to scope and terms for payment.

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Construction Manager as follows:  
*(Insert amount of, or basis for, compensation.)*

As mutually agreed in writing between the Owner and Construction Manager. No Additional Services are to be provided without prior written agreement between the Owner and the Construction Manager as to scope and terms for payment.

**§ 11.4** Compensation for Supplemental and Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager.

**§ 11.5** The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants are set forth below. Any increase in hourly rates shall be commercially reasonable and mutually agreed to by the Owner and Construction Manager.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

<< >>

Employee or Category	Rate (\$0.00)

## **§ 11.6 Compensation for Reimbursable Expenses**

**§ 11.6.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager's consultants directly related to the Project, as follows:

- .1 Authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Overnight or other expedited delivery charges;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Professional photography and presentation materials requested by the Owner;
- .8 Intentionally omitted;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses but only in the event the Owner does not provide the Construction Manager with on-site office space; and
- .11 Other similar Project-related expenditures with prior written authorization from the Owner.

**§ 11.6.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants.

**§ 11.7 Construction Manager's Insurance.** If the types and limits of coverage required in Section 2.8 are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager for the additional costs incurred by the Construction Manager for the additional coverages as set forth below.

(Insert the additional coverages the Construction Manager is required to obtain in order to satisfy the requirements set forth in Section 2.8, and for which the Owner shall reimburse the Construction Manager.)

N/A

## **§ 11.8 Payments to the Construction Manager**

### **§ 11.8.1 Initial Payment**

**§ 11.8.1.1** An initial payment of zero dollars (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

### **§ 11.8.2 Progress Payments**

**§ 11.8.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable 30 days from the date of receipt by the Owner of the Construction Manager's invoice. Amounts unpaid 60 days after the invoice date shall bear interest at the New York statutory rate applicable to the obligations of public school districts.

**§ 11.8.2.2** The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager. Notwithstanding the foregoing, the Owner may withhold amounts from the Construction Manager's compensation to the extent such is based on the Construction Manager's breach, negligence or non-performance, provided, however, that any payments withheld will be directly related to only those issues in dispute between the parties.

§ 11.8.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:  
(Include other terms and conditions applicable to this Agreement.)

None.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document C132™–2019, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .3 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[ « » ] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:  
(Insert the date of the E235-2019 incorporated into this agreement.)

« »

[ « » ] Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.2.)

« »

- .4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

« »

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

OWNER (Signature)

« » « » « »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« » « » « »

(Printed name and title)

**Exhibit B**  
**Scope of Construction Management Services**

Proposed Scope of Work – Lura Sharp Elementary [\$16.5M **Project** Budget]

- Roof replacement
- Masonry reconstruction/renovations – priority areas
- Mechanical system – transition from steam to hot water
  - HWS/HWR pipe/infrastructure replacements
  - Equipment replacements to vertical unit-ventilators – ducted distribution.
  - controls
- Room renovations associated with mechanical system replacements.
  - Asbestos removals
  - Floor and ceiling replacements
  - Classroom lighting replacements
  - Finish upgrades
  - Casework and cabinetry replacements

Proposed Scope of Work – Middle/High School [\$8.5M **Project** Budget]

- Pool renovations and reconstruction
  - Skylight replacements
  - Transite exterior panel replacement
  - Pool cover and controls
- Toilet Room renovations
- Science Room renovations
- Mechanical equipment replacements
- Locker room renovations

**Note: all work is preliminary priorities that are in development. Additional scope may be added as the process develops.**