

WYOMING CENTRAL SCHOOL BOARD OF EDUCATION

May 9, 2024

PUBLIC HEARING 6:00 PM

REGULAR MEETING IMMEDIATELY FOLLOWING PUBLIC HEARING

- I. Pledge of Allegiance
- II. Call to Order
- III. Agenda: Additions or Deletions 1___ 2___
- IV. Public Forum
- V. Board Discussion
- VI. Presentations
 - A. 8th Grade Class Trip
- VII. Consent Items 1___ 2___
 - A. Approve minutes of the 4/22/24 special meeting
 - B. Approve Treasurer Report & Budget by Function March 2024
 - C. Approve Engagement Letter for Legal Services Between Bond Schoeneck & King PLLC and Wyoming Central School District
 - D. Approve Watchdog Building Partners and Wyoming CSD Agreement
 - E. Approve Annual Reorganizational Meeting 7/11/24 @ 6:00 PM
 - F. Approve Additional Election Officials for 5/21/24
- VIII. President's Report
- IX. Superintendent's Report
- X. Treasurer's Report
- XI. Old Business
 - A. 2023-2024 instructional calendar revisions based upon April 18th
- XII. New Business
- XIII. Executive Session
- XIV. Personnel
 - A. Appoint non-certified substitute teacher, teacher's assistant, teachers aide, and monitor
- XV. CPSE/CSE

XVI. Adjournment

**WYOMING CENTRAL SCHOOL
WYOMING, NEW YORK**

**BOARD OF EDUCATION
SPECIAL MEETING
APRIL 22, 2024**

- Members present:** Kaitlyn Bush, Benjamin Chamberlain, Jessica Merrill, Barry True,
Rudd Wetherwax(arrived at 6:03 p.m.), Nicole White
- Members absent:** Haley Tygart
- Others present:** Emily Herman, Joelle Stroud, Nancy Norton
- Guests:** None.
- Call to Order:** The meeting was called to order at 6:00 p.m. by Mr. Chamberlain, Board President.
- Approval of Agenda:** Resolved, the Board approves the agenda on motion by Mrs. Merrill and second by Mr. True.
- Yes-5 Bush, Chamberlain, Merrill, True, White
- No-0
- Motion approved.
- Public Forum:** None.
- Board Discussion:** None.
- Presentations:** None.
- Mr. Wetherwax arrived at 6:03 p.m.
- Consent Items:** Resolved, the Board approves the following items A.-H. on motion by Mr. Chamberlain and second by Mrs. Merrill:
- A. Approve minutes of the 4/11/24 regular meeting.
 - B. Approve to vote by paper ballot during the hours of 1:00 pm to 8:00 pm in the school foyer at the Annual Vote and Election on May 21, 2024
 - C. Approve Election Officials for the 5/21/24 Annual Vote and Election at the rate of \$15.00 per hour
 - D. Approve the Village Hall of Wyoming as an alternate voting site, in case of an emergency, for the 5/21/24 Annual Vote and Election

E. Approve propositions for the 5/21/24 Annual Vote and Election:

PROPOSITION #1, ANNUAL BUDGET

RESOLVED, that the Board of Education of the Wyoming Central School District shall be authorized to expend the amount of \$6,155,494, to meet the expenditures for the fiscal year 2024-2025, AND FURTHER that said Board of Education shall be authorized to levy and collect a tax upon taxable property of the School District in an amount necessary therefore.

PROPOSITION #2, BOARD ELECTIONS

RESOLVED, to elect two (2) members of the Board of Education for two (2) five (5) year terms commencing July 1, 2024 and expiring June 30, 2029 to succeed Jessica Merrill and Rudd Wetherwax, whose terms expire on June 30, 2024. All board positions are at-large.

Vote for two (2):

Jordan Wetherwax
Desiree Fioramonte
Jodi H. Chamberlain

PROPOSITION #3, AUTHORIZATION TO WITHDRAW FROM THE EXISTING "2020 VEHICLE, MACHINERY, & EQUIPMENT PURCHASE CAPITAL RESERVE FUND"

RESOLVED, that the Board of Education of the Wyoming Central School District is hereby authorized to withdraw from the existing "2020 Vehicle, Machinery, & Equipment Purchase Capital Reserve Fund" a sum of money not to exceed Fifty Thousand Dollars (\$50,000.00) and to expend such funds for the purchase of a 65 passenger diesel engine school bus.

PROPOSITION #4, WYOMING FREE CIRCULATING LIBRARY ASSOCIATION

RESOLVED, shall the sum raised by annual levy of a tax upon the taxable real property within the Wyoming Central School District for the purpose of funding a portion of the operating expenses of the Wyoming Free Library Association be increase by Two Thousand Dollars (\$2,000.00) from the annual amount of Forty-Three Thousand Four Hundred Ninety-Five Dollars (\$43,495.00) to the annual amount of Forty-Five Thousand Four Hundred Ninety-Five Dollars (\$45,495.00) commencing with the 2024-2025 school year?

Approve to cast one vote for each of the three candidates for the G-L-S-W BOCES Board of Education: Margaret Foster, Edward Levinstein and David

Woodruff and to cast one vote for the BOCES Administrative Budget for 2024-2025 in the amount of \$3,272,493.

G. Approve the SEQRA for the 2024-2025 COEP

H. Approve the Wyoming Central School District School Resource Officer (SRO) Agreement for the term of 7/1/24-6/30/27

Yes-6 Bush, Chamberlain, Merrill, True, Wetherwax, White,

No-0

Motion approved.

President's Report: None.

Superintendent's Report: None.

Old Business: None.

New Business: Resolved, the Board approves the following A.-D. on motion by Mrs. Merrill and second by Mr. Chamberlain:

A. Approve revised 2024-2025 Property Tax Report Card

B. Approve to purchase McGraw Hill, Reveal Math for grades K-5 for 6 years at \$19,412.38

C. Approve Use of Facilities Request for Justin Britton – April 23 & 24, 2024 for youth basketball

D. Accept donation from Warsaw Soccer Club in the amount of \$300

Yes-6 Bush, Chamberlain, Merrill, True, Wetherwax, White,

No-0

Motion approved.

Executive Session: Resolved, the Board approves to retire into executive session at 6:06 p.m. for the purpose of personnel on motion by Mr. Chamberlain and second by Mr. True:

Yes-6 Bush, Chamberlain, Merrill, True, Wetherwax, White,

No-0

Motion approved.

Out of Executive Session: The Board reconvened regular session at 6:25 p.m.

Personnel: None.

CPSE/CSE: None.

Adjournment: Resolved, the Board approves to adjourn the meeting at 6:26 p.m. on motion by Mr. True and second by Mr. Chamberlain:

Yes-6 Bush, Chamberlain, Merrill, True, Wetherwax, White,

No-0

Motion approved.

Respectfully submitted,

Nancy Norton
District Clerk

LAURA M. PURCELL, ESQ.
lpurcell@bsk.com
P: 585.362.4787
F: 585.362.4701

April 26, 2024

VIA ELECTRONIC MAIL

Ms. Emily Herman
Superintendent of Schools
Wyoming Central School District
P.O. Box 244
Wyoming, NY 14591
eherman@wyomingscd.org

RE: Engagement Letter for Legal Services Between Bond Schoeneck & King PLLC and Wyoming Central School District

Dear Ms. Herman:

This letter summarizes the proposed terms of Bond Schoeneck & King PLLC's ("we", "us", "our" or the "Firm") representation of Wyoming Central School District (the "District" or "Client"), including the scope of services the firm will provide pursuant to this engagement and the agreed-upon fee and billing arrangements. Unless otherwise set forth herein, our representation will be limited to the District and its Board only, and does not extend to any separate or differing interests of Client's officers, directors, owners, subsidiaries, affiliates, agents, employees, or family members, or to any other potentially-interested or related parties (individually "Affiliate," and collectively, "Affiliates").

Scope of Engagement. The firm shall serve as legal counsel to the District and provide such legal advice, consultation, and other services as requested by the District related to school district matters including, but not limited to, operations, labor and personnel, student issues, financial matters, facilities, and property.

Except as we may otherwise both agree in writing, Client agrees that we may disclose the fact of our representation of Client, including in materials that the Firm uses to describe its practices and expertise.

Firm Personnel; Principal Contact. The Client is engaging the Firm as a whole and not any individual attorney. Laura Purcell will be responsible for the supervision of the Firm's representation of the District. Laura can be reached at (585) 362-4700 or lpurcell@bsk.com. As necessary or appropriate, we will draw upon the talents and experience of other Firm attorneys, professionals, and staff in providing services relating our representation.

Fee Arrangement. The Firm's fee is based on the time spent by the attorneys and legal assistants who work on Client matters. The hourly rates for these services for the 2023-24 and 2024-25 fiscal years are \$279 for partners and senior counsel, \$263 for associates, \$175 for law clerks (unadmitted law graduates) and \$150 for law student clerks, and paralegal/library research services. We will, from time to time at Client's request, provide estimates (which are not binding) concerning our estimated fee. Should a fee dispute arise which is not resolved by discussion between Client and our Firm, Client may have the right to arbitration of that dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to Client upon request.

A Client may have insurance coverage that will apply to some or all of our fees and expenses. Regardless of the limits of that coverage (or its discontinuation), Client remains responsible to us for all billed fees and expenses.

Other Charges. In addition to the Firm's fees for rendering professional services, Client shall be responsible for, and Firm invoices will include, separate charges for performing services such as photocopying, scanning, delivery charges, long distance telephone calls, facsimile transmissions, specialized computer applications (including e-discovery costs), travel, and other expenses and services incurred incidentally to the performance of the Firm's legal services. Client shall also be responsible for payment of any expenses and disbursements incurred by the Firm on Client's behalf (*i.e.*, transcription fees, filing fees, expert witness fees, etc.), which will be billed to Client with the Firm's invoice. Based on the nature of the expense, the Firm may also request that Client pay or advance the fee directly to the person/entity requesting/charging the same. The Firm shall promptly notify Client of any significant expense that is incurred in connection with the Matter.

Should Client ever issue a litigation hold to the Firm for a matter unrelated to the Firm (*e.g.*, due to a subpoena or litigation/threatened litigation in which the Firm is not a party or potential party), Client shall reimburse the Firm for its reasonable costs expended in complying with such litigation hold.

Billing Cycle and Retainer. The Firm generally requires its clients to deposit a retainer for legal services against which the Firm bills and collects fees and disbursements. The Firm has waived the requirement for an initial retainer with respect to this Matter, but reserves the right to require one if deemed appropriate in the future. Fees for legal services and other charges are billed monthly and are payable within 30 days of Client's receipt of the Firm's invoice.

Should Client's account remain unpaid after 30 days, a late-payment fee of 2% per month. If Client's account becomes delinquent by more than 90 days, the Firm will contact Client about making arrangements to bring the account current. It is our hope that, by addressing payment issues promptly, we can avoid any misunderstanding. However, as a condition to the Firm's continued representation of Client, Client must remain current in Client's payments to the Firm for services and expenses. Should a delinquency continue and satisfactory payment terms not be arranged, the Firm reserves the right to withdraw from its representation of Client and pursue collection of the amount owed. In such an event, Client shall be responsible for the cost of collecting the debt,

including court costs, filing fees, and reasonable attorneys' fees incurred by the Firm for the collection.

If you disagree with any invoice, you must notify us of the nature of your dispute within 30 days of your receipt of that invoice. You agree that your failure to do so will result in that invoice becoming your final binding obligation.

If Client ever overpays an invoice, Client agrees that the Firm may apply such overpayment to any outstanding fees and expenses or to Client's next bill, with notice to Client as to how the Firm applied the overpayment. If there are no outstanding fees or expenses and no work in progress, the Firm shall refund the overpayment to Client.

Termination of Engagement. Either party may terminate the engagement described herein at any time for any reason by providing the other party written notice, subject, on the Firm's part, to the rules of professional conduct. No such termination, however, will relieve Client of the obligation to pay the legal fees owed to the Firm for services performed and other charges owed to the Firm through the date of termination. After the Firm's completion of legal services to Client, changes may occur in applicable laws or regulations that could have an impact upon Client's future rights and liabilities. Unless Client engages the Firm after completion of the Matter to provide additional advice on issues relating specifically to the Matter, the Firm has no continuing obligation to advise Client with respect to future legal developments, whether relating to the Matter or otherwise.

Conclusion of Representation; Disposition of Client Documents. Unless previously terminated, the Firm's representation of Client with respect to the Matter will conclude when the Firm sends Client the last invoice for services rendered in the Matter. Following such conclusion, any otherwise nonpublic information Client has supplied to the Firm that is retained by the Firm will be kept confidential in accordance with applicable rules of professional conduct. At Client's request, the Firm will return Client's papers and property promptly after receipt of payment for any outstanding fees and costs. If Client does not make such a request within 90 days following the conclusion of the engagement set forth herein, Client agrees and understands that any materials left with the Firm after the engagement ends may be retained or destroyed at the Firm's discretion.

Please note that "materials" include paper files and information in other storage media, including, but not limited to, voicemail, e-mail, and other electronic files, printer files, copier files, video files, and other formats. The Firm reserves the right to make, at its expense, copies of all documents generated or received by the Firm in the course of its representation. The Firm will retain its files pertaining to the Matter. These Firm files include, for example, Firm administrative records; internal lawyers' work product, such as drafts, notes, and internal memoranda; and legal and factual research, including memos and investigative reports prepared by or for the internal use of lawyers. The Firm will retain all remaining documents for a certain period of time, but reserves the right for various reasons, including the minimization of unnecessary storage expenses, to destroy or otherwise dispose of them within a reasonable time after the conclusion of the engagement set forth herein.

Client Cooperation. Client agrees to cooperate fully with the Firm and to provide promptly all information known or available to Client relevant to the Firm's representation of Client, as well as any updates or changes to Client's contact information. Such cooperation is essential, as the Firm will, of necessity, be relying on the completeness and accuracy of the information Client provides to the Firm when performing services on Client's behalf. Should Client not fully cooperate with the Firm, both the efficiency and economy of the Firm's representation of Client may suffer.

Communication with Client. Unless Client directs otherwise, the Firm will use unencrypted e-mail as the primary means of communication with Client, and Client shall inform the Firm of which e-mail address(es) the Firm should use for such communication. The Firm may also use cellular telephones (including smart phones) and facsimile machines to communicate with Client. Texting is not a preferred method of communication, but may be used on a limited basis to communicate non-sensitive information to Client. The Firm will take reasonable steps to protect the confidentiality of Firm-Client communications, but, unless applicable law provides otherwise, the Firm will not be responsible for disclosures of Client's confidential information occurring from the use of such communication technologies. Client agrees to notify the Firm if Client has any requests or requirements regarding the Firm's methods of communication with Client that differ from the foregoing.

Possible Conflicts. Conflicts of interest will be handled as required by applicable rules of professional conduct. Unless otherwise agreed, for the purpose of determining whether a conflict of interest exists, it is only Client that the Firm represents, and not any of its Affiliates. Client agrees not to give the Firm any confidential information regarding any Affiliate unless: (a) that Affiliate has separately engaged the Firm to perform services on that Affiliate's behalf; or (b) such information is essential to the engagement set forth herein. While the Firm recognizes that to act adversely to any Affiliate could jeopardize a long-term relationship with Client, which the Firm does not wish to do, for conflict of interest purposes the Firm reserves the right to represent another client with interests adverse to any Affiliate that is not itself a Firm client without obtaining any consent from Client or Client's Affiliates.

The Firm has a General Counsel who provides legal advice to our lawyers and staff. To the extent the Firm is addressing its duties, obligations, or responsibilities to Client in those consultations, it is possible that a conflict of interest might be deemed to exist as between Firm lawyers or the Firm and Client. Client agrees that these consultations are protected from disclosure by the Firm's attorney-client privilege and that Client will not seek to discover or inquire into them. Of course, nothing in the foregoing shall diminish or otherwise affect the Firm's obligation to keep Client informed of material developments in the Firm's representation of Client, including any conclusions arising out of such consultations to the extent that they affect Client's interests.

During the term of this engagement, the Firm agrees that it will not accept representation of another client to pursue interests that are directly adverse to Client's interests unless and until the Firm has made full disclosure to Client of all the relevant facts, circumstances and implications of the Firm undertaking the two representations, and Client has consented to the Firm's representation of the other client and agreed to waive any existing conflict. Client agrees, however, that Client will not

Ms. Emily Herman
Superintendent of Schools
April 26, 2024
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unreasonably withhold consent and waiver of any conflict if the Firm can confirm in good faith that the following criteria are met: (i) there is no substantial relationship between any matter in which the Firm is representing or has represented Client and the matter for the other client; (ii) the Firm's representation of the other client will not implicate any confidential information we have received from Client; (iii) the Firm's effective representation of Client and the discharge of the Firm's professional responsibilities to Client will not be prejudiced by the Firm's representation of the other client; and (iv) the other client has also consented in writing based on our full disclosure of the relevant facts, circumstances and implications of the Firm undertaking the two representations.

Please contact me directly with any questions regarding this engagement letter. Otherwise, if this proposal is acceptable, please so indicate by returning a countersigned copy of this engagement letter. Consistent with its policy, the Firm reserves the right to delay commencement of work on this Matter until Client has signed and returned this engagement letter to us.

We are grateful for the opportunity to continue to represent the Wyoming Central School District.

Very truly yours,

BOND, SCHOENECK & KING, PLLC



Laura M. Purcell

LMP/slc

Agreed and Accepted this _____
day of _____, 2024

WYOMING CENTRAL SCHOOL DISTRICT

By: _____
Emily Herman, Superintendent of Schools

AIA® Document C132® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the 30th day of April in the year Two Thousand Twenty-Four

BETWEEN the Owner:

Wyoming Central School District
1225 State Route 19, PO Box 244
Wyoming, NY, 14591

and the Construction Manager:

Watchdog Building Partners, LLC
3445 Winton Place, Suite 102
Rochester, NY 14623
Telephone Number (585) 760-7855

for the following Project:

Wyoming CSD 2023 Capital Improvements Project

The Architect:

Clark Patterson Lee (CPL)
1279 North Main Street
Jamestown, NY 14701
Telephone Number (716) 664-4710
CPL Project No. R23.00416.00

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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.

TABLE OF ARTICLES

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2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES
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5	OWNER'S RESPONSIBILITIES
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13	SCOPE OF THE AGREEMENT

EXHIBIT A: PROJECT SCOPE and BUDGET

EXHIBIT B: POST-REFERENDUM SCHEDULE

EXHIBIT C: ARCHITECT-CONSTRUCTION MANAGER COORDINATION MATRIX

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in Exhibits A and B .

§ 1.1.1 The Owner's program for the Project:

(Paragraph deleted)

See Exhibit A (Project Scope) and Exhibit B (Project Schedule)

Competitively bid multiple prime contracts possibly in multiple phases.

The Owner is retaining the Construction Manager to perform construction management services relating to the planning, design and construction for certain construction work for school facilities, including necessary support for the Project Architect's submission of that work to the New York State Education Department for review and approval.

§ 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.)

See Exhibit A (Project Scope) and Exhibit B (Project Schedule)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

Estimated Referendum Amount: \$5,375,000 Estimated Construction Budget \$4,300,000

§ 1.1.4 The Construction Manager, in accordance with its professional skill and judgment, shall review the Architect's Project Schedule set forth in the Architect's Agreement and prior to the submission of design to the State Education Department shall prepare its own Project Schedule which shall be a detailed Milestone Schedule showing dates for the following:

Design Phase: January 2024 – April 2024
Submit for SED Review: June 15, 2024
SED Approval: December 2024
Bid Phase: January – February 2025
Commencement of Construction: April 1, 2025
Substantial Completion: October 1, 2025
Close Out Phase: December 2025

§1.1.4.1 Within one (1) month of receiving approval from the New York State Education Department, the Construction Manager shall create a detailed, comprehensive Milestone Construction Schedule using critical path and predecessor logic (and phasing plan, if necessary) using the Construction Manager's professional skill and judgment, to be included in the Bid Documents, reasonably acceptable to the Owner and Architect.

The Construction Schedule will take into account the Owner's school building use and programmatic needs.

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

Competitive bidding and/or procurement without competitive bidding in compliance with New York State law and New York State Education Department regulations.

§ 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.)

TBD

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

TBD

§ 1.1.7.1 Intentionally omitted.

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

The Owner has completed its Asbestos Hazard Emergency Response Act (AHERA) Report which is on file at the Owner's offices and available for use and consideration in connection with the Project. As a local educational agency, Owner must comply with the Asbestos Hazard Emergency Response Act (AHERA) 15 U.S.C. §2641-2656. The Construction Manager is responsible to review the Owner's AHERA reports. 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 not brought to the site by the Construction Manager, however, the Construction Manager shall promptly advise the Owner in writing of the presence and location of any suspected hazardous materials or toxic substances of which the Construction Manager becomes aware.

§ 1.1.9 The Owner identifies the following representative in accordance with Section 5.5:

(List name, address, and other contact information.)

Emily Hermam, Superintendent of Schools
Wyoming Central School District
1225 State Route 19, PO Box 244
Wyoming, NY, 14591

§ 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:

Clark Patterson Lee (CPL)
1279 North Main Street
Jamestown, NY 14701

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

Lester Roberts, Project Manager for Watchdog Building Partners LLC
Watchdog Building Partners, LLC
3445 Winton Place, Suite 102

(Paragraphs deleted)
Rochester, New York 14623

§ 1.1.12 The Construction
(Paragraphs deleted)
Manager's staffing plan as required under Section 3.3.3 is set forth in Exhibit C .

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

None unless approved by Owner in writing, in advance.

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

None unless approved by Owner in writing, in advance.

§ 1.1.15 Other Initial Information on which this Agreement is based:

None

(Paragraphs deleted)

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

§ 1.2.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.3 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.

(Paragraphs deleted)

§ 1.4 The terms "Project Schedule", "Project Milestone Schedule", "Construction Schedule", "Construction Milestone Schedule", or similar terms refer to a schedule or the various schedules related to the Work of the Project, the services of the Architect and its consultants, and the services of the Construction Manager and its consultants.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 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 and 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 acknowledges that the Owner is relying on the Construction Manager's skill and care in connection with its services on the Project. The Construction Manager has represented, and the Owner agrees, that proper construction management services require a high degree of professional skill and experience to manage a school construction project of this size and type. The Construction Manager acknowledges that it will act as the Owner's agent, and in the Owner's best interest. 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. The Construction Manager shall furnish construction administration and construction management services and use its best efforts to have the Project completed in an expeditious and economical manner consistent with the interests of the Owner. As soon as possible after discovery, the Construction Manager shall notify Owner in writing if a Contractor fails to comply with, all applicable federal and state laws as well as rules, regulations and specifications adopted by the New York State Education Department and any other agency with authority over the construction or renovation of public school facilities in New York State, to include the rules and regulations of the Owner.

§ 2.2.1 The Construction Manager will provide the Basic Services set forth in this Agreement, through the Pre-Construction, Construction and Close-Out phases of the Project, to the extent that such services are applicable to any one or more of these phases.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition as the same may be amended by the Owner and the Architect, and a copy of the Architect's scope of services shall be provided to the Construction Manager upon request. 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 condition(s) of the Project and the progress of the Work. The Construction Manager shall be provided temporary office space by the Owner (if available) convenient to the Project in which progress meetings can be held. The office space will have access to the Owner's wi-fi system.

§ 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 and audio/video 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 reasonably 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. 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.

§ 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. If at any time during the Project any such representative becomes unacceptable to the Owner (on any lawful basis), the Construction Manager will replace him/her with another representative who is mutually acceptable to the Owner and Construction Manager within ten (10) calendar days after receipt of written notification thereof from the Owner.

§ 2.7 Except with the Owner's knowledge and 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 or beyond, if required herein.

§ 2.8.1 Comprehensive General Liability Insurance naming the Owner as an Additional Insured on a primary and a non-contributory basis, containing an Additional Insured Endorsement, Waiver of Subrogation Endorsement, or equivalent endorsements attached reasonably acceptable to Owner:

General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000

§ 2.8.2 Commercial Automobile Liability Insurance covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than one million (\$1,000,000) combined single limit and aggregate for bodily injury and property damage. Including Bodily Injury and Property Damage for the operation of Any Auto (Symbol 1) used in connection with Work to be completed by the Construction Manager and all subcontractors and consultants, with the Owner named as an Additional Insured on a primary and a non-contributory basis and a follow form basis, with Endorsement CA 2048 or equivalent attached.

§ 2.8.3 Umbrella Liability Insurance:

Each Occurrence Limit	\$5,000,000
Aggregate	\$5,000,000

The Umbrella Liability Insurance coverage shall provide additional limits of liability coverage over and above the General Liability and Automobile Liability coverages required by this Agreement with the Owner named as an Additional Insured on a primary and a non-contributory basis and a follow form basis and a Waiver of Subrogation Endorsement reasonably acceptable to Owner.

§ 2.8.4 Worker's Compensation Insurance covering the obligations of the Construction Manager in accordance with applicable law at statutory limits and Employer's Liability Insurance with a policy limit of not less than required by applicable law, covering all operations under this Agreement, whether performed by the Construction Manager, its subcontractors, or consultants.

§ 2.8.5 Professional Liability Insurance covering the Construction Manager's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than two million (\$2,000,000) per occurrence and in the aggregate.

§ 2.8.6 At the request of the Owner, the Construction Manager shall provide the Owner for each of the insurance coverages required herein one original or one certified copy of the original policy of insurance, including all endorsements, plus one certificate of insurance, with a brief description of the project or service. The policies and certificates shall show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, and umbrella or excess policies as set forth herein. All such insurance shall be written without expense to the Owner by an insurance company authorized to provide insurance in the State of New York, shall be drawn on standard forms approved by the New York State Insurance Department by a Carrier rated A or better by Standard & Poor's or A.M. Best rating services or otherwise approved in writing by the Owner, and shall protect the Construction Manager, its subcontractors and consultants, and the Owner from liability for claims for personal injury, death and property damage which may arise from performance under this Agreement.

(Paragraphs deleted)

§2.8.6.1 At the request of the Owner the issuing insurance company, agents and/or authorized representatives shall set forth in writing that there are no pending claims against the insured and/or that there is ample coverage remaining to cover the insured in the event of a claim.

§2.8.6.2 At the request of the Owner, the issuing insurance company, agents and/or authorized representatives shall set forth in writing that the insurance: (1) applies to all operations of the Construction Manager in connection with the Work to be performed under this Agreement; (2) applies on the effective dates stated, whether or not the Agreement between the Construction Manager and the Owner has been executed; and (3) is written in accordance with the company's regular policies and endorsements on standard forms approved by the New York State Insurance Department.

§ 2.8.6.3 Each policy must provide the Owner thirty (30) days advance written notice prior to cancellation, a reduction in coverage, and/or non-renewal of the policy.

§ 2.8.6.4 The Construction Manager shall provide written notification to the Owner of the cancellation or expiration of any insurance Construction Manager is required to provide under this Agreement. The Construction Manager shall provide such written notice within five (5) business days of the date the Construction Manager is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 2.9 Within thirty (30) days of the Contract awards, the Construction Manager shall collect each Contractor's Construction Schedule of its Work. In the event a Contractor fails to supply the Construction Manager with its Construction Schedule which meets the criteria set forth in the Contract Documents, then the Construction Manager shall notify the Owner, the Architect, and owner's legal counsel in writing of the Contractor's breach, and recommend a remedial course of action.

§ 2.10 The Construction Manager, in accordance with its professional skill and judgment, shall create the Construction Schedule (using predecessor logic software) which integrates and coordinates each Contractor's schedule to meet the Construction Schedule included in the Bid Documents in such a manner as to allow for the orderly and timely completion of the Project.

§ 2.11 In the event that the Construction Manager, based on its professional skill and judgment, determines that any Contractor fails to complete work beyond three (3) days after any deadline set forth in the Construction Schedule, then the Construction Manager shall notify the Owner, Architect and Owner's legal counsel in writing and make a recommendation on the manner in which the Contractor should recover the time and meet the Construction Schedule. Should this necessitate an update of the Construction Schedule, the Construction Manager shall provide a copy of the updated Construction Schedule to the Contractors, the Architect, and the Owner. Absent an Owner approved Change Order, no changes to the Construction Schedule will be allowed.

§ 2.12 The Construction Manager's Basic Services shall be extended throughout the following phases of the Project and durations:

- .1 **Schematic Design Phase Services:** The Construction Manager shall coordinate with the Owner and the Architect by providing cost estimates of Work, as needed, throughout the duration of the Schematic Design phase of the Project as a Basic Service.
- .2 **Construction Document Design Phase Services:** The Construction Manager shall coordinate with the Owner and the Architect by providing cost estimates of Work, and proposed schedules of the Work, as needed, throughout the duration of the Construction Document Design Phase of the Project as a Basic Service.
- .3 **Construction Phase Services:** The Construction Manager shall mobilize and establish its full-time construction management prior to the commencement of construction and continue throughout the Construction phase as determined by the Construction Schedule and the Construction Phase Basic Services shall end forty-five (45) days after the last Contractor has fully completed its punch list (with the Architect and Construction Manager having signed off on its punch list) and has submitted its final pay application with consent of surety. The Construction Manager shall hold weekly coordination meetings throughout the Construction Phase of the Project and, using its professional skill and judgment, shall coordinate the work of the Contractors, all consultants, and any testing or inspections for the Project.
- .4 **Post-Construction Phase Services:** The Construction Manager shall organize its files during the thirty (30) day time period following the Construction Phase. The Construction Manager shall meet with the Owner and turn over its indexed project files, warranties, operation manuals and as-built records. The Construction Manager shall participate in the post-construction inspection of the Work no later than eleven (11) months after completion of the Work, with the Architect to identify all warranty and non-conforming work.
- .5 The Construction Manager shall not be entitled to additional compensation for any services from the Owner unless agreed to in advance in writing by the Owner. The Construction Manager shall not be entitled to any additional service compensation due to the fault of the Construction Manager.
- .6 The Construction Manager and the Owner agree that this Project is contingent upon State Education Department approval. Once the Owner receives State Education Department approval, if necessary, the parties shall meet and confer and amend this contract in writing to reflect the agreed upon Milestone Construction Schedule and adjust the staffing plan and payments to the Construction Manager to align with the newly agreed upon Milestone Construction Schedule.

§ 2.13 At the request of 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.

§ 2.14 If a centralized electronic document management system will be used on the Project, and the Construction Manager shall be designated the Responsible Project Participant in section 3.5 of E203-2013, responsible for managing and maintaining the centralized electronic document management system. The centralized electronic document management system shall include all items listed in Article 3 of E203, and the following:
(List any items to be included that are not listed in Article 3 of E203-2013.)

TBD

§ 2.15 The Construction Manager shall retain all Project related documents and information it receives, and the Owner, Architect, and Owner's legal counsel shall have access to the documents and information through online remote access to the centralized electronic document management system and the Project Management software and database. The Construction Manager shall transmit the documents and information to the Owner at final completion.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in this Agreement, and include usual and customary Pre-Referendum, Preconstruction, Construction, Post Construction Phase Services, and Contract Closeout Services.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall become fully familiar with the program developed by the Architect and Owner and the requirements necessary for the Project's timely completion. It is recognized that although the Owner will provide information available regarding requirements for the Project, the Construction Manager is being retained to assist the Owner in developing the Project's requirements, objectives and schedule.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, Project Schedule and construction budget requirements, each in terms of the other.

§ 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 Milestone 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.

(Paragraphs deleted)

§ 3.2.4 The Construction Manager shall meet with the Architect to review the Schematic Design Documents. The Architect and the Construction Manager shall work together on and agree to an estimate of the Cost of the Work prior to the Design Development Phase and shall report same in writing to the Owner. 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.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide written recommendations to the Owner and Architect 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, including assistance with constructability reviews required by the State Education Department.

§ 3.2.6 The Construction Manager shall create and maintain the Construction Milestone Schedule agreed to by the Architect and approved by the Owner. The Construction Milestone Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and establish all Project Critical Path milestones and deadlines, and shall incorporate the Architect's long lead item submittals which are necessary to complete the project on time. The Construction Manager shall also prepare, and deliver to the Owner, a written Construction Management Plan as set forth in §3.2.3.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and deliver to the Owner and the Architect estimates of the Cost of the Work prior to the following phases: 1) the Design Development Phase; 2) the Construction Documents Phase; and 3) post-State Education Department submission and approval but prior to the completion of the Bid Documents. The Construction Manager shall include appropriate contingencies for design, bidding, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make written recommendations for corrective action, including but not limited to designation of one or more elements of the Work as "Alternates" for bidding purposes.

§ 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 make written recommendations to 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 consult with the Owner and Architect and make written recommendations whenever the Construction Manager determines that the design, or details, adversely affect cost, scope, schedule, constructability, or quality of the Project.

(Paragraph deleted)

§ 3.2.10 The Construction Manager shall provide written 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.

§ 3.2.11 The Construction Manager shall provide written recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors. The Construction Manager shall review and become familiar with the New York State Department of Education Safety Regulations for the Project and all applicable safety regulations, guidelines or requirements that apply to the Project, including but not limited to all infectious disease exposure precautions. The Construction Manager's responsibility is limited to the coordination of safety programs. The Construction manager shall not have direct control over or charge of the acts or omissions of the Contractors.

§ 3.2.12 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. Such division of the Work shall comply with New York State General Municipal Law. The Construction Manager shall review the Drawings and Specifications and make 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.

§ 3.2.13 The Construction Manager shall expedite, and coordinate the ordering and delivery of all materials in support of the Construction Schedule, identify critical path submittals, including those that must be ordered in advance of construction. The Construction Manager shall notify Contractors in writing (with copies to the Architect and Owner) of items Construction Manager has identified as critical path materials which Construction Manager knows require a long lead time to prompt Contractors to complete their work on schedule.

§ 3.2.14 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.

§ 3.2.15 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. The Construction Manager shall review and break down each Contractor's schedule of values to show the value of materials and labor for each Contractor's work activity.

§ 3.2.16 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.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, at the phases set forth in Section 3.2.7, the Construction Manager shall update and submit the latest written estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval. If after review of Owner's incidentals and soft costs, the latest estimate of the Project Cost exceeds the Owner's budget for the Cost of the Work, the Construction Manger shall make written recommendations and provide its services as necessary to bring the estimate within that budget.

§ 3.2.18 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 Milestone 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.

§ 3.2.19 The Construction Manager shall submit a list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.20 With the assistance of the Architect, the Construction Manager shall receive bids and prepare bid analyses. The Construction Manager shall assist the Owner and Architect with the evaluation of the apparent lowest responsive and responsible bidders and together with the Architect shall make written recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 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.

§ 3.2.22 The Construction Manager shall assist the Owner 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.

§ 3.2.23 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.

(Paragraph deleted)

§ 3.3 Construction Phase and Project Closeout

§ 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 and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition as modified, which shall include but not be limited to:

- .1 coordinating any utility interruptions with the Owner;
- .2 on-site, day-to-day observation of work;
- .3 collecting all bonds and insurance certificates from Contractor and forward same to the Owner;
- .4 coordinating all on-site stored material locations and Contractor staging;
- .5 greeting, escorting, and logging all authorized visitors to the Project site and alerting security and/or the appropriate authorities of any known, unauthorized visitors entering or attempting to enter the Project site to the extent reasonably possible with on-site staff;
- .6 maintaining a daily log of activities on the jobsite;
- .7 logging and maintaining all project samples on site;
- .8 maintaining documentation and photographs of project progress;
- .9 coordinating punch list inspections and completion of punch list items;
- .10 conducting regular observations of the Work for purposes of insuring that the Work is being performed to the standard and quality required by the Contract Documents, including any Submittals.

§ 3.3.2 The Construction Manager's responsibility to provide Construction Phase Services commences and ends as set forth in Section 2.12.3

§ 3.3.3 The Construction Manager shall provide staff, at a minimum, as set forth in Exhibit B, with 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 Construction Schedule and the Contract Documents. The Construction Manager shall hold weekly construction meetings with all Contractors. The Construction Manager shall publish the fully integrated Construction Schedule to all Contractors.

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating 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 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.

§ 3.3.6 The Construction Manager shall schedule and conduct 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 within three (3) business days of every meeting.

§ 3.3.7 In accordance with the Contract Documents and the latest approved Construction 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 schedule and coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and deliver test and inspection reports to the Owner and Architect. In the event any such tests or inspections fail the Construction Manager shall provide written notification of such failure 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, in writing, recommend courses of action to the Owner when requirements of a Contract are not being fulfilled, including but not limited to the failure of a Contractor to complete Work in compliance with the Construction Schedule. The Construction Manager shall advise Owner in writing regarding the performance by each of the Contractors. 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 written recommendations to the Owner as Construction Manager may deem necessary for the proper execution and timely progress of the Project. Owner, at its discretion, shall take whatever action it deems necessary.

§ 3.3.10 The Construction Manager shall maintain a budget for the Project, inclusive of construction cost, incidentals, and changes in the work, and include the most current version in the Construction Manager's progress reports and deliver it to the Owner as requested.

§ 3.3.11 The Construction Manager shall maintain accounting records on 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. Additionally, the Construction Manager shall establish accounting procedures which coincide with the procedures utilized by the Owner. The Construction Manager shall also assist the Owner, upon request, with the development and completion of all reports required by the New York State Education Department with respect to the Project.

§ 3.3.11.1 The Construction Manager shall in conjunction with the Architect develop and implement procedures for the review and processing of Applications for Payment by Contractors for progress and final payments.

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

- .1 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; (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment; (3) prepare a Project Application and Certificate for Payment; (4) certify the total amount the Construction Manager determines is due all Contractors collectively; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.11.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's performance of all duties set forth in this Agreement, and professional evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, in accordance with the Construction Manager's professional opinion, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, including but not limited to completion and delivery of all tests and inspections, 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 and that lien waivers and prevailing wage certifications have been duly received by the Construction Manager for the Contractors for the period covered by the Application for Payment.

§ 3.3.11.4 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.

§ 3.3.12 The Construction Manager shall obtain and review the safety programs developed by each Contractor solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations for any additional safety measures to be considered 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 Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall bring any observed deficiencies to the attention of Contractors and the Owner by written communication.

(Paragraphs deleted)

§ 3.3.13 The Construction Manager shall utilize its professional skill and judgment to determine whether the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents understanding that it is the Construction Manager's responsibility to guard the Owner against deficiencies and defects in the Work 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 3.3.20.2. 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.

§ 3.3.13.1 The Construction Manager shall monitor and advise the Owner and Architect in writing of any material deviation from the sequence of construction in accordance with the Contract Documents and any material deviation from the Project Schedule.

§ 3.3.14 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 but is required to report in writing any material deviations upon discovery to the Architect and Owner. The Construction Manager shall be responsible for the Construction Manager's 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. If, however, the Construction Manager observes any safety program or action at the site which it believes is improper (including any deviation from the Project or Construction Schedules) or in violation of applicable law or rules, it shall immediately advise the Owner, in writing.

§ 3.3.15 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, and provide its written recommendation. The Construction Manager shall assist in the resolution of questions that may arise.

§ 3.3.16 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit written recommendations to the Architect and Owner, including the impact, if any, on the cost of the Project or the Construction Schedule, and, if the proposed changes are accepted or required by the Owner, in conjunction with the Architect, prepare Change Orders or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. After Change Orders or Construction Change Directives are prepared and signed by the Construction Manager and the Contractor, the Construction Manager shall submit same to the Architect and Owner for approval and execution.

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

§ 3.3.18 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 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.

§ 3.3.19 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.

§ 3.3.19.1 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 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.

§ 3.3.20.1 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 3.3.20.2.

§ 3.3.20.2 The Construction Manager shall record the progress of the Project and keep the centralized electronic management system required by this Agreement current. On a monthly basis, or more frequently as required by the

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Owner, the Construction Manager shall submit written progress reports to the Owner, Owner's legal counsel, and Architect, showing percentages of completion and detailed corrective action plans and/or recovery schedules as appropriate, and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status, including recovery schedules by Contractor, as appropriate;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals and recovery schedules by Contractor, as appropriate;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports, if a test or inspection report reveals an unanticipated condition or other failure to satisfy a requirement of the Contract Documents, Construction Manager shall provide a corrective action plan designed to remedy the condition or correct the deficiency on a schedule that meets the applicable Substantial Completion date;
- .6 Status report of nonconforming and rejected Work with an initial or updated corrective action plan;
- .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 and/or video recordings 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 progress or lack thereof for all corrective action plans and recovery schedules shall be discussed and recorded in the minutes of the meetings required by §3.3.6.

§ 3.3.21 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 in an organized fashion in paper copy and electronic format to the Owner.

(Paragraphs deleted)

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

§ 3.3.23 With the Architect and 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.

§ 3.3.24 When the Construction Manager and Architect consider 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.

§ 3.3.25 When the Work of all Contractors, or designated portion thereof, is substantially complete, the Construction Manager 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. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager together with the Architect 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 Contractors is ready for final inspection. The Construction Manager shall assist the Architect in conducting the final inspection.

§ 3.3.26 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 ; (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 documentation required of the Contractors under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver to the Owner, other items provided by the Contractors, such as keys, manuals, record drawings, and maintenance stocks. 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.

§ 3.3.28 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 Construction Manager. Said consent shall not be unreasonably withheld.

§ 3.3.29 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 and Architect to review the facility operations and performance to determine if there are any deficiencies or non-conforming Work. In the event any deficiencies or non-conforming work is uncovered, then the Construction Manager shall contact the appropriate Contractor to have the deficiencies or non-conforming Work repaired prior to the expiration of the warranty.

(Paragraph deleted)

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services – Unless otherwise set forth herein, TBD and approved by the Owner in writing, in advance.

§ 4.1.1 The services listed below are not included in 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 <i>(Construction Manager, Owner or not provided)</i>
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(Rows deleted)

§ 4.1.1.1 Management Support for Commissioning Services provided after the completion of construction for the relevant Project Phase. Labor and Material cost shall not exceed \$ 5,000	Construction Manager
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(Rows deleted)

§ 4.1.2 Description of Supplemental Services– TBD and approved by the Owner in writing, in advance.

§ 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.)

NA

§ 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.)

NA

Init.

§ 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. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.2 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 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 Scope of the Project, including size, quality, complexity, the Owner's schedule or budget for Cost of the Work. 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

(Paragraphs deleted)

as the Initial Decision Maker.

§ 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 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.

(Paragraphs deleted)

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall, with the assistance of the Architect and Construction Manager, provide information in a timely manner regarding requirements for and limitations on the Project.

§ 5.2 The Owner shall with the assistance of the Architect and Construction Manager establish and periodically update 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. The Construction Manager and Architect will work together and agree on the initial and all other estimates of the Cost of the Work. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. 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 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 by the parties. Upon request, 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.

§ 5.4 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 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 understood that making the required decision may take a longer period of time.

§ 5.5 Unless provided by the Construction Manager, the Owner upon request from the Construction Manager shall 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 other 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.

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include 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.

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

§ 5.8 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.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents when so notified by the Architect, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance 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.

§ 5.11 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.

§ 5.12 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.

§ 5.13 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 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, subject to strict compliance with the District's facility access procedures and infection control protocols, and all applicable NYS Education Department and NYS Department of Health regulations and guidelines.

(Paragraphs deleted)

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 Architect's consultants, compensation of the Construction Manager and Construction Manager's consultants, the costs of the land, rights-of-way, financing, and contingencies for changes in the Work (identified as such) or other costs that are the responsibility of the Owner.

§ 6.1.1 Pursuant to the Education Law, the Owner must obtain approval of the voters of the District for the Project, and for the maximum project expenditure (sometimes referred to herein as the "Referendum Amount"). This Referendum Amount constitutes a fixed-limit maximum expenditure for the Project.

§ 6.1.2 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 the Architect's Consultants, the compensation of the Construction Manager and Construction Manager's consultants, the cost of other project representation, costs of land, rights-of-way, financing costs, legal fees, and all other costs associated with the Project. The Construction Manager acknowledges that the Owner is bound by law to a maximum project expenditure not to exceed the approved Referendum Amount.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information (see Exhibit A) and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's professional judgement.

§ 6.3 If 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, in consultation with the Architect, shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget (including but not limited to, design alternatives, material choices, building systems, equipment, etc.) for the Owner's consideration and approval.

§ 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, so long as the overall Project Cost does not exceed the Referendum Amount;
- .2 terminate in accordance with Section 9.3;
- .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 obtain additional bids. 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, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with New York State Law.

§ 8.1.2 Notwithstanding the limits of any insurance coverage required by this Agreement, the Construction Manager shall indemnify and hold the Owner and the Owner's Board of Education, officers, administrators, volunteers, and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the breach of contract or negligent acts or omissions of the Construction Manager, its employees and/or its consultants in the performance of services under this Agreement. This obligation shall survive the termination or expiration of this Agreement.

(Paragraphs deleted)

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to commencing litigation. If either party will be prejudiced by waiting until the mediation has concluded, then either party may proceed in accordance with applicable law to comply with filing deadlines prior to resolution of the matter by mediation.

§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be governed by the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of this Agreement, but unless the parties mutually agree, the American Arbitration Association shall not administer or oversee the mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with a mutually agreeable person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of the litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located 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

(Paragraphs deleted)

parties shall proceed to litigation with exclusive jurisdiction and venue in New York State Supreme Court for the County where the project is located. The School District shall be entitled to receive its reasonable attorneys' fees and expenses recoverable under applicable law if it prevails in the litigation.

§ 8.3 The provisions of this Article 8 shall survive the termination of this Agreement.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than 14 days' written notice or, at the Construction Manager's option, suspend performance of services under this Agreement. 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. Before resuming services, the Owner shall pay the Construction Manager all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.1.1 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 fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 Either party may terminate this Agreement for cause upon not less than seven days' written notice to the other party should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.2.1 Owner's failure to make payments, except the obligation to make payments previously due in a timely manner for liabilities actually incurred, or its suspension of the Project shall not constitute grounds for the Construction Manager's termination of this Agreement so long as Owner's failure to make payments or its suspension of the Project is caused by or arises out of acts of God, weather, earth movement, lockout or labor shortages, restrictive governmental laws, regulations, recommendations of emergency, acts or omissions, executive orders, acts or directives of public officials or authorities, public declarations of emergency, epidemics, pandemics, or acts of war or terrorism which directly or indirectly affect the Project and/or the facilities and services of the Owner, without fault and beyond the reasonable control of the Owner (each, a "Force Majeure Event").

§ 9.3 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.4 If the Owner terminates this Agreement for its convenience pursuant to Section 9.3, or the Construction Manager terminates this Agreement pursuant to Section 9.1, the Owner shall compensate the Construction Manager for services performed and Reimbursable Expenses incurred prior to the date of termination provided the Construction Manager delivers all existing Project records held in its files or under its control, in hardcopy and electronic format, to the Owner in a useful and organized manner..

§ 9.5 If, after notice of termination for cause by the Owner, it is determined for any reason that 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 9.3.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the state of New York, without regard to conflict of law principles.

§ 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 as revised by the Owner and contained in the Contract Documents, 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 without the written consent of the other, 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 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.

§ 10.5 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, unless the hazardous materials or toxic substances were brought to the Project site by the Construction Manager or its employees. Notwithstanding the above limitations, it is understood that the Construction Manager shall provide the same services for the Owner with respect to any asbestos removal activities or other environmental activities as are provided by the Construction Manager with respect to all other activities of the Project.

§ 10.6 If the Construction Manager or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.6.1. This Section 10.6 shall survive the termination of this Agreement.

§ 10.6.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.6.

§ 10.7 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.

(Paragraphs deleted)

§10.8 This Agreement, including any obligations hereunder, may not be assigned to any other party without the express written permission of the other party to this Agreement. A sale of all or a majority interest in the Construction Manager, a material change in the executive leadership of the Construction Manager, or a change in the Construction Manager's on-site representative without the prior written consent of the Owner shall be deemed an assignment in violation of the terms and conditions of this Agreement, at the option of the Owner.

§10.9 The notice requirements set forth in this Agreement dealing with Claims and Disputes are in addition to and not a substitution or replacement of any notice requirements contained in applicable law.

§ 10.10 The parties agree that when satisfactorily identified, a copy of this entire Agreement accurately reproduced from an electronically stored executed version hereof shall be admissible in evidence as an original in all legal proceedings between them regardless of whether a paper original is available. The introduction of a reproduction does not preclude admission of the original.

§ 10.11 Nothing contained in this Agreement shall be construed as creating any personal liability on the part of any officer, employee or agent of the Owner.

§ 10.12 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.

§ 10.13 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. 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, with a minimum of 24 hour notice to such audit and only in the presence of the Construction Manager's PM or other designated staff approved by Executive Leadership. Construction Manager agrees to maintain for a period of five (5) 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 five years for any and all records and information pertaining to unresolved questions which have been brought to Construction Manager's attention by written notice.

§ 10.14 No failure on the part of either party to exercise and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

Init.

§ 10.15 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.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described herein, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

20% of agreed upon fee

§ 11.1.2 For Construction Phase and Closeout Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

80% of agreed upon fee

§ 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.)

Hourly at agreed upon rates

§ 11.3 Additional Services shall be compensated only with the prior written approval of the Owner, which shall include a description of the Additional Services, the amount of or the method of determining the compensation for such Additional Services, and the impact, if any, on the Project Schedule. 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 as agreed by Owner in writing:
(Insert amount of, or basis for, compensation.)

Hourly at agreed upon rates

§ 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.
(Insert amount of, or basis for computing, Construction Manager's consultants' compensation for Supplemental or Additional Services.)

Hourly at agreed upon rates

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Project Executive	\$135 /hr
Project Manager	\$125 /hr
Assistant Project Manager	\$85 /hr
Field Manager	\$80 /hr
Construction Administrator	\$45 /hr
Financial Analyst	\$85 /hr

§ 11.6 Compensation for Reimbursable Expenses

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

(Paragraphs deleted)

- .1 Permitting and other fees required by authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, and standard form documents;
- .3 Postage, handling, and delivery;
- .4 Site office expenses;
- .5 Internet service or jetpack if Service is not accessible through District
- .6 Professional photography, and presentation materials requested by the Owner; and
- .7 Expenses authorized by the Owner in writing, in advance.

(Paragraph deleted)

§ 11.6.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Construction Manager and the Construction Manager’s consultants multiplied by 10%.

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

§ 11.7

(Paragraphs deleted)

Payments to the Construction Manager

§ 11.7.1 The Owner shall pay the Construction Manager fee a Lump Sum amount of One Hundred Eighty Thousand Five Hundred Dollars (\$180,500) for providing its Basic Services based on the following information available at the time of this agreement:

Project Referendum.....	December 2023
Bond Authorization	\$5,375,000
Estimated Construction Value	\$ 4,300,000
SED Approval.....	December 2024
Bid Phase (One).....	January-February 2025
Construction	April 1, 2025 – October 1, 2025(6 months)
Close Out.....	December 2025

No additional fees for services provided by the Construction Manager beyond the scheduled duration of the Project shall be paid unless the Construction Manager requests an amendment of this Agreement in writing in advance and the Owner approves an amendment of this Agreement in writing in advance that sets forth the revised schedule, the additional services, the staffing plan, and the additional fees.

§11.7.2 The compensation for Construction Manager’s Basic Services shall be allocated, capped, and paid per each Phase of the Project as follows:

Schematic Design Phase	3%
Design Development Phase	3%
Construction Documents Phase	11%
Bidding Phase	3%
Construction Phase	70%
Close-Out	10%

(Paragraphs deleted)

§ 11.7.3 The Construction Manager shall invoice the Owner on a monthly basis. The dollar amount of each invoice will vary depending upon the phase of the Project, as set forth in Section 11.7.2 and whether the phase has been completed on or before its anticipated completion date as set forth in the Project Schedule. For example, during the Design Development Phase, the Construction Manager may only invoice the Owner (in equal monthly installments) up to 3% of its total fee for the Project (assuming that the percentage set forth for that phase in Section 11.7.2 is 3%). As an

example, if the Project Schedule states that the Design Development Phase will be completed in three (3) months, the Construction Manager will be permitted to invoice the Owner three (3) times, in equal amounts, totaling 3% of its total Project fee. However, if any phase of the Project (as outlined in Section 11.7.2) is extended beyond its corresponding anticipated completion date (as set forth in the Project Schedule), the Construction Manager shall not be permitted to invoice the Owner further until that phase is completed. Amounts unpaid thirty (30) days after the date due, shall bear interest at the rate required by New York State law from the date the payment was due.

§ 11.8 Should the Construction Manager or its consultants or subcontractors cause damage to the Project, or fail to carry out its services in accordance with this Agreement or otherwise be in default under the terms of this Agreement, the Owner, upon 30 days written notice to the Construction Manager specifying the claimed default or deficiency and providing an opportunity to cure, shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount reasonably sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed. No such dispute or withholding shall relieve the Construction Manager of its responsibility to continue performing services pursuant to this Agreement, or the Owner of its responsibility to continue to make progress payments except to the extent withheld pursuant to this Section. The Owner shall not withhold amounts from the Construction Manager's compensation to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

§ 12.1 It is understood that the use of an Architect by the Owner shall not diminish the responsibilities and obligations of the Construction Manager.

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, dealing with the subject matter hereof, including but not limited to any consulting or pre-referendum agreements related to the Project defined herein. 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, as modified by the Parties.

.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if applicable:

(Insert the date of the E203-2013 incorporated into this Agreement.)

NA

.3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

[NA] 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.)

[NA] 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.)

- a) AIA Document A232-2019, General Conditions, as modified
- b) Exhibit "A" – Project Scope and Budget
- c) Exhibit "B" – Project Schedule

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Delivery of a signature page attached to this Agreement containing one or more signatures by facsimile or other electronic means shall be as effective as delivery of the original signature page to this Agreement. This Agreement shall not be binding until all Parties have signed.

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



OWNER *(Signature)*

Emily Herman, Superintendent of Schools
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Todd LaBarr President, Watchdog Building Partners
(Printed name and title)

To: Board of Education Members

From: Nancy Norton, District Clerk

Re: Additional Election Officials

For your approval, the following individuals as Election Officials for the 5/21/24 Annual Vote and Election:

Election Official: Cathy Walters

Alternate Election Official: Cheryl Strathearn