

**Tully Central School District  
REQUEST FOR PROPOSALS FOR  
ARCHITECTURAL/ENGINEERING SERVICES**

**GENERAL INFORMATION/CONDITIONS:**

The Tully Central School District (the “District”), located in Onondaga County, New York, has a student enrollment of approximately 840 students Pre-K to 12. The District is in the process of reviewing potential improvements and repairs to its facilities. The District’s Board of Education (the “Board”) recognizes that there is a need for facilities’ improvements and would like to put a proposition before the voters of the District in October 2019 for a proposed District-wide capital project.

The purpose of this request for proposal (“RFP”) is to help the District select an appropriate firm to provide post-referendum architectural/engineering services to implement an approved capital improvement project. The District is embarking on a capital improvement project with a desired public referendum vote as early as October 2019 but no later than December 2019. The scope of the work will remain straightforward and pragmatic due to the anticipated financial size of \$6 million and the identified needs of the District and is anticipated to include renovations of bathrooms and locker rooms, new concessions/bathroom/storage building, new storage facilities on campus, miscellaneous security measures, and mechanical improvements. Any capital improvement project is subject to the availability of District funds and the approval of the voters of the District.

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

For a firm to be considered for engagement, an original plus five (5) copies of its proposal must be submitted to:

Bradley R. Corbin  
School Business Administrator  
Tully Central Schools  
20 State Street  
Tully, NY 13159

Envelopes containing proposals must be labeled as follows:

**“ARCHITECTURAL/ENGINEERING SERVICES PROPOSAL”**

The deadline for submission of proposals is **2:00 p.m. on Friday, December 14, 2018.**

Proposers are responsible for submitting their proposals to the appropriate location at or prior to the time indicated in the specifications. **No proposals will be accepted after the designated time or date indicated in the proposal specifications.** Any proposals received after this

deadline will be returned unopened to the firm. Delay in mail delivery is not an exception to the receipt of a proposal.

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

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

**TENTATIVE RFP TIMELINE:**

RFP Mailed:	November 20, 2018
Proposal Due Date:	2:00 p.m. on December 14, 2018
Proposal Review and Evaluation:	Week of December 17, 2018
Board of Education Appointment:	January 22, 2019

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

**PROJECT OVERVIEW:**

The Project scope includes rehabilitation and repair work at the Junior-Senior High School and the Elementary School. Project requirements include full design and construction administration services from design through Project closeout phases described in the modified AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition (the “Contract”), which is attached hereto as **Exhibit A**. Basic design services are those reasonably necessary and customarily provided by an architectural design team for a public school reconstruction project in New York State and shall include, at a minimum, the following disciplines: architectural, civil, structural, mechanical (HVAC/plumbing), electrical, telecommunications, fire protection, security and all other disciplines required for a complete design.

The services covered by the Contract are subject to appropriation by the District through a public referendum. If the referendum is unsuccessful, then the Contract will become null and void and of no force and effect.

**PROPOSED PROJECT SCHEDULE:**

A&E Selection	January 2019
Voter Referendum	October 2019
Design Phase	November 2019 – June 2020
NYSED Submission of Plans	July 2020
NYSED Approval of Plans	January 2021
Contract Bidding/Award	February/March 2021

**POINT OF CONTACT:**

District RFP documents are distributed by the Business Administrator. The Business Administrator, or his designee, shall be the only one authorized to make changes or alterations to anything contained in this RFP. Copies of RFP documents obtained from any other source are not considered official copies. Only those perspective proposers who obtain RFP documents from the Business Administrator will be sent addendum information, if such information is issued.

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

All questions concerning this proposal shall be sent to:

Bradley R. Corbin

Business Administrator

Email: [bcorbin@tullyschools.org](mailto:bcorbin@tullyschools.org)

**PROPOSAL COSTS:**

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

**MODIFICATION OR WITHDRAWAL OF PROPOSALS:**

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

**RIGHT TO REJECT PROPOSALS:**

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

proposal except as and to the extent that the District, in its sole discretion, shall enter into a contract with the proposer that it selects as the successful consultant.

**CONTRACT AGREEMENT:**

The written agreement under which the selected consultant will provide services to the District shall be in the form of the attached Contract (attached as Exhibit A). Fees for service and time schedules are the primary matters for negotiation. The form of the Contract may not be modified by the proposer, and any exception to any provision in the Contract must be submitted with the proposal.

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

**RIGHT TO NEGOTIATE WITH PROPOSERS:**

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

**NEGOTIATED CHANGES:**

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

**DURATION OF PROPOSALS:**

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

**FORMAT OF PROPOSALS:**

To enable the District to compare the proposals received, each proposal shall include complete information as listed in the following documents:

- Exhibit B – ARCHITECTURAL/ENGINEERING SERVICES QUESTIONNAIRE**
- Exhibit C – ARCHITECTURAL/ENGINEERING FEES FORM**
- Exhibit D – AREAS OF EXPERTISE FORM**

**INSURANCE REQUIREMENTS:**

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

The required limits of liability coverage shall be:

1. **Commercial General Liability** – a proposer must maintain a policy of commercial general liability insurance with policy limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate (per project) for bodily injury and damage to property.
2. **Automobile Liability** – a proposer must maintain automobile liability insurance covering “Any Auto” with a Combined Single Limit of \$1,000,000.
3. **Workers’ Compensation and NYS Disability** – a proposer must provide statutorily required Workers' Compensation Insurance, Employers’ Liability and NY State Disability Insurance for all employees in accordance with the requirements of the laws of New York. A proposer must maintain coverage for employers’ liability with a policy limit of not less than \$500,000 each accident.
4. **Professional Liability** – a proposer shall procure and maintain professional liability insurance covering liability the proposer and of its consultants arising out of negligent acts, errors, or omissions in the rendering of the professional services in the minimum amount of \$5,000,000 per claim and in the aggregate. If written on a “claims-made” basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for three years following the completion of work. If the proposer is providing environmental services, the errors & omissions policy must be endorsed to include coverage for these services.
5. **Umbrella Liability** – a proposer shall procure and maintain umbrella liability insurance coverage over its Commercial General Liability and Automobile Liability policies (on a follow form basis) in the minimum amount of \$5,000,000 per claim and in the aggregate.

All insurance companies shall have an “A-” or better rating by AM Best with a Financial Standing of “VIII” or better.

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

## **EXPECTED SCOPE OF SERVICES**

The services the successful proposer shall provide for the Project shall be set forth in the Contract attached as Exhibit A, and include, without limitation, the following phases of work and tasks:

### **PRE-CONSTRUCTION PHASE:**

- Meet with other members of the District's Project Team to review the program in order to fully understand the scope, concept and other pertinent aspects of this Project.
- Complete a detailed building design including floor plans for all prime contractors. Develop project narratives outlining general building systems.
- Prepare plans and specifications along with all other documents required for submission to and approval by New York State Education Department.
- Prepare plans and specifications in accordance with applicable law, rules, regulations, codes and ordinances including, but not limited to, section 155 et. seq. of the Regulations of the Commissioner of Education for all purposes including public bidding.
- Review and comment on cost estimates provided by the construction manager. Respond to the construction manager's requests for information.
- Evaluate all construction options technically, in terms of costs, and with regard to movement of staff/logistics for minimum operational disruptions.
- Establish contact and maintain liaisons as necessary with the New York State Education Department authorities during all approval processes.
- Attend pre-bid meetings with potential contractors. Answer bid RFIs and prepare addenda (as needed) related to the design documents.
- Assist the District in establishing cost breakdowns and other controls with which to evaluate the responsiveness and completeness of construction bids received.
- Identify materials that will require long lead items to obtain the most economic benefit from a cost standpoint (balancing short and long term needs) while maintaining the District's functional and program requirements.
- Assist with establishing a system of controls requiring specific performance of contractors and vendors, and which will anticipate by means of adequate reporting and documentation, the means to resolve disputes, delays and change orders.
- In conjunction with the District, assist with the delineation of responsibilities and duties among the District, the construction manager, contractors, suppliers and others involved in the Project.

- Assist in expediting the bidding process, assure acceptable bids, cultivate good contractual relations; provide bid phase assistance (pre-bid conference, document distribution, bidder questions, prepare and distribute addenda, bid evaluation and recommendations, contract liaison, and if required, preparing bid packages for each contract, including definition of scopes of work, drawings, technical specifications, terms and conditions, bonding and insurance requirements etc.).
- Assist the District and the construction manager in bid selection process. Establish a list of contractors, evaluate bids and alternates, and make recommendations to the construction manager for approval of selected contractors with public bidding requirements.

#### CONSTRUCTION PHASE:

- Provide full-time, on-site and off-site staff to perform all duties in a timely manner, including, without limitation, communication with contractors to expedite their work, maintenance of quality control and conformance to the Contract Documents.
- Evaluate the construction activity, including site visits to monitor the work in progress, review all monthly requisition and payment processes and keep accounts, handle inquiries, keep records, report on schedule progress and estimated completion cost, prepare punch-lists, administer final completion and handover process, and review record drawings, warranties, guarantees, etc., for acceptability.
- Expedite the review process after receiving submittals and shop drawings while checking for conformance with the Contract Documents, maintaining accurate records of accepted shop drawings and submittals.
- Assist with monitoring progress and evaluate proposed change orders and their cost impacts during the construction phases of the Project.
- Provide all necessary personnel and expertise required for the timely administration of contracts, negotiation of change orders and resolution of disputes and delays.
- Assist the District with the testing services and other services retained for the Project.
- Assist the District with the coordination of activities of the utility companies and the regulatory agencies.
- Continue progress evaluation, determine effects on the Project schedule and make recommendation to adjust the work as required to maintain the accepted schedule.
- Attend/conduct when necessary all weekly and specially scheduled job meetings involving the Project team; keep and distribute accurate minutes of meetings in a timely manner.

- Review requests for payment from contractors and suppliers against previously established milestones and schedules and work completed.
- Assist contractors to avoid and resolve jurisdictional disputes when and if they occur.
- Prepare and maintain a current master record copy of drawings showing all changes to the construction documents.
- Collect and organize for delivery to the District all operating manuals, equipment lists and maintenance manuals required by the contract documents.
- Recommend to the District when inspection(s) to determine substantial completion and final completion and punch-lists should be made, conduct such inspection(s) with the Project team and others, as required, and ensure that all punch-list items are corrected and completed.
- Assist the District personnel in assuming operation of all systems, including scheduling of instructional sessions by the contractor as required in the contract documents.
- Notify the District of the suspected presence of hazardous or toxic materials, incomplete work, any failures of contractors to perform work and such other occurrences or conditions as may adversely affect the Project.
- Assist the District in exercising guarantees and warranties.
- Diligently pursue all contractor closeouts.
- Deliver all records, final drawings, documents and other items pertinent to the Project to the District.

**CRITERIA FOR EVALUATING PROPOSALS:**

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

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

The District reserves the right to conduct any investigation of the qualifications of any proposer that it deems appropriate or request additional information from any proposer. Failure by a



respondent to timely provide any additional information requested by the District may, in the sole discretion of the District, be cause for the rejection of the proposer's proposal.

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

The District reserves its rights to examine any other criteria and take the same under consideration and to reject any firm or proposals despite its compliance with these criteria if it determines that to do so would be in its best interests.

- Actual firm experience in the planning, design, value engineering and management of construction projects of K-12 educational facilities in multi-building school districts.
- Knowledge of and experience with N.Y.S. Education Department procedures regarding construction projects and other state and federal laws affecting the operations of public school districts.
- Qualifications and commitment of key individuals.
- Evidence of strong client/contracted vendor relationships.
- Success with similar projects substantiated by client and user references.
- Record of cost-effective and time-efficient completion of similar projects.
- Clarity of internal project management approach and related cost/budget/document quality control.
- Description of any special tools or methodologies, especially cost control and scheduling, which can influence Project success of construction document production.
- Availability of all resources required for this Project.
- Ability to respond to Owner input and requirements.
- Fee structure.

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

**EXHIBIT A**

**AIA Document B132™–2009, Standard Form of Agreement Between Owner  
and Architect, Construction Manager as Adviser Edition (the “Contract”)**

[Attached]



# AIA<sup>®</sup> Document B132<sup>™</sup> – 2009

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

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Nineteen  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

Tully Central School District  
20 State Street  
Tully, NY 13159

and the Architect:  
*(Name, legal status, address and other information)*

for the following Project:  
*(Name, location and detailed description)*

Architectural and engineering services for the Tully Central School District in connection with a capital improvement project that is anticipated going to referendum vote in October 2019. The referendum amount is anticipated to be \$6,000,000.

The Construction Manager:  
*(Name, legal status, address and other information)*

To be determined

The Owner and Architect 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<sup>™</sup>–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232<sup>™</sup>–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132<sup>™</sup>–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232<sup>™</sup>–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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### ARTICLE 1 INITIAL INFORMATION

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

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.1.1 The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

See Exhibit A attached hereto and incorporated herein by reference.

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

§ 1.1.3 The Owner's budget for the Project is Six Million Dollars (\$6,000,000.00). The Owner's currently estimated budget for the Cost of the Work, as defined in Section

*(Paragraphs deleted)*

6.1, is \$5,000,000.

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

Begin design – November 2019

Submission to NYSED – June 2020

Bidding/Contract Award – February/March 2021

Init.

**.2** Commencement of construction:

Summer 2021

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

September 2022

**.4** Other:

Closeout: December 31, 2022

**§ 1.1.5** The Owner intends to retain a Construction Manager adviser and:

*(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)*

One Contractor

Multiple Prime Contractors

Unknown at time of execution

**§ 1.1.6** The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

*(List number and type of bid/procurement packages.)*

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

**§ 1.1.7** Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

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

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

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

Robert Hughes, Superintendent  
Tully Central School District  
20 State Street  
Tully, NY 13159

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

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

N/A

**§ 1.1.10** The Owner will retain the following consultants:

*(List name, legal status, address and other information.)*

- .1** Construction Manager: The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:

Init.

January 2019

- .2** Cost Consultant (if in addition to the Construction Manager):  
*(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)*

N/A

- .3** Land Surveyor:

To be determined

- .4** Geotechnical Engineer:

To be determined

- .5**

*(Paragraphs deleted)*

Other consultants:

*(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)*

To be determined

**§ 1.1.11** The Architect identifies the following representative in accordance with Section 2.4:  
*(List name, address and other information.)*

**§ 1.1.12** The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
*(List name, legal status, address and other information.)*

**§ 1.1.12.1** Consultants retained under Basic Services:

- .1** Structural Engineer:

- .2** Mechanical Engineer:

- .3** Electrical Engineer:

Init.

**.4 Civil Engineer:**

**§ 1.1.12.2** Consultants retained under Additional Services:

N/A

**§ 1.1.13** Other Initial Information on which the Agreement is based:

N/A

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

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** The Architect shall provide the professional services as set forth in this Agreement.

**§ 2.2** The Architect shall perform its services in accordance with the professional practices, standards and codes and with the skill and diligence of a recognized professional Architect experienced in designing projects similar to the Project in the Rochester, New York area (the "Standard of Care") and in compliance with applicable federal, state and local laws, codes, ordinances and regulations and the rules and regulations of applicable governmental authorities having jurisdiction over all or part of the services, the Architect, or the Project (including, but not limited to the Americans with Disabilities Act). The Architect acknowledges that the Owner is relying upon the accuracy, competence and completeness of the Architect in performing the services. Nothing herein shall be construed to extend or exceed the Standard of Care or establish a fiduciary relationship between the parties. The Architect covenants to furnish professional services to the Owner in an expeditious, economical and proper manner consistent with the Owner's interests and objectives.

**§ 2.3** The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager, as modified. The Architect shall not be responsible for actions taken by the Construction Manager. The Architect agrees to work cooperatively with the Construction Manager in the best interests of the Owner and the expeditious progress of the Project.

**§ 2.4** The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

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

**§ 2.6** The Architect shall maintain the following insurance for the duration of this Agreement.

**§ 2.6.1** Commercial General Liability insurance policy with a combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage. The Commercial General Liability policy

Init.

shall include all major divisions of coverage and be on a comprehensive basis including: Premises Operations without exclusion of X, C and U coverage; Independent Contractor's Protective; Products and Completed Operation; Personal Injury Liability; Contractual; Owned, non-owned and hired motor vehicles; Broad Form Property Damage including Completed Operations; Explosion and Collapse; and Underground.

**§ 2.6.2** Automobile Liability insurance policy covering owned, non-owned and rented vehicles operated by the Architect with policy limits of not less than \$1,000,000 combined single limit and aggregate for bodily injury and property damage.

**§ 2.6.3** Umbrella Liability Insurance on a "follow form" basis with limits of not less than \$5,000,000 to serve as an additional \$5,000,000 over the Commercial General Liability and Automobile Liability insurance policies.

**§ 2.6.4** Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than \$500,000.

**§ 2.6.5** Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than \$5,000,000 per claim and in the aggregate.

**§ 2.6.6** The professional liability policy obtained by the Architect shall be continued in effect for three years following the earlier of final payment to the Architect or substantial completion of the Project. If the policy is materially changed, cancelled or not renewed, the Architect shall purchase, at its own expense, tail coverage in compliance with the minimum standards prescribed by the Insurance Department of the State of New York.

**§ 2.6.7** The Architect shall obtain all insurance required by this Agreement, as well as that outlined above. The Commercial General Liability, Automobile Liability, and Umbrella Liability insurance policies shall name the Owner, its officers, employees and agents as an additional insured with respect to the Project to which these insurance requirements pertain. These policies shall be provided on a primary and non-contributory basis, ahead of any insurance carried by the Owner with respect to the Project. Certificates of Insurance in duplicate with evidence of additional insurance and primary insurance status shall be submitted to the Owner prior to commencement of the Architect's Services. The required insurance policies shall contain a thirty (30) day mandatory cancellation clause that shall provide that the Owner shall be notified not less than thirty (30) days prior to the cancellation, amendment, non-renewal, and changes to the insurance policy. The Architect shall also give at least thirty (30) days' notice to the Owner of such cancellation, amendment, change, non-renewal, and of any lapse of insurance coverage under this Agreement.

**§ 2.6.8** The Architect acknowledges that failure to obtain such insurance on behalf of the Owner constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Owner.

**§ 2.6.9** The Architect acknowledges that the Owner is a central school district that is subject to various laws and regulations of the State of New York. The Architect will, in accordance with the professional standards prescribed by Section 2.2, comply with all laws and regulations as they pertain to the design, bidding and construction of the Project, including, but not limited to, the requirements of Article 5-A of the General Municipal Law; Article 9 of the Education Law; and Sub-Chapter J, Part 155 of Title 8, Chapter II of the Codes, Rules and Regulations of the State of New York. The Architect shall perform such acts as may be required or reasonably inferable in order to constitute proper administration of the Project within the meaning of Part 155.2(a)(5)(i) of the Regulations of the Commissioner of Education (8 N.Y.C.R.R. Chapter II). The Architect will consult with the Owner or the Owner's legal counsel with respect to any questions concerning the applicability or interpretation of such laws and regulations.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

**§ 3.1** The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil, and electrical engineering services. Services not set forth in this Article 3, or otherwise defined in this Agreement as Basic Services, are Additional Services.

**§ 3.1.1** The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

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§ 3.1.1.1 The Architect shall become familiar with the Project sites and facilities and review any written instructions from the Owner that address the Project's scope, including but not limited to, the individual space requirements for program areas, special utilities, finishes, fixed equipment, physical assessments of the facilities, the Owner's determination of needs and any other guidelines or requirements which may impact the design and/or construction of the Project (the "Design Criteria"), and shall arrive at a mutual understanding of such requirements with the Owner. Architect shall consult, to the extent required by the Owner, with authorized employees, agents, consultants and/or representatives of the Owner relative to the design and construction of the Project.

§ 3.1.1.2 The Architect shall also be available to present details of the Project at the Owner's Board of Education meetings on an as-needed basis during all phases of the Project, maximum one meeting per month over the Project duration. This includes, but is not limited to, preparing and presenting progress reports to the Owner's Board of Education. The Architect shall also assist the Owner with the preparation of informational materials relating to the Project for distribution to the Owner's staff and to community members.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Owner does not accept responsibility for the accuracy of drawings and other information furnished to the Architect. Architect, as part of its Basic Services, is responsible for verifying the accuracy of drawings or other information furnished by the Owner by field verification. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project. The Architect agrees that time is of the essence for the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

*(Paragraph deleted)*

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause. Any adjustments to the schedule shall be void and of no force and effect until such adjustments are agreed to in writing by the Owner, the Architect, and the Construction Manager.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect, with the assistance of the Owner and Construction Manager, shall prepare, file, apply for and secure all licenses, approvals, permits and authorizations as may be required by the State Education Department and any other governmental authority or agency having jurisdiction over or interest in the Project, all within the required time limits, or shall where appropriate ensure that responsibility for the same is incorporated in the Construction Documents as an obligation of the appropriate Contractor.

§ 3.1.9 The Architect shall review the Owner's AHERA reports and design abatement measures (including drawings and specifications) related to the presence of asbestos containing building materials as required for completion of the Work within the voter-approved Project scope.

§ 3.1.10 The Architect shall provide professional services related to the analysis of the Owner's needs and programming requirements of the Project within the voter-approved Project scope.

§ 3.1.11 The Architect shall provide normal and customary services to investigate existing conditions of the facilities as related to the voter-approved Project scope.

§ 3.1.12 Any errors or omissions in the Drawings, Specifications or other documents furnished by the Architect shall be promptly corrected within those Drawings, Specifications or other documents by the Architect at no cost to the Owner. Nothing contained herein shall preclude a claim against the Architect by the Owner for damages arising from defective Drawings, Specifications or any other of the Contract Documents furnished by the Architect. The Owner's approval, acceptance, use or payment for all or any part of the Architect's services for the Project shall not in any way alter the Architect's obligations or the Owner's rights hereunder.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

**§ 3.2.8** In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

### **§ 3.3 Design Development Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical, civil and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.3.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

**§ 3.3.3** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.4 and request the Owner's approval of the Design Development Documents.

### **§ 3.4 Construction Documents Phase Services**

**§ 3.4.1** Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

**§ 3.4.2** The Architect shall, consistent with Section 1.1.4, submit a complete set of Construction Documents to the New York State Education Department ("SED") for review and approval. The Architect shall also furnish a copy of that submission to the Owner and Construction Manager. The Architect will advise the Owner and Construction Manager of any necessary revisions to the Construction Documents mandated by Facilities Planning and any adjustments to the estimate of the Cost of the Work resulting from those revisions, seeing to it that the estimate does not exceed the Owner's budget for the Cost of the Work. Should the revised estimate exceed the Owner's budget for the Cost of the Work, the Architect will develop and provide to the Owner Construction Document alternatives that do not exceed that amount for review and approval by the Owner. Should this require a resubmittal of Construction Documents to SED, the Architect shall be responsible for same, without additional compensation.

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and (3) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms. The Architect, if requested by the Owner, shall also assist the Owner and Construction Manager in the development and preparation of (1) the form of agreement between the Owner and Contractor; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions).

**§ 3.4.4** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.4 and request the Owner's approval of the Construction Documents. The Construction Documents shall be prepared in sufficient detail for the Greece Central School District Board of Education (the "Board") to submit the design to the Commissioner of Education for his approval in conformity with the requirements of the Education Law.

§ 3.4.6 The Architect shall assist the Construction Manager in preparing bid alternates for Work included in the Scope of Work if deemed necessary by the Owner and the Construction Manager to adjust the Construction Cost to the funds available.

§ 3.4.7 The Architect shall prepare documents for separate prime construction contracts in order for the Project to comply with Article 5-A of the New York General Municipal Law.

§ 3.4.8 To the extent such duties are consistent with the professional standards described in Section 2.2 hereof, the Architect shall investigate and document existing conditions to the extent required to prepare Bidding Documents for the Scope of Work and alternates.

### § 3.5 Bidding or Negotiation Phase Services

#### § 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.

#### § 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

*(Paragraphs deleted)*

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. All references to AIA Document A232™–2009, General Conditions of the Contract for Construction, shall mean such General Conditions as they may be modified by the Owner.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect 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, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect'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 Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, but not less than once per week at each Project facility or location that is under construction at that time, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall provide the Owner with written reports concerning each such on-site visit. The weekly written reports shall be promptly delivered by the Architect to the Owner, and to the Construction Manager for information purposes. The Architect's site visits shall be performed by the individual designated in Section 1.1.11, or another representative from the Architect with appropriate experience, or one of the Architect's consultants also with appropriate experience. However, the Architect shall not be required to make exhaustive or continuous on-site observations and/or inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work. The Architect will exercise care and diligence in accordance with the standard prescribed by Section 2.2, in discovering and promptly reporting to the Owner any defects or deficiencies in the Work of any of the Contractors or any of their subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. The Architect will follow professional standards in performing all architectural services under this Agreement. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Architect shall be advisory only and may be reviewed by the Owner, the Construction Manager or the Contractor for compliance with the Contract Documents as provided in the General Conditions of the Contract for Construction, provided, however, that the Architect shall not be responsible to any party for its decision not to abide by the Architect's interpretations and decisions.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2009, the Architect shall render initial decisions on Claims as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify an application for payment not more frequently than monthly. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

**§ 3.6.3.2** The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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

**§ 3.6.3.4** The Architect shall maintain a record of the applications and certificates for payment.

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 3.6.4.2** In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness as to cause no delay in the Contractor's Work. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents. The Architect will not receive Additional Services compensation for services performed in connection with Change Orders when such services are caused or necessitated by the errors or omissions of the Architect, or required by Section 6.4.

§ 3.6.5.2 The Architect may authorize minor changes in the Work, subject to approval by the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services unless identified in this Agreement as Basic Services, but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility and only if authorized in writing in advance by the Owner, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

<b>Services</b>	<b>Responsibility</b> <i>(Architect, Owner or Not Provided)</i>	<b>Location of Service Description</b> <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Programming (B202™–2009)	Not Provided	
§ 4.1.2 Multiple preliminary designs	Architect – Included in Basic Services	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Architect – Included in Basic Services	
§ 4.1.5 Site evaluation and planning (B203™–2007)	Not Provided	
§ 4.1.6 Building information modeling (E202™–2008)	Not Provided	
§ 4.1.7 Civil engineering	Architect – Included in Basic Services	
§ 4.1.8 Landscape design	Architect – Included in Basic Services	
§ 4.1.9 Architectural interior design (B252™–2007)	Architect – Included in Basic Services	
§ 4.1.10 Value analysis (B204™–2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Not Provided	
§ 4.1.12 On-site project representation (B207™–2008)	Not Provided	
§ 4.1.13 Conformed construction documents	Not Provided	
§ 4.1.14 As-designed record drawings	Not Provided	
§ 4.1.15 As-constructed record drawings	Architect – Included in Basic Services	
§ 4.1.16 Post occupancy evaluation	Not Provided	
§ 4.1.17 Facility support services (B210™–2007)	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner’s consultants	Not Provided	
§ 4.1.20 Telecommunications/data design	Architect – Included in Basic Services	
§ 4.1.21 Security evaluation and planning (B206™–2007)	Not Provided	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided	
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® certification (B214™–2012)	Not Provided	
§ 4.1.25 Historic preservation (B205™–2007)	Not Provided	
§ 4.1.26 Furniture, furnishings, and equipment design (B253™–2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

N/A

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Intentionally omitted;
- .3 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;
- .6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .7 Intentionally omitted;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Evaluation of the qualifications of bidders or persons providing proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect.

**§ 4.3.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect, except to the extent caused by the acts or omissions of the Architect or its consultants;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service except to the extent required by Section 6.4 or caused by the acts or omissions of the Architect or its consultants
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker, unless caused by the acts or omissions of the Architect or its consultants;
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom, except to the extent required by Section 6.4;
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 120 days after the date of Substantial Completion of the Work unless caused by the acts or omissions of the Architect or its consultants.

**§ 4.3.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Weekly visits to the site by the Architect over the duration of the Project during construction

- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

*(Paragraph deleted)*

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

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

**§ 5.2** The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2009, Standard Form of Agreement Between Owner and Construction Manager, as modified. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to that agreement.

**§ 5.3** The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

**§ 5.4** The Owner shall 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 Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

*(Paragraph deleted)*

**§ 5.5** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.6** The Owner 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 necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.7** The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Architect shall review the tests and information furnished to the Architect by or on behalf of the Owner pursuant to this Section 5.7.

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

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

§ 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 Architect and Construction Manager 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.

§ 5.12 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction, as modified, and the Supplementary General Conditions of the Contract for Construction.

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

## ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies, identified as such, for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall review the preliminary estimates and detailed estimates of the Cost of the Work prepared by the Construction Manager in order that the Architect's preparation of the Construction Documents is consistent with the estimates of the Cost of the Work. While the Architect does not warrant the accuracy of the estimates of the Construction Manager, the Architect shall review all cost estimates prepared by the Construction Manager and exercise its professional judgment to provide suggestions and input regarding their accuracy and completeness. The Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If during any Phase of the design the estimated Cost of the Work is in excess of the Owner's budget for the Cost of the Work, or the bids received exceed the Owner's budget for the Cost of the Work, the Architect shall revise, at its own cost and expense, all of any part of the Schematic Design Documents, Design Development Documents, Construction Documents or Bidding Documents necessary to bring the estimated Cost of the Work or bids within the Owner's budget for the Cost of the Work. In order to reduce the estimated Cost of the Work to the Owner's budget for the Cost of the Work, the Architect shall, in addition to the above, at the Owner's request and at no additional cost to

the Owner, (i) provide value engineering to reduce the estimated Cost of the Work to the Owner's budget for the Cost of the Work; (ii) assist the Owner and Construction Manager in redefining the scope of the Project; (iii) incorporate all scope reductions and Project modifications into the modified Schematic Design Documents, Design Development Documents, Construction Documents or Bidding Documents; and/or (iv) develop and incorporate bid alternates into the Construction Documents and Bidding Documents.

*(Paragraphs deleted)*

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** Notwithstanding the foregoing and provided the Owner has made payments to the Architect in accordance with this Agreement, the Architect hereby grants to the Owner a non-exclusive, perpetual, royalty-free license to, upon termination, completion or cancellation of this Agreement, use all drawings, specifications and other documents produced by the Architect and the Architect's consultants pursuant to this Agreement to complete, alter or modify the Project. The foregoing license shall not extend to the use of drawings, specifications and other documents produced by the Architect and the Architect's consultants on other projects.

*(Paragraph deleted)*

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. Upon a termination under Article 9, this license may be transferred by the Owner to a similarly credentialed third-party Architect for the purposes of completing the design and constructing the Project. In addition, the Owner shall be permitted to authorize contractors, subcontractors, sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their construction of the Project by license granted in Section 7.3. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. After completion of the Project or termination of this Agreement, Owner may make any changes, additions, and deletions of the Project design, in whole or in part, including (without limitation) destruction of any tangible portion of the design, all without further permission or consent of the Architect, although the Architect shall not be liable to the Owner or any third party as a result of any such changes, additions, and deletions. The Owner shall release, indemnify, and hold the Architect harmless against any claims, damages, losses, costs or expenses resulting from any modifications, reuses, additions or deletions.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Architect 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 the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

**§ 8.1.2** If allowed under the policy or policies of insurance for property damage applicable to the Project without penalty, additional premiums or impairment of coverage, to the extent of actual recovery of proceeds arising from damages covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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**§ 8.1.3** To the fullest extent permitted by law, the Architect shall defend (but only to the extent covered by the Architect's insurance), indemnify and hold harmless the Owner and its officers, board members, employees and agents from and against any and all claims, suits, losses or expenses (including reasonable legal fees and other expenses of litigation in connection with this indemnification and the enforcement thereof) arising from (i) any negligent, willful or wrongful act, or negligent errors or omissions resulting in bodily injury (including death), personal injury or property damage by Architect or any individual or entity for whom Architect has legal responsibility (each an "Architect Party"), (ii) any breach of this Agreement or infringement of any copyright, patent or other intellectual property right by any Architect Party, or (iii) any failure to comply with any laws or regulations affecting any Architect Party's design services. This indemnification shall survive the termination or completion of this Agreement.

*(Paragraph deleted)*

## **§ 8.2 Mediation**

**§ 8.2.1** If claim, dispute or other matter in question arises out of or related to this Agreement, the parties shall endeavor to settle the dispute first through direct discussion between their designated representatives. The representatives shall meet promptly in a good faith effort to resolve the dispute. If the designated representatives are unable to reach a resolution within fifteen (15) calendar days of the referral of the matter to them, the matter may be submitted by either party to voluntary non-binding mediation before a mutually agreed upon mediator. The request by either party for mediation is neither mandatory nor is the result thereof binding on either party; however, should one party make a written request for mediation, the other party shall be bound to proceed with the mediation process except if submission to mediation would cause a party to be unable to satisfy any applicable limitations period. Any such mediation shall be completed within thirty (30) days of submission and each party shall cooperate in the process.

**§ 8.2.2** Intentionally omitted.

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

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

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

*(Paragraphs deleted)*

**§ 8.2.5** Unless otherwise agreed in writing, the Architect shall continue to carry out its services as provided in this Agreement and maintain its progress during any proceedings undertaken pursuant to this Article 8, and the Owner shall continue to make payments to the Architect in accordance with this Agreement, except for matters specifically relating to the dispute.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

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

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

§ 9.2 If the Owner suspends the Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for actual, reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be subject to negotiations by the parties.

§ 9.3 If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

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

§ 9.6 In the event of termination by the Owner without cause, as set forth above, upon the completion of any phase of Basic Services, progress payments due the Architect for services rendered through such phase shall constitute total payment for such services. In the event of termination by Owner during any phase of Basic Services, the Architect shall be paid for services rendered during that phase through the date of termination. There will be no additional termination expenses payable to the Architect in any case. In no event, however, shall the amount to be paid in accordance with this paragraph exceed the amounts set forth in Section 11.5 for the respective phase. Also, in the event of any termination without cause as set forth above, the Architect will be paid for all unpaid and authorized Additional Services and unpaid Reimbursable Expenses.

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

§ 9.8 If, after notice of termination for cause, it is determined for any reason that Architect 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.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, as modified.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect 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.

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect 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, provided, however, that the Architect shall report to the Owner the presence and location of any hazardous materials or toxic substances that the Architect notices or observes.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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

#### ARTICLE 11 COMPENSATION

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

*(Insert amount of, or basis for, compensation.)*

\_\_\_\_\_ percent (\_\_\_%) of the Cost of the Work.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

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

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

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

§ 11.4 No additional consultant services shall be obtained without the Owner's advance written permission and agreement as to scope of service and terms for payment. Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3 shall be the amount invoiced to the Architect.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Thirty-Five	percent (	35	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Closeout Phase	Five	percent (	5	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 Intentionally omitted.

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

The hourly billing rates for services of the Architect are set forth in Exhibit B attached hereto and incorporated herein by reference.

*(Table deleted)*

#### § 11.8 Compensation for Reimbursable Expenses

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

- .1 Authorized out-of-town travel and subsistence;
- .2 Sampling and testing for lead and asbestos if authorized in advance by the Owner;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Overnight and expedited delivery charges;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Intentionally omitted;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Intentionally omitted; and
- .11 Other similar Project-related expenditures with prior written authorization from the Owner.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants. There shall be no mark-up by the Architect, the Architect's consultants, or paid by the Owner on Reimbursable Expenses.

#### § 11.9 Compensation for Use of Architect's Instruments of Service

*(Paragraph deleted)*

Intentionally omitted.

#### § 11.10 Payments to the Architect

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

§ 11.10.2 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable thirty (30) days from the date of receipt by the Owner of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below.

*(Insert rate of monthly or annual interest agreed upon.)*

Payments due and unpaid under the Contract shall bear interest from the date payment is due in accordance with Section 106-b(1)(b) of the New York State General Municipal Law.

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

§ 11.10.4 Records of Reimbursable Expenses shall be attached to the Architect's monthly invoices. Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

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## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 With regard to Construction Administration Phase as-built documents, Contractors are to provide electronic as-built documentation for the Architect's review. Contractors will make corrections to the as-built documentation as requested by the Architect. Once the electronic as-built information has been satisfactorily submitted from each Contractor, the Architect will consolidate the as-built information received by each Contractor into Master Sets for each District Building.

§ 12.2 The Architect hereby represents and warrants to the Owner the following: (a) that the Architect is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services required and perform its obligations hereunder; (b) that the Architect is able to and shall furnish any of the plant, tools, materials, supplies, equipment and labor required to complete the services required hereunder and perform all of its obligations hereunder and it has sufficient experience and competence to do so; (c) that the Architect is authorized to do business in New York and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the services required under this Agreement and the Project itself; (d) that the Architect's execution of this Agreement and its performance of it is within its duly authorized powers; and (e) that the Architect's duly authorized representative has visited the Project, and familiarized himself or herself with the local conditions under which the services required under this Agreement are to be performed. The Architect agrees that the representations and warranties in this Article 12 shall survive the execution and delivery of this Agreement.

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

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

§ 12.5 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B132™–2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
  - .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
  - .4 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
**ARCHITECT** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*



Init.

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# **Additions and Deletions Report for** **AIA® Document B132™ – 2009**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:49:13 ET on 11/19/2018.

## **PAGE 1**

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Nineteen

...

Tully Central School District  
20 State Street  
Tully, NY 13159

...

Architectural and engineering services for the Tully Central School District in connection with a capital improvement project that is anticipated going to referendum vote in October 2019. The referendum amount is anticipated to be \$6,000,000.

...

To be determined

## **PAGE 2**



TABLE OF ARTICLES

...

See Exhibit A attached hereto and incorporated herein by reference.

...

**§ 1.1.3** The Owner’s budget for the Project is Six Million Dollars (\$6,000,000.00). The Owner’s currently estimated budget for the Cost of the Work, as defined in Section 6.1:  
*(Provide total and, if known, a line item breakdown.)*

6.1, is \$5,000,000.

...

Begin design – November 2019  
Submission to NYSED – June 2020  
Bidding/Contract Award – February/March 2021

PAGE 3

Summer 2021

...

September 2022

...

Closeout: December 31, 2022

...

Multiple Prime Contractors

...

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

...

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

...

Robert Hughes, Superintendent  
Tully Central School District  
20 State Street  
Tully, NY 13159

...

N/A  
PAGE 4

January 2019

...

N/A

...

To be determined

...

To be determined

.5 Civil Engineer:

.6 Other consultants:

...

To be determined

PAGE 5

.4 Civil Engineer:

N/A

...

N/A

...

**§ 2.2** ~~The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project, in accordance with the professional practices, standards and codes and with the skill and diligence of a recognized professional Architect experienced in designing projects similar to the Project in the Rochester, New York area (the "Standard of Care") and in compliance with applicable federal, state and local laws, codes, ordinances and regulations and the rules and regulations of applicable governmental authorities having jurisdiction over all or part of the services, the Architect, or the Project (including, but not limited to the Americans with Disabilities Act). The~~

Architect acknowledges that the Owner is relying upon the accuracy, competence and completeness of the Architect in performing the services. Nothing herein shall be construed to extend or exceed the Standard of Care or establish a fiduciary relationship between the parties. The Architect covenants to furnish professional services to the Owner in an expeditious, economical and proper manner consistent with the Owner's interests and objectives.

**§ 2.3** The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager, as modified. The Architect shall not be responsible for actions taken by the Construction Manager. The Architect agrees to work cooperatively with the Construction Manager in the best interests of the Owner and the expeditious progress of the Project.

...

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

**§ 2.6** The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

**§ 2.6.1** Comprehensive General Liability with policy limits of not less than (\$ ) for each occurrence and Commercial General Liability insurance policy with a combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage. The Commercial General Liability policy shall include all major divisions of coverage and be on a comprehensive basis including: Premises Operations without exclusion of X, C and U coverage; Independent Contractor's Protective; Products and Completed Operation; Personal Injury Liability; Contractual; Owned, non-owned and hired motor vehicles; Broad Form Property Damage including Completed Operations; Explosion and Collapse; and Underground.

**§ 2.6.2** Automobile Liability covering owned insurance policy covering owned, non-owned and rented vehicles operated by the Architect with policy limits of not less than (\$ ) \$1,000,000 combined single limit and aggregate for bodily injury and property damage.

**§ 2.6.3** The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual Umbrella Liability Insurance on a "follow form" basis with limits of not less than \$5,000,000 to serve as an additional \$5,000,000 over the Commercial General Liability and Automobile Liability insurance policies.

**§ 2.6.4** Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than (\$ ) \$500,000.

**§ 2.6.5** Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than (\$ ) \$5,000,000 per claim and in the aggregate.

**§ 2.6.6** The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. professional liability policy obtained by the Architect shall be continued in effect for three years following the earlier of final payment to the Architect or substantial completion of the Project. If the policy is materially changed, cancelled or not renewed, the Architect shall purchase, at its own expense, tail coverage in compliance with the minimum standards prescribed by the Insurance Department of the State of New York.

**§ 2.6.7** The Architect shall obtain all insurance required by this Agreement, as well as that outlined above. The Commercial General Liability, Automobile Liability, and Umbrella Liability insurance policies shall name the Owner, its officers, employees and agents as an additional insured with respect to the Project to which these insurance requirements pertain. These policies shall be provided on a primary and non-contributory basis, ahead of any

insurance carried by the Owner with respect to the Project. Certificates of Insurance in duplicate with evidence of additional insurance and primary insurance status shall be submitted to the Owner prior to commencement of the Architect's Services. The required insurance policies shall contain a thirty (30) day mandatory cancellation clause that shall provide that the Owner shall be notified not less than thirty (30) days prior to the cancellation, amendment, non-renewal, and changes to the insurance policy. The Architect shall also give at least thirty (30) days' notice to the Owner of such cancellation, amendment, change, non-renewal, and of any lapse of insurance coverage under this Agreement.

**§ 2.6.8** The Architect acknowledges that failure to obtain such insurance on behalf of the Owner constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Owner.

**§ 2.6.9** The Architect acknowledges that the Owner is a central school district that is subject to various laws and regulations of the State of New York. The Architect will, in accordance with the professional standards prescribed by Section 2.2, comply with all laws and regulations as they pertain to the design, bidding and construction of the Project, including, but not limited to, the requirements of Article 5-A of the General Municipal Law; Article 9 of the Education Law; and Sub-Chapter J, Part 155 of Title 8, Chapter II of the Codes, Rules and Regulations of the State of New York. The Architect shall perform such acts as may be required or reasonably inferable in order to constitute proper administration of the Project within the meaning of Part 155.2(a)(5)(i) of the Regulations of the Commissioner of Education (8 N.Y.C.R.R. Chapter II). The Architect will consult with the Owner or the Owner's legal counsel with respect to any questions concerning the applicability or interpretation of such laws and regulations.

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**§ 3.1** The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, civil, and electrical engineering services. Services not set forth in this Article 3-3, or otherwise defined in this Agreement as Basic Services, are Additional Services.

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**§ 3.1.1.1** The Architect shall become familiar with the Project sites and facilities and review any written instructions from the Owner that address the Project's scope, including but not limited to, the individual space requirements for program areas, special utilities, finishes, fixed equipment, physical assessments of the facilities, the Owner's determination of needs and any other guidelines or requirements which may impact the design and/or construction of the Project (the "Design Criteria"), and shall arrive at a mutual understanding of such requirements with the Owner. Architect shall consult, to the extent required by the Owner, with authorized employees, agents, consultants and/or representatives of the Owner relative to the design and construction of the Project.

**§ 3.1.1.2** The Architect shall also be available to present details of the Project at the Owner's Board of Education meetings on an as-needed basis during all phases of the Project, maximum one meeting per month over the Project duration. This includes, but is not limited to, preparing and presenting progress reports to the Owner's Board of Education. The Architect shall also assist the Owner with the preparation of informational materials relating to the Project for distribution to the Owner's staff and to community members.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. Owner does not accept responsibility for the accuracy of drawings and other information furnished to the Architect. Architect, as part of its Basic Services, is responsible for verifying the accuracy of drawings or other information furnished by the Owner by field verification. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project. The Architect agrees that time is of the essence for the Project.



...

~~§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.~~

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause. Any adjustments to the schedule shall be void and of no force and effect until such adjustments are agreed to in writing by the Owner, the Architect, and the Construction Manager.

...

~~§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. Architect, with the assistance of the Owner and Construction Manager, shall prepare, file, apply for and secure all licenses, approvals, permits and authorizations as may be required by the State Education Department and any other governmental authority or agency having jurisdiction over or interest in the Project, all within the required time limits, or shall where appropriate ensure that responsibility for the same is incorporated in the Construction Documents as an obligation of the appropriate Contractor.~~

§ 3.1.9 The Architect shall review the Owner's AHERA reports and design abatement measures (including drawings and specifications) related to the presence of asbestos containing building materials as required for completion of the Work within the voter-approved Project scope.

§ 3.1.10 The Architect shall provide professional services related to the analysis of the Owner's needs and programming requirements of the Project within the voter-approved Project scope.

§ 3.1.11 The Architect shall provide normal and customary services to investigate existing conditions of the facilities as related to the voter-approved Project scope.

§ 3.1.12 Any errors or omissions in the Drawings, Specifications or other documents furnished by the Architect shall be promptly corrected within those Drawings, Specifications or other documents by the Architect at no cost to the Owner. Nothing contained herein shall preclude a claim against the Architect by the Owner for damages arising from defective Drawings, Specifications or any other of the Contract Documents furnished by the Architect. The Owner's approval, acceptance, use or payment for all or any part of the Architect's services for the Project shall not in any way alter the Architect's obligations or the Owner's rights hereunder.

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§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, ~~mechanical~~ mechanical, civil and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

...

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections ~~6.5 and 6.6~~ 6.4 and request the Owner's approval of the Design Development Documents.

...

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project, shall, consistent with Section 1.1.4, submit a complete set of Construction Documents to the New York State Education Department ("SED") for review and approval. The Architect shall also furnish a copy of that submission to the Owner and Construction Manager. The Architect will advise the Owner and Construction Manager of any necessary revisions to the Construction Documents mandated by Facilities Planning and any adjustments to the estimate of the Cost of the Work resulting from those revisions, seeing to it that the estimate does not exceed the Owner's budget for the Cost of the Work. Should the revised estimate exceed the Owner's budget for the Cost of the Work, the Architect will develop and provide to the Owner Construction Document alternatives that do not exceed that amount for review and approval by the Owner. Should this require a resubmittal of Construction Documents to SED, the Architect shall be responsible for same, without additional compensation.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms. The Architect, if requested by the Owner, shall also assist the Owner and Construction Manager in the development and preparation of (1) the form of agreement between the Owner and Contractor; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions).

**PAGE 10**

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6-7-6.4 and request the Owner's approval of the Construction Documents. The Construction Documents shall be prepared in sufficient detail for the Greece Central School District Board of Education (the "Board") to submit the design to the Commissioner of Education for his approval in conformity with the requirements of the Education Law.

§ 3.4.6 The Architect shall assist the Construction Manager in preparing bid alternates for Work included in the Scope of Work if deemed necessary by the Owner and the Construction Manager to adjust the Construction Cost to the funds available.

§ 3.4.7 The Architect shall prepare documents for separate prime construction contracts in order for the Project to comply with Article 5-A of the New York General Municipal Law.

§ 3.4.8 To the extent such duties are consistent with the professional standards described in Section 2.2 hereof, the Architect shall investigate and document existing conditions to the extent required to prepare Bidding Documents for the Scope of Work and alternates.

...

### **§ 3.5.3 Negotiated Proposals**

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by

- .1 — facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 — participating in selection interviews with prospective contractors; and
- .3 — participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

...

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. ~~If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.~~ All references to AIA Document A232™–2009, General Conditions of the Contract for Construction, shall mean such General Conditions as they may be modified by the Owner.

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**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, but not less than once per week at each Project facility or location that is under construction at that time, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall provide the Owner with written reports concerning each such on-site visit. The weekly written reports shall be promptly delivered by the Architect to the Owner, and to the Construction Manager for information purposes. The Architect’s site visits shall be performed by the individual designated in Section 1.1.11, or another representative from the Architect with appropriate experience, or one of the Architect’s consultants also with appropriate experience. However, the Architect shall not be required to make exhaustive or continuous on-site observations and/or inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work. The Architect will exercise care and diligence in accordance with the standard prescribed by Section 2.2, in discovering and promptly reporting to the Owner any defects or deficiencies in the Work of any of the Contractors or any of their subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. The Architect will follow professional standards in performing all architectural services under this Agreement. The Owner’s approval, acceptance, use of or payment for all or any part of the Architect’s services hereunder or of the Project itself shall in no way alter the Architect’s obligations or the Owner’s rights hereunder.

...

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Architect shall be advisory only and may be reviewed by the Owner, the Construction Manager or the Contractor for compliance with the Contract Documents as provided in the General Conditions of the Contract for Construction, provided, however, that the Architect shall not be responsible to any party for its decision not to abide by the Architect’s interpretations and decisions.

...

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2009, the Architect shall render initial decisions on Claims ~~between the Owner and Contractor~~ as provided in the Contract Documents.

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**§ 3.6.4.4** After receipt of the Construction Manager’s recommendations, and subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect’s response to such requests shall be made in writing within any time limits agreed upon, or otherwise with

reasonable ~~promptness~~ ~~promptness~~ as to cause no delay in the Contractor's Work. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

...

**§ 3.6.5.1** The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents. The Architect will not receive Additional Services compensation for services performed in connection with Change Orders when such services are caused or necessitated by the errors or omissions of the Architect, or required by Section 6.4.

**§ 3.6.5.2** The Architect may authorize minor changes in the ~~Work~~ ~~Work~~, subject to approval by the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

...

**§ 4.1** Additional Services listed below are not included in Basic Services unless identified in this Agreement as Basic Services, but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's ~~responsibility~~, responsibility and only if authorized in writing in advance by the Owner, and the Owner shall compensate the Architect as provided in Section 11.2.

**PAGE 2**

<b>§ 4.1.1</b> Programming (B202™–2009)	Not Provided	
	Architect – Included in Basic Services	
<b>§ 4.1.2</b> Multiple preliminary designs	Not Provided	
<b>§ 4.1.3</b> Measured drawings	Not Provided	
	Architect – Included in Basic Services	
<b>§ 4.1.4</b> Existing facilities surveys	Not Provided	
<b>§ 4.1.5</b> Site evaluation and planning (B203™–2007)	Not Provided	
<b>§ 4.1.6</b> Building information modeling (E202™–2008)	Not Provided	
	Architect – Included in Basic Services	
<b>§ 4.1.7</b> Civil engineering	Architect – Included in Basic Services	
	Architect – Included in Basic Services	
<b>§ 4.1.8</b> Landscape design	Architect – Included in Basic Services	
	Architect – Included in Basic Services	
<b>§ 4.1.9</b> Architectural interior design (B252™–2007)	Not Provided	
<b>§ 4.1.10</b> Value analysis (B204™–2007)	Not Provided	
<b>§ 4.1.11</b> Detailed cost estimating	Not Provided	
<b>§ 4.1.12</b> On-site project representation (B207™–2008)	Not Provided	
<b>§ 4.1.13</b> Conformed construction documents	Not Provided	
<b>§ 4.1.14</b> As-designed record drawings	Not Provided	
	Architect – Included in Basic Services	
<b>§ 4.1.15</b> As-constructed record drawings	Not Provided	
<b>§ 4.1.16</b> Post occupancy evaluation	Not Provided	
<b>§ 4.1.17</b> Facility support services (B210™–2007)	Not Provided	
<b>§ 4.1.18</b> Tenant-related services	Not Provided	
<b>§ 4.1.19</b> Coordination of Owner's consultants	Not Provided	
<b>§ 4.1.20</b> Telecommunications/data design	Architect –	

	<u>Included in Basic Services</u>	
§ 4.1.21 Security evaluation and planning (B206™-2007)	<u>Not Provided</u>	
§ 4.1.22 Commissioning (B211™-2007)	<u>Not Provided</u>	
§ 4.1.23 Extensive environmentally responsible design	<u>Not Provided</u>	
§ 4.1.24 LEED® certification (B214™-2012)	<u>Not Provided</u>	
§ 4.1.25 Historic preservation (B205™-2007)	<u>Not Provided</u>	
§ 4.1.26 Furniture, furnishings, and equipment design (B253™-2007)	<u>Not Provided</u>	

...

N/A

...

- .2 ~~Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;~~ Intentionally omitted;

...

- .7 ~~Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;~~ Intentionally omitted;

...

- .1 ~~Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;~~ Architect, except to the extent caused by the acts or omissions of the Architect or its consultants;

...

- .3 ~~Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~ Service except to the extent required by Section 6.4 or caused by the acts or omissions of the Architect or its consultants
- .4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker;~~ Maker, unless caused by the acts or omissions of the Architect or its consultants;
- .5 ~~Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom;~~ or therefrom, except to the extent required by Section 6.4;
- .6 ~~To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60-120 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier unless caused by the acts or omissions of the Architect or its consultants.~~

...

- .1 ~~(—) Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor~~
- .2 ~~(—) Weekly visits to the site by the Architect over the duration of the Project during construction~~
- .3 ~~(—) Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- .4 ~~(—) Two (2) inspections for any portion of the Work to determine final completion~~

~~§ 4.3.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

**PAGE 3**

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2009, Standard Form of Agreement Between Owner and Construction ~~Manager~~, Manager, as modified. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to ~~the~~ that agreement.

...

~~§ 5.4.1 The Owner acknowledges that accelerated, phased or fast track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.~~

...

§ 5.7 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Architect shall review the tests and information furnished to the Architect by or on behalf of the Owner pursuant to this Section 5.7.

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

**PAGE 4**

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction, as modified, and the Supplementary General Conditions of the Contract for Construction.

...

§ 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 ~~includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, does not include the compensation of the Architect and its consultants, the compensation of the Construction Manager and its consultants,~~ the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

...

**§ 6.3** The Owner shall require the Construction Manager to include appropriate ~~contingencies~~ contingencies, identified as such, for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall ~~be entitled to rely on the accuracy and completeness of~~ review the preliminary estimates and detailed estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services, prepared by the Construction Manager in order that the Architect's preparation of the Construction Documents is consistent with the estimates of the Cost of the Work. While the Architect does not warrant the accuracy of the estimates of the Construction Manager, the Architect shall review all cost estimates prepared by the Construction Manager and exercise its professional judgment to provide suggestions and input regarding their accuracy and completeness. The Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

...

**§ 6.4** If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds If during any Phase of the design the estimated Cost of the Work is in excess of the Owner's budget for the Cost of the Work, or the bids received exceed the Owner's budget for the Cost of the Work, the Architect shall revise, at its own cost and expense, all of any part of the Schematic Design Documents, Design Development Documents, Construction Documents or Bidding Documents necessary to bring the estimated Cost of the Work or bids within the Owner's budget for the Cost of the Work. In order to reduce the estimated Cost of the Work to the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments. Architect shall, in addition to the above, at the Owner's request and at no additional cost to the Owner, (i) provide value engineering to reduce the estimated Cost of the Work to the Owner's budget for the Cost of the Work; (ii) assist the Owner and Construction Manager in redefining the scope of the Project; (iii) incorporate all scope reductions and Project modifications into the modified Schematic Design Documents, Design Development Documents, Construction Documents or Bidding Documents; and/or (iv) develop and incorporate bid alternates into the Construction Documents and Bidding Documents.

**§ 6.5** If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

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

**§ 6.6** If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

**§ 6.7** After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

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**§ 7.3** ~~Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~ Notwithstanding the foregoing and provided the Owner has made payments to the Architect in accordance with this Agreement, the Architect hereby grants to the Owner a non-exclusive, perpetual, royalty-free license to, upon termination, completion or cancellation of this Agreement, use all drawings, specifications and other documents produced by the Architect and the Architect's consultants pursuant to this Agreement to complete, alter or modify the Project. The foregoing license shall not extend to the use of drawings, specifications and other documents produced by the Architect and the Architect's consultants on other projects.

**§ 7.3.1** ~~In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

**§ 7.4** ~~Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Upon a termination under Article 9, this license may be transferred by the Owner to a similarly credentialed third-party Architect for the purposes of completing the design and constructing the Project. In addition, the Owner shall be permitted to authorize contractors, subcontractors, sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their construction of the Project by license granted in Section 7.3. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. After completion of the Project or termination of this Agreement, Owner may make any changes, additions, and deletions of the Project design, in whole or in part, including (without limitation) destruction of any tangible portion of the design, all without further permission or consent of the Architect, although the Architect shall not be liable to the Owner or any third party as a result of any such changes, additions, and deletions. The Owner shall release, indemnify, and hold the Architect harmless against any claims, damages, losses, costs or expenses resulting from any modifications, reuses, additions or deletions.~~

...

**§ 8.1.1** ~~The Owner and Architect 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 the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~ law.

**§ 8.1.2** ~~To the extent damages are~~ If allowed under the policy or policies of insurance for property damage applicable to the Project without penalty, additional premiums or impairment of coverage, to the extent of actual recovery of proceeds arising from damages covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.



~~§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers 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 negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage. To the fullest extent permitted by law, the Architect shall defend (but only to the extent covered by the Architect's insurance), indemnify and hold harmless the Owner and its officers, board members, employees and agents from and against any and all claims, suits, losses or expenses (including reasonable legal fees and other expenses of litigation in connection with this indemnification and the enforcement thereof) arising from (i) any negligent, willful or wrongful act, or negligent errors or omissions resulting in bodily injury (including death), personal injury or property damage by Architect or any individual or entity for whom Architect has legal responsibility (each an "Architect Party"), (ii) any breach of this Agreement or infringement of any copyright, patent or other intellectual property right by any Architect Party, or (iii) any failure to comply with any laws or regulations affecting any Architect Party's design services. This indemnification shall survive the termination or completion of this Agreement.~~

~~§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

~~§ 8.2.1 Any If claim, dispute or other matter in question arising arises out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution. Agreement, the parties shall endeavor to settle the dispute first through direct discussion between their designated representatives. The representatives shall meet promptly in a good faith effort to resolve the dispute. If the designated representatives are unable to reach a resolution within fifteen (15) calendar days of the referral of the matter to them, the matter may be submitted by either party to voluntary non-binding mediation before a mutually agreed upon mediator. The request by either party for mediation is neither mandatory nor is the result thereof binding on either party; however, should one party make a written request for mediation, the other party shall be bound to proceed with the mediation process except if submission to mediation would cause a party to be unable to satisfy any applicable limitations period. Any such mediation shall be completed within thirty (30) days of submission and each party shall cooperate in the process.~~

~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, 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. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Intentionally omitted.~~

~~§ 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, Rochester, New York, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

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[  ] Litigation in a court of competent jurisdiction

...

### **§ 8.3 Arbitration**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, unless the parties mutually agree otherwise. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

**§ 8.3.2** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 8.3.4 Consolidation or Joinder**

**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

**§ 8.2.5** Unless otherwise agreed in writing, the Architect shall continue to carry out its services as provided in this Agreement and maintain its progress during any proceedings undertaken pursuant to this Article 8, and the Owner shall continue to make payments to the Architect in accordance with this Agreement, except for matters specifically relating to the dispute.

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. This Agreement may be terminated by either party should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination (termination "for cause"). The party seeking termination shall give the other party written notice of its intent to terminate for failure to substantially perform with information identifying the item(s) of substantial non-performance. If the non-performing party fails to correct or take substantial actions to correct all items within seven (7) calendar days of receiving the written notice, the Agreement may be terminated upon further written notice delivered to the non-performing party.

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

§ 9.2 If the Owner suspends the ~~Project, Project~~ for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for actual, reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted, subject to negotiations by the parties.

§ 9.3 If the Owner suspends the Project for more than 90 ~~cumulative consecutive~~ days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 ~~Either party may terminate this Agreement upon not less than seven days' written notice 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. Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination, except to the extent the non-payment is based on the Architect's breach, negligence or non-performance, provided, however, that any payments withheld will be directly related to only those issues in dispute between the parties.~~

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. In the circumstances constituting substantial non-performance set forth in Section 9.4, the Architect may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full, less disputed items described in Section 9.4, is received by the Architect within seven (7) days of the date of the notice, the suspension shall take effect upon seven (7) days additional notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services to the extent such suspension was proper and warranted.

§ 9.6 In the event of termination ~~not the fault of the Architect~~, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7, by the Owner without cause, as set forth above, upon the completion of any phase of Basic Services, progress payments due the Architect for services rendered through such phase shall constitute total payment for such services. In the event of termination by Owner during any phase of Basic Services, the Architect shall be paid for services rendered during that phase through the date of termination. There will be no additional termination expenses payable to the Architect in any case. In no event, however, shall the amount to be paid in accordance with this paragraph exceed the amounts set forth in Section 11.5 for the respective phase. Also, in the event of any termination without cause as set forth above, the Architect will be paid for all unpaid and authorized Additional Services and unpaid Reimbursable Expenses.

§ 9.7 ~~Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~ Upon termination for cause by the Owner, the Architect shall not be entitled to any further payments, and the Owner shall be entitled to all of its rights and remedies provided by law of under this Agreement.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9. If, after notice of termination for cause, it is determined for any reason that Architect 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.

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§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, ~~except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~ located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for ~~Construction.~~ Construction, as modified.

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**§ 10.6** Unless otherwise required in this Agreement, the Architect 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-site, provided, however, that the Architect shall report to the Owner the presence and location of any hazardous materials or toxic substances that the Architect notices or observes.

...

\_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Cost of the Work.

...

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

...

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

**§ 11.4** No additional consultant services shall be obtained without the Owner's advance written permission and agreement as to scope of service and terms for payment. Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or ~~11.3~~, 11.3 shall be the amount invoiced to the Architect plus percent ( \_\_\_\_\_%), or as otherwise stated below:

Architect.

...

Schematic Design Phase	<u>Fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Thirty-Five</u>	percent (	<u>35</u>	%)
Bidding or Negotiation Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Closeout Phase	<u>Five</u>	percent (	<u>5</u>	%)

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**§ 11.6** ~~When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~ Intentionally omitted.

**§ 11.7** ~~The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.~~ Any increase in hourly rates shall be commercially reasonable and mutually agreed to by the Owner and the Architect.

...

The hourly billing rates for services of the Architect are set forth in Exhibit B attached hereto and incorporated herein by reference.

**Employee or Category**

**Rate (\$0.00)**

- ...
- .1 ~~Transportation and authorized Authorized out-of-town travel and subsistence;~~
  - .2 ~~Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; Sampling and testing for lead and asbestos if authorized in advance by the Owner;~~
- ...
- .5 ~~Postage, handling and delivery; Overnight and expedited delivery charges;~~
- ...
- .8 ~~Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; Intentionally omitted;~~
- ...
- .10 ~~Site office expenses; Intentionally omitted; and~~
  - .11 ~~Other similar Project-related expenditures; expenditures with prior written authorization from the Owner.~~

**§ 11.8.2** ~~For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus — percent (—%) of the expenses incurred consultants. There shall be no mark-up by the Architect, the Architect's consultants, or paid by the Owner on Reimbursable Expenses.~~

...

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

~~Intentionally omitted.~~

...

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

**§ 11.10.2** ~~Unless otherwise agreed, payments Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation ~~thirty (30) days~~ from the date of receipt by the Owner of the Architect's invoice. Amounts unpaid (—) ~~sixty (60) days~~ after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect; below.~~

...

~~%— Payments due and unpaid under the Contract shall bear interest from the date payment is due in accordance with Section 106-b(1)(b) of the New York State General Municipal Law.~~

...

**§ 11.10.3** ~~The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Architect. Notwithstanding the foregoing, the Owner may withhold amounts from the Architect's compensation to the~~

extent such is based on the Architect's breach, negligence or non-performance, provided, however, that any payments withheld will be directly related to only those issues in dispute between the parties.

**§ 11.10.4** Records of Reimbursable Expenses shall be attached to the Architect's monthly invoices. Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

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**§ 12.1** With regard to Construction Administration Phase as-built documents, Contractors are to provide electronic as-built documentation for the Architect's review. Contractors will make corrections to the as-built documentation as requested by the Architect. Once the electronic as-built information has been satisfactorily submitted from each Contractor, the Architect will consolidate the as-built information received by each Contractor into Master Sets for each District Building.

**§ 12.2** The Architect hereby represents and warrants to the Owner the following: (a) that the Architect is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services required and perform its obligations hereunder; (b) that the Architect is able to and shall furnish any of the plant, tools, materials, supplies, equipment and labor required to complete the services required hereunder and perform all of its obligations hereunder and it has sufficient experience and competence to do so; (c) that the Architect is authorized to do business in New York and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the services required under this Agreement and the Project itself; (d) that the Architect's execution of this Agreement and its performance of it is within its duly authorized powers; and (e) that the Architect's duly authorized representative has visited the Project, and familiarized himself or herself with the local conditions under which the services required under this Agreement are to be performed. The Architect agrees that the representations and warranties in this Article 12 shall survive the execution and delivery of this Agreement.

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

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

**§ 12.5** Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:49:13 ET on 11/19/2018 under Order No. 7670529898 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B132™ – 2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

**EXHIBIT B**

**TULLY CENTRAL SCHOOL DISTRICT  
20 State Street  
Tully, NY 13159**

**ARCHITECTURAL/ENGINEERING SERVICES QUESTIONNAIRE**

Firm Name: \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

1. Provide a Company Profile that includes the following:
  - a. the size of the firm (number of employees)
  - b. the number of years that the firm has been in business
  - c. the type of service the firm can provide (i.e., full service, limited service with subcontractors, etc.)
  - d. the background of the firm
  - e. the location and address of the office from which the work for this District is to be performed.
  
2. Provide a list of those individuals in the firm with expertise in public school construction that will be directly involved with the District and whose participation will be contractually committed to the District. Include a résumé that includes information without limitation such as:
  - a. years of experience in NYS public school construction
  - b. educational background,
  - c. the date the person began work for the firm,
  - d. their experience in designing NYS public school construction projects in the position to be held for this District,
  - e. any special skills,
  - f. a list of references with names and telephone numbers of contact persons for each person.
  - g. the approximate percentage of work time each key person would devote to this District.
  
3. On a separate page list the school districts you represent. Indicate the size (enrollment), the total dollar amount of the construction projects that you have completed with each district, and a contact person (including phone number) for references.
  
4. Total number of persons in the firm with expertise in State Education Department procedures for public school construction projects \_\_\_\_\_



5. Please complete the AREAS OF EXPERTISE form attached.
6. Will an architect be available to attend Board meetings and other special meetings, etc. without limitations (mostly evenings) when required? \_\_\_ Yes \_\_\_ No
7. Do you have any conflicts of interest or affiliations with employees of the District that would prohibit or restrict your representation of the Tully Central School District?  
\_\_\_ Yes \_\_\_ No If yes, please specify on a separate schedule.
8. Have you been involved in any litigation, arbitration or claims involving a New York State public school district in the past ten (10) years under your current company name or previous company names?  
\_\_\_ Yes \_\_\_ No If yes, please specify the details on a separate schedule.
9. Please specify the liability insurance coverages that you carry.
10. Please complete the attached ARCHITECTURAL/ENGINEERING FEES FORM.

EXHIBIT C

**TULLY CENTRAL SCHOOL DISTRICT  
20 State Street  
Tully, NY 13159**

**ARCHITECTURAL/ENGINEERING FEES FORM**

Please indicate the fees you would charge for a capital improvement project to provide the basic services based on the form of Contract attached to the RFP as Exhibit A and assuming an approved Referendum amount of \$6,000,000 with an estimated Construction Budget of \$4,500,000. The Project would consist of various alterations/renovations to the elementary and junior senior high schools. It is anticipated that the construction of the Project will be phased in over an approximate two (2) year period (i.e., Summer 2021 through September 2022).

1. FEE for architectural and engineering services is \_\_\_\_\_% of the Construction Budget.
2. REIMBURSABLE EXPENSES - Provide a list and the cost of all services to be included under the category of reimbursable expenses: (such as postage, copying, etc.)

Type of Service	Cost
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**(Attach additional list if necessary)**

TOTAL REIMBURSABLE EXPENSES                      \$ \_\_\_\_\_

**OPTIONAL FEES:**

3. LUMP SUM FEE – please provide a lump sum fee to provide the basic services based on the form of Contract attached to the RFP as Exhibit A: \$\_\_\_\_\_.
4. FEES for any additional services (list on a separate page, identifying service and fee for same).
5. FEES for any services for which there would be no charge (list on a separate page).
6. HOURLY RATES. Include a current hourly rate schedule for personnel who would be assigned to this Project.
7. **COMMENTS: Firms may wish to provide any additional information that will assist the District in the comparison of fees.**

**EXHIBIT D**

**TULLY CENTRAL SCHOOL DISTRICT  
20 State Street  
Tully, NY 13159**

**AREAS OF EXPERTISE FORM**

For each of the following areas indicate: (use separate sheet(s) if necessary)

	Can you provide service in this area?	Do you have direct staff that will provide this?	How many in firm with direct expertise?	Comments:
Architectural/ Engineering Services				
HVAC Design				
Plumbing Design				
Electrical Design				
General Site Work				
Landscape Design				
Asbestos Design				
Athletic Field Design				
Technology Design				
Interior Design				
Traffic Studies including Parking Lot Design				
LEED Certified Staff				
State Aid Calculations for Building Aid				
Staff that provides assistance with all SED required forms				
Construction Administration Services				

Building Condition Surveys				
List other specialties or areas of expertise				