

**Tully Central School District  
REQUEST FOR PROPOSALS FOR  
CONSTRUCTION MANAGEMENT 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 construction management services to implement an approved capital improvement project. 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 toilet rooms 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 construction management 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:

**“CONSTRUCTION MANAGEMENT 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 its proposal or qualify its proposal in any manner. No proposal will be considered which purports to qualify, limit, amend or omit any requirement of the Request for Proposal.

**TENTATIVE RFP TIMELINE:**

RFP Mailed:	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 construction management from pre-construction through Project closeout phases described in the modified AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser (the “Contract”), which is attached hereto as **Exhibit A**. Services will include all required preconstruction, construction and close-out services.

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:**

CM 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
Construction Phase	Summer 2021 – September 2022
Final Completion/Closeout	December 31, 2022

**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 RFP are to be submitted in writing prior to the proposal opening. If the written request requires excessive time or the request would create additional work for District staff, it may be denied. **Verbal questions will not be entertained.** Questions may be submitted **via email.** Questions must be submitted at least 72 hours prior to the proposal 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 construction management services. The District intends to award a contract on the basis of the best interest and advantage to the District, and reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with all qualified proposers, or to cancel this RFP, in part, or in its entirety, if it is in the best interest of the District. The District may select as the successful proposal that, in the District's sole discretion, best meets the District's requirements whether or not that proposal is the lowest priced. No proposer shall have any legal, equitable, or contractual rights of any kind arising out of its submission of a proposal except as and to the extent that the District, in its sole discretion, shall enter into a contract with the proposer that it selects as the successful consultant.

**CONTRACT AGREEMENT:**

The written agreement 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:**

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

1. Section 1 shall provide the following information about the firm:
  - a. Name, address, telephone and fax numbers of the firm.
  - b. Primary contact person for the firm through the proposal and selection process with telephone, fax, and e-mail contact information.
  - c. A brief overview of the firm describing its construction management experience and philosophy, and its general approach and expertise in the construction management of K-12 educational projects.
2. Section 2 shall provide (i) a detailed statement as to how the firm intends to meet the requirements of the Project, including its specific project approach and management plan and identifying methods and techniques to be used to establish and maintain schedules, budget and cost containment, and (ii) a list of the proposed Project team members, including any proposed consultants, who will fill the key positions indicated in the firm's organizational chart for the Project. Responding firms shall specifically identify the Principal in Charge and the Project Manager, along with anticipated roles of these persons. This section shall also include brief resumes of key individuals identifying

tenure with the firm and descriptions of relevant project experience with the firm. Identify whether past projects were with the proposing firm or with previous employment. Responding firms shall not propose any individual with less than five (5) years of relevant experience.

- a. As part of the proposal include an example of budget, schedule, change order and RFI reporting, daily job reports and any other management tools which record project events or expedite the project.
3. Section 3 shall provide a list/description of similar completed New York State K-12 educational projects for which the firm has performed comparable construction management services. The list shall specify the services performed and, for each of at least five (5) examples, (i) provide contact information for the client and prime contractors on the project and (ii) describe the project scope, total construction cost, completion date, and location.
4. Section 4 shall provide a list of qualifications that the firm believes would be beneficial to the District in the execution of this Project. The responding firm shall describe specific additional competencies beyond the requirements of this RFP that may benefit the District.
5. Section 5 shall provide a brief, written description of how the firm has managed similar projects. The responding firm shall also include information as to whether the project was timely completed, whether significant problems occurred that affected project performance, and how the firm handled any conflicting issues, project communications, and construction administration with regard to similar projects.
6. Section 6 shall provide a comprehensive, five-year summary of the firm's litigation, arbitration and negotiated/settled history with previous clients. This section shall also identify the firm's insurance carrier.
7. Section 7 shall outline graphically (Organizational Chart) the firm's proposed team structure indicating key positions within the firm, as well as involvement by sub-consultants. This section shall also provide sub-consultants' addresses and telephone numbers, and a brief description of the scope of services to be performed by each sub-consultant and their experience with K-12 education-related construction projects.
8. Section 8 shall describe Project controls that will ensure that the firm can meet the Project schedule and that the Construction Documents will be complete and fully coordinated.
9. Section 9 shall be the proposer's fee proposal for CM Basic Services, which must be either (1) a lump sum, inclusive of all direct personnel expenses, overhead and profit or (2) a percentage of the Cost of the Work, inclusive of all direct personnel expenses, overhead and profit.
  - a. Use the following schedule assumptions in your compensation fee proposal:

- Anticipated Preconstruction Phase
    - October 2019 – March 2021
  - Anticipated Construction Phase
    - April 2021 - September 2022
  - Anticipated Close-Out Phase
    - September 2022 -December 31, 2022
- b. Identify the types of personnel and the estimated durations each will be dedicated to the Project for each of the Project phases. Also provide a proposed staffing schedule which includes hours based on the Project timeline.
- c. Payments for additional services will be based on hourly rates and shall be presented for all personnel assigned to the Project. By way of example:

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

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

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

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

**INSURANCE REQUIREMENTS:**

No proposer shall commence work for the District until it has obtained all the insurance required herein, submits certificates of insurance 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 and per location) for bodily injury and damage to property.

2. **Automobile Liability** – a proposer must maintain automobile liability insurance covering “Any Auto” with a Combined Single Limit of \$1,000,000.
3. **Workers’ Compensation and NYS Disability** – a proposer must provide statutorily required Workers' Compensation Insurance, Employers’ Liability and NY State Disability Insurance for all employees in accordance with the requirements of the laws of New York. 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 \$1,000,000 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:**

- Document review
- Cost estimates preparation

- Report regularly, both orally and in writing, to the District on progress, budgets, and schedule
- Provide recommendations on relative feasibility of construction methods, materials, labor, phasing, temporary construction, time requirements for procurements and cost evaluation of alternate materials and systems
- Master scheduling
- Review the scheduling of project milestones and documentation with the District to ensure its timely delivery within budget, schedule and with minimum changes
- Value engineering
- Construction logistics planning
- Phased construction planning
- Manage the procurement process
- Evaluate completeness and responsiveness of bids received

#### CONSTRUCTION PHASE:

- Provide full-time field coordination
- Manage all construction contractors in the field
- Provide all necessary personnel and expertise required for the administration of contracts, negotiation of change orders and resolution of disputes and delays
- Cost estimating
- Construction scheduling
- Manage shop drawing and submittal process
- Attend/conduct, when necessary, all weekly and specially scheduled job meetings involving the project team; keep and distribute accurate minutes of meetings
- Assist the District with the testing services and other services retained for the Project
- 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 completion and handover process, and review record drawings, warranties, guarantees, etc., for acceptability
- Review all monthly requisition and payment processes and keep accounts
- Establish, maintain and utilize a cost control system for all construction
- Review requests for payment from contractors and suppliers against previously established milestones and schedules and work completed
- Continue progress evaluation, determine effects on the project schedule and make recommendation to adjust the work as required to maintain the accepted schedule
- Prepare monthly status reports to the District
- Prepare and maintain a current master record copy of drawings showing all changes to the contract drawings.
- Review, and assist with the enforcement of, the safety programs of the trade contractors
- Track and review permits and approvals
- Minimize disruptions to school activities



- Recommend to the District when inspections to determine substantial completion and final completions and punch-lists should be made, conduct such inspection(s) with the project team and others, as required, and insure that all punch-list items are corrected.
- Coordinate the District's occupancy requirements
- Coordinate all close out documentation

**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 management of construction projects of K-12 educational facilities in multi-building school districts.
- Knowledge of and experience with N.Y.S. Education Department procedures regarding the management of construction projects and other state and federal laws affecting the operations of public school districts.
- Extent of services offered, and depth and extent of overall resources that can be put to use by the District for this project.

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

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

**EXHIBIT A**

**AIA Document C132™–2009, Standard Form of Agreement Between Owner  
and Construction Manager as Adviser (the “Contract”)**

[Attached]



# AIA<sup>®</sup> Document C132<sup>™</sup> – 2009

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

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

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

Tully Central School District  
20 State Street  
Tully, NY 13159

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

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

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

The Owner and Construction Manager agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Documents A132<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 B132<sup>™</sup>–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. ^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.

## TABLE OF ARTICLES

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

### ARTICLE 1 INITIAL INFORMATION

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

*(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 the following procurement method for the Project:  
*(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)*

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

§ 1.1.6 The Owner's requirements for accelerated or fast-track 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 Construction Manager acknowledge that this Project is subject to approval by voter referendum and that, if the referendum is unsuccessful, the Owner will have no authority to go forward with the Project. The parties further agree that, if the referendum vote is unsuccessful or if the Owner does not proceed with the Project for any reason, the Owner shall have no financial obligations to the Construction Manager 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 Construction Manager's submittals to the Owner are as follows:  
*(List name, address and other information.)*

N/A

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:  
*(List name, legal status, address and other information.)*

.1 Land Surveyor:

To be determined/

.2 Geotechnical Engineer:

To be determined.

.3 Civil Engineer:

To be determined.

.4 Other:

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

To be determined.

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

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:  
*(List any specific requirements and personnel to be included in the staffing plan, if known.)*

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:

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

.2 Other consultants:

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

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

N/A

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

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

Init.

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User Notes:

(827291457)

**§ 2.2** The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care, the orderly progress of the Project, and the interests of the Owner, as made known to the Construction Manager. The Construction Manager shall visit the construction site(s) and familiarize itself with the requirements of the Project. The Construction Manager shall provide professional construction management services on the Project. The Construction Manager acknowledges that the Owner is relying on the Construction Manager's skill and care in connection with its services on the Project. The Construction Manager has represented, and the Owner agrees, that proper construction management services require a high degree of professional skill and experience to manage a school construction project of this size and type. The Construction Manager acknowledges that it will act as the Owner's agent, and in the Owner's best interest. The Construction Manager represents that it is knowledgeable in public school construction and shall furnish the Construction Manager's reasonable skill and judgment and agrees to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and construction management services and use its best efforts to have the Project completed in an expeditious and economical manner consistent with the interests of the Owner. The Construction Manager shall exercise reasonable care and skill to comply with, and to see that all Contractors comply with, all applicable federal and state laws as well as rules, regulations and specifications adopted by the New York State Education Department and any other agency with authority over the construction or renovation of public school facilities in New York State.

**§ 2.3** The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified. The Construction Manager shall not be responsible for actions taken by the Architect.

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

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

**§ 2.4** The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager's representative has primary responsibility for overseeing all aspects of the Construction Manager's services under this Agreement. The Construction Manager shall not remove or replace its representative or other personnel assigned to the Project without prior written consent of the Owner other than removal or replacement arising under circumstances beyond the Construction Manager's control.

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

**§ 2.6** The Construction Manager shall maintain the following insurance for the duration of this Agreement. All required policies shall be written with carriers who maintain an A.M. Best's rating and financial size of at least A- XII and shall be licensed (for insurance companies domiciled in New York), admitted (for insurance companies not domiciled in New York), and authorized to do business in the State of New York by the New York State Department of Financial Services. The Commercial General Liability, Automobile Liability and Excess Liability insurance policies shall be endorsed with a 30-day cancellation notice to be sent to the Owner. The Commercial General Liability, Umbrella Liability and Automobile Liability insurance policies shall name the Owner (including its Board of Education, employees, officers, board members, administrators and volunteers) 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 Construction Manager's Services. All policies required by this Section shall include waiver of subrogation endorsements in favor of the Owner. All required endorsements, such as Additional Insured, Waiver of Subrogation, and Notice of Cancellation, shall be attached to the certificate of insurance. The



Construction Manager acknowledges that the failure to obtain and maintain such insurance constitutes a material breach of this Agreement.

**§ 2.6.1** Occurrence-based Commercial General Liability coverage to include bodily injury, personal injury and property damage applicable to or arising from, in whole or in part, the Construction Manager's operations and contractual liability, all with a per-project aggregate endorsement:

Each Occurrence	\$1,000,000
Damage to Rented Premises	\$300,000 each occurrence
Medical Expenses	\$5,000 any one person
Personal Injury & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products and Completed Operations	\$2,000,000

The Commercial General Liability insurance policy shall be on a comprehensive basis including: Premises Operations without exclusion of X, C and U coverage; Products and Completed Operation; Personal Injury Liability including advertising liability; Contractual; Broad Form Property Damage including Completed Operations. Products and Completed Operations coverage must be maintained for three (3) years after final payment. There shall be no exclusions relating to NYS Labor Law or municipal operations. The Commercial General Liability policy shall utilized Additional Insured form CG 2010 and CG 2037, or their equivalent, and shall attach endorsements to the certificate of insurance.

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

**§ 2.6.3** The Construction Manager shall provide umbrella or excess liability insurance on a follow form basis over the Commercial General Liability and Automobile Liability insurance policies with limits not less than \$5,000,000 each occurrence and \$5,000,000 in the aggregate.

**§ 2.6.4** Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than \$1,000,000.

**§ 2.6.5** Professional Liability insurance covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than \$1,000,000 per claim and in the aggregate.

**§ 2.6.6** The Construction Manager 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 Commercial General Liability, Automobile Liability, umbrella or excess policies.

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

#### **§ 3.1 Definition**

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 or otherwise defined in this Agreement as Basic Services, and include usual and customary construction coordination and scheduling, constructability review, cost estimating, allocation of construction activities among the Multiple Prime Contractors, cost accounting, and Project closeout services.

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

#### **§ 3.2 Preconstruction Phase**

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

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

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

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

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

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action. The Construction Manager acknowledges that the Owner is entitled to rely upon the accuracy of the Construction Manager's estimates of the Cost of the Work for planning and estimating purposes.

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

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

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

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting

Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make written recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

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

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

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

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

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

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

### § 3.3 Construction Phase Administration of the Construction Contract

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

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

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified. If the Owner modifies AIA Document A232–2009 for the Bidding Documents, those modifications will be reviewed by the Construction Manager, who shall advise the Owner if any such modifications expand or otherwise affect any services under this Agreement, and whether as a result the Construction Manager proposes any resulting revisions to this Agreement. Absent such advice, the Construction Manager waives any claim that modifications to AIA Document A232™–2009 in the Bidding Documents have any effect on its services under this Agreement.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect. The Construction Manager shall then hold a meeting with all Prime Contractors impacted by the construction milestone(s) not being met and shall coordinate the various work activities to have the Prime Contractors back on track to meet the milestones set forth in the construction schedules and the Project schedule.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors. The Construction Manager shall also attend meetings of the Owner's Board of Education as requested by the Owner's Superintendent of Schools.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled. The Construction Manager shall advise Owner regarding the performance by each of the Contractors. Disputes with a Contractor relating to the execution or progress of the Work or the interpretation of the requirements of the Contract Documents (except interpretations of the drawings and specifications which shall be referred to the Architect) shall be referred to the Construction Manager who may make such recommendations to the Owner as Construction Manager may deem necessary for the proper execution and timely progress of the Project. The Owner, at its discretion, shall take whatever action it deems necessary.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.



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

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. The Construction Manager shall establish accounting procedures that coincide with the procedures used by the Owner. The Construction Manager shall also assist the Owner, upon request, with the development and completion of any and all reports required by the State Education Department with respect to the Project.

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

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

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

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

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, 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.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall obtain copies of the Contractors' safety programs, shall review such programs periodically during the

construction meetings, and shall immediately bring any observed safety concerns, deficiencies to the attention of the Contractor and Owner by written communication. If the Construction Manager observes any unsafe practices by a Contractor or those for whom the Contractor is responsible, the Construction Manager shall immediately advise the Contractor of the practice the Construction Manager believes to be unsafe and, if not corrected by the Contractor, promptly notify the Owner for Owner action.

**§ 3.3.14** The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, exercise its best efforts consistent with the professional standard of care to guard the Owner against defects and deficiencies in the Work, and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager, in consultation with the Owner and Architect, shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

**§ 3.3.15** The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. If, however, the Construction Manager observes any safety program or action at the site as being improper or contrary to applicable laws and rules, the Construction Manager will immediately advise the Owner of the situation in writing, with notice to the responsible Contractor to take necessary corrective action, and shall thereafter notify the Owner if corrective action has not been taken. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's breach of this Agreement and its negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

**§ 3.3.17** The Construction Manager shall review and provide comments on requests for changes and proposed change orders, and assist the Owner in negotiating change orders, and, if they are accepted by the Owner, prepare change orders and construction change directives that incorporate the Architect's modifications to the Construction Documents. After change orders or construction change directives are prepared and signed by the Architect, the Construction Manager shall submit same to Owner for approval and execution.

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

**§ 3.3.19** Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect within five (5) days of receipt thereof those that the Construction Manager recommends for approval. The Construction

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Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect. The Contractors shall not commence any Work relating to the submittals unless the submittal has been approved by the Architect.

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

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

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

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

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

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

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

None.

**§ 3.3.21** Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

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

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

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

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate and monitor the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

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

§ 3.3.27 The Construction Manager shall secure and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

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

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services, unless so identified in this Agreement as Basic Services, but may be required for the Project. Both Contingent and Optional Additional Services shall be compensated only with the prior written approval of the Owner, which shall include the amount of or method of determining the compensation for such Additional Services. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

*(Designate the Additional Services the Construction Manager 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.)*



Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings	Not Provided	
§ 4.1.2 Architectural interior design (B252™-2007)	Not Provided	
§ 4.1.3 Tenant-related services	Not Provided	
§ 4.1.4 Commissioning (B211™-2007)	Not Provided	
§ 4.1.5 LEED® certification (B214™-2012)	Not Provided	
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, 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 this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6, unless the same was caused by the failure of the Construction Manager to perform its obligations under this Agreement;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Intentionally omitted;
- .4 Intentionally omitted;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Assistance to the Initial Decision Maker, if other than the Architect; or
- .8 Service as the Initial Decision Maker.

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

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker, unless the same was caused by the failure of the Construction Manager to perform its obligations under this Agreement.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 120 days after the date of Substantial Completion of the Work, through no fault of the Construction Manager.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

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*(Paragraph deleted)*

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

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall with the assistance of the Architect and Construction Manager provide information in a timely manner regarding requirements for and limitations on the Project. Notwithstanding the foregoing, the Construction Manager acknowledges that it is retained to assist the Owner in developing the final program, proper requirements, objectives, and schedule, as part of its Basic Services.

**§ 5.2** The Owner shall establish 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. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

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

**§ 5.4** The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

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

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

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

**§ 5.8** The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager, in writing and in advance, to furnish them as an Additional Service, when the Construction Manager 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 obtain and furnish tests, inspections and reports required by law or the Contract Documents when so notified by the Construction Manager or Architect as appropriate, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services. The Owner's failure or omission to so notify shall not relieve the Construction Manager of its duties under this Agreement. The Owner shall have no duty of observation, inspection, or investigation.

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

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

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

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager 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 furniture, fixtures and equipment, the costs of the land, rights-of-way, financing, legal fees, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

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

§ 6.2 In entering this Agreement, the Construction Manager acknowledges that a budget has been established by the owner for the Cost of Work for the Project and that this budget is of cardinal importance. The Construction Manager shall consult with the Architect to determine what materials, equipment, component systems, and types of construction will be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternates in the Contract Documents in accordance with the Owner's budget. In the event the Owner's Cost of Work budget is exceeded at any time by the estimate of the Cost of Work, the Construction Manager, as part of its Basic Services, shall recommend and (to the extent that such modifications are accepted by the Owner) implement such modifications as are necessary to eliminate such excess in order to bring estimated costs within the Owner's Cost of Work budget. In the event the Construction Documents are completed and the actual bids for construction obtained by the Owner result in costs exceeding the latest established estimate of the Cost of Work, the Owner may approve the increased costs or cooperate with the Architect and Construction Manager

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in revising the scope of the Project as required to reduce the Cost of Work. Services of the Construction Manager for such revisions are part of Basic Services.

**§ 6.3** Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager. Notwithstanding the foregoing, the Owner is entitled to rely on the estimates of the Cost of the Work prepared by the Construction Manager and nothing in this section or elsewhere in the Contract Documents limits the Construction Manager's obligations under this Agreement, including without limitation those under Sections 2.2.1, 3.2.4, 3.2.7, 3.2.17 and 6.2.

*(Paragraphs deleted)*

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The restrictions, limitations, and licenses set forth in this Section apply as between the Architect and the Construction Manager, but not necessarily the Owner, whose rights and obligations with respect to the specified matters are set forth exclusively in the written agreement between the Owner and the Architect. The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractors is described. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Construction Manager's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Project. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of the Construction Manager's services under this Agreement. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in the Supreme Court for the County of Onondaga. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by the laws of the State of New York.

**§ 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 Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** Notwithstanding the limits of any insurance provided or maintained by the Construction Manager, and to the fullest extent allowed by law, the Construction Manager agrees for itself, and to cause its subcontractors, to indemnify, defend and hold harmless the Owner and its respective agents, officers, employees, board members or directors from and against any and all claims of third parties resulting in liabilities, losses, obligations, fines, liens, penalties, actions, judgments, damages, costs (including, without limitation, reasonable attorneys' fees and expenses incurred in

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connection therewith and in the enforcement of this indemnification), charges, expenses and demands of whatever kind in connection with and/or arising from or out of the following: (i) any negligent, willful or wrongful act, or negligent errors or omissions, resulting in bodily injury (including death), personal injury or property damage by the Construction Manager, the Construction Manager's subcontractors, their respective officers, employees, servants, agents, suppliers, invitees, successors and assigns; (ii) any breach of this Agreement; or (iii) any statutorily imposed liability for injury to employees or failure to comply with any laws or regulations affecting the Construction Manager's services. The Construction Manager's duties and obligations pursuant to this paragraph shall survive the termination or expiration of this Agreement and shall not be limited by any provision herein requiring the Construction Manager to maintain specific insurance coverages.

*(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 the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

*(Check the appropriate box. If the Owner and Construction Manager 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 Construction Manager 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 Construction Manager in accordance with this Agreement, except for matters specifically relating to the dispute.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner persistently fails to make payments to the Construction Manager in accordance with this Agreement, except to the extent that non-payment is due to the Construction Manager's material breach of this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to terminate or suspend services, the Construction Manager shall give fourteen (14) days' written notice and opportunity to cure to the Owner before terminating or suspending services. Unless payment in full of undisputed amounts is made by the Owner within fourteen (14) days following the Owner's receipt of such notice, the termination or suspension will take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to

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suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall subject to negotiations by the parties.

§ 9.2 If the Owner suspends the Project for thirty (30) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall 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 Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Subject to the conditions for the Architect's termination due to non-payment under Section 9.1, either party may terminate this Agreement upon not less than seven (7) 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 without prejudice to the party receiving such notice to attempt cure of the default, acceptance of such cure to not be unreasonably withheld.

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

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, provided that the Construction Manager delivers all existing Project records held in its files or otherwise to the Owner in a useful and organized manner. There will be no termination expenses paid to the Construction Manager in any case.

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

*(Paragraphs deleted)*

## **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, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

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

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

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

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

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

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

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

§ 10.11 This Agreement, including the exhibits specifically identified herein, constitutes the entire agreement between the parties and incorporates all prior understandings in connection with the subject matter hereof. This Agreement may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which such change, waiver, discharge or termination is sought to be enforced.

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

§ 10.13 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.

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

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

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

and information pertaining to unresolved questions and matters that have been brought to the Construction Manager's attention.

## ARTICLE 11 COMPENSATION

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

§ 11.1.1 For Preconstruction Phase Services in Section 3.2 and Construction Phase Services in Section 3.3:  
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

Stipulated sum of \$ \_\_\_\_\_.

(Paragraphs deleted)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

N/A

§ 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 Construction Manager as follows:

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

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

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

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. Any increase in hourly rates shall be commercially reasonable and mutually agreed to by the Owner and the Construction Manager.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit B attached hereto and incorporated herein by reference.

(Table deleted)

### § 11.6 Compensation for Reimbursable Expenses

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

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

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

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**§ 11.7 Payments to the Construction Manager**

**§ 11.7.1** 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.

**§ 11.7.2** Unless otherwise agreed, 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 Construction Manager’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.

**§ 11.7.3** If the Construction Manager is in default under the terms of this Agreement or otherwise fails to substantially perform pursuant to the Agreement, the Owner shall have the right to withhold payments due or to become due to the Construction Manager in an amount commensurate with any loss or damage which may result to the Owner from the Construction Manager’s conduct or omission.

**§ 11.7.4** Records of Reimbursable Expenses shall be attached to the Construction Manager’s monthly invoices. Records of the Construction Manager’s expenses and hours pertaining to this Project shall be kept in accordance with generally accepted accounting standards for construction managers, which standards shall be consistently applied. Said records shall be available to the Owner or its authorized representative for inspection and copying during regular hours for three years after the date the Owner accepts the Project.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

N/A

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .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)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

---

*(Printed name and title)*

---

*(Printed name and title)*



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# **Additions and Deletions Report for** **AIA® Document C132™ – 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 12:50:54 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

...

Construction Management 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.

## **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

...

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

...

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

...

The Owner and Construction Manager acknowledge that this Project is subject to approval by voter referendum and that, if the referendum is unsuccessful, the Owner will have no authority to go forward with the Project. The parties further agree that, if the referendum vote is unsuccessful or if the Owner does not proceed with the Project for any reason, the Owner shall have no financial obligations to the Construction Manager 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

...

To be determined/

PAGE 4

To be determined.

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To be determined.

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To be determined.

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N/A

PAGE 5

**§ 2.2** The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and ~~care and the orderly progress of the Project.~~ care, the orderly progress of the Project, and the interests of the Owner, as made known to the Construction Manager. The Construction Manager shall visit the construction site(s) and familiarize itself with the requirements of the Project. The Construction Manager shall provide professional construction management services on the Project. The Construction Manager acknowledges that the Owner is relying on the Construction Manager's skill and care in connection with its services on the Project. The Construction Manager has represented, and the Owner agrees, that proper construction management services require a high degree of professional skill and experience to manage a school construction project of this size and type. The Construction Manager acknowledges that it will act as the Owner's agent, and in the Owner's best interest. The Construction Manager represents that it is knowledgeable in public school construction and shall furnish the Construction Manager's reasonable skill and judgment and agrees to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and construction management services and use its best efforts to have the Project completed in an expeditious and economical manner consistent with the interests of the Owner. The Construction Manager shall exercise reasonable care and skill to comply with, and to see that all Contractors comply with, all applicable federal and state laws as well as rules, regulations and specifications adopted by the New York State Education Department and any other agency with authority over the construction or renovation of public school facilities in New York State.

**§ 2.3** The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser ~~Edition.~~ Edition, as modified. The Construction Manager shall not be responsible for actions taken by the Architect.

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

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

**§ 2.4** The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager's representative has primary responsibility for



overseeing all aspects of the Construction Manager's services under this Agreement. The Construction Manager shall not remove or replace its representative or other personnel assigned to the Project without prior written consent of the Owner other than removal or replacement arising under circumstances beyond the Construction Manager's control.

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

**§ 2.6** The Construction Manager 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 Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~ All required policies shall be written with carriers who maintain an A.M. Best's rating and financial size of at least A- XII and shall be licensed (for insurance companies domiciled in New York), admitted (for insurance companies not domiciled in New York), and authorized to do business in the State of New York by the New York State Department of Financial Services. The Commercial General Liability, Automobile Liability and Excess Liability insurance policies shall be endorsed with a 30-day cancellation notice to be sent to the Owner. The Commercial General Liability, Umbrella Liability and Automobile Liability insurance policies shall name the Owner (including its Board of Education, employees, officers, board members, administrators and volunteers) 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 Construction Manager's Services. All policies required by this Section shall include waiver of subrogation endorsements in favor of the Owner. All required endorsements, such as Additional Insured, Waiver of Subrogation, and Notice of Cancellation, shall be attached to the certificate of insurance. The Construction Manager acknowledges that the failure to obtain and maintain such insurance constitutes a material breach of this Agreement.

**§ 2.6.1** ~~Comprehensive General Liability with policy limits of not less than (\$ ) for each occurrence and in the aggregate for bodily injury and property damage. Occurrence-based Commercial General Liability coverage to include bodily injury, personal injury and property damage applicable to or arising from, in whole or in part, the Construction Manager's operations and contractual liability, all with a per-project aggregate endorsement:~~

<u>Each Occurrence</u>	<u>\$1,000,000</u>
<u>Damage to Rented Premises</u>	<u>\$300,000 each occurrence</u>
<u>Medical Expenses</u>	<u>\$5,000 any one person</u>
<u>Personal Injury &amp; Advertising Injury</u>	<u>\$1,000,000</u>
<u>General Aggregate</u>	<u>\$2,000,000</u>
<u>Products and Completed Operations</u>	<u>\$2,000,000</u>

The Commercial General Liability insurance policy shall be on a comprehensive basis including: Premises Operations without exclusion of X, C and U coverage; Products and Completed Operation; Personal Injury Liability including advertising liability; Contractual; Broad Form Property Damage including Completed Operations. Products and Completed Operations coverage must be maintained for three (3) years after final payment. There shall be no exclusions relating to NYS Labor Law or municipal operations. The Commercial General Liability policy shall utilized Additional Insured form CG 2010 and CG 2037, or their equivalent, and shall attach endorsements to the certificate of insurance.

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

**§ 2.6.3** ~~The Construction Manager 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 policies.~~ shall provide umbrella or excess liability insurance on a follow form basis over the Commercial General Liability and Automobile Liability insurance policies with limits not less than \$5,000,000 each occurrence and \$5,000,000 in the aggregate.

§ 2.6.4 Workers' Compensation at statutory limits and ~~Employers~~ Employers' Liability with a policy limit of not less than ~~(\$—)~~ \$1,000,000.

§ 2.6.5 Professional Liability insurance covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than ~~(\$—)~~ \$1,000,000 per claim and in the aggregate.

§ 2.6.6 The Construction Manager 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 Commercial~~ General Liability, Automobile Liability, umbrella or excess policies.

**PAGE 6**

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 or otherwise defined in this Agreement as Basic Services, and include usual and customary construction coordination and scheduling, constructability review, cost estimating, ~~and allocation of construction activities among the Multiple Prime Contractors.~~ Contractors, cost accounting, and Project closeout services.

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

**PAGE 7**

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

...

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

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action. The Construction Manager acknowledges that the Owner is entitled to rely upon the accuracy of the Construction Manager's estimates of the Cost of the Work for planning and estimating purposes.

...

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

**PAGE 8**

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

**PAGE 9**

**§ 3.3.3** The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–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 Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend~~Edition, as modified. If the Owner modifies AIA Document A232–2009 for the Bidding Documents, those modifications will be reviewed by the Construction Manager, who shall advise the Owner if any such modifications expand or otherwise affect any services under this Agreement, and whether as a result the Construction Manager proposes any resulting revisions to this Agreement. Absent such advice, the Construction Manager waives any claim that modifications to AIA Document A232™–2009 in the Bidding Documents have any effect on its services under this Agreement.

...

**§ 3.3.5** Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect. The Construction Manager shall then hold a meeting with all Prime Contractors impacted by the construction milestone(s) not being met and shall coordinate the various work activities to have the Prime Contractors back on track to meet the milestones set forth in the construction schedules and the Project schedule.

**§ 3.3.6** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors. The Construction Manager shall also attend meetings of the Owner's Board of Education as requested by the Owner's Superintendent of Schools.

...

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

**PAGE 10**

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

**§ 3.3.12** The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. The Construction Manager shall establish accounting procedures that coincide with the procedures used by

the Owner. The Construction Manager shall also assist the Owner, upon request, with the development and completion of any and all reports required by the State Education Department with respect to the Project.

...

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

...

**§ 3.3.13** The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall obtain copies of the Contractors' safety programs, shall review such programs periodically during the construction meetings, and shall immediately bring any observed safety concerns, deficiencies to the attention of the Contractor and Owner by written communication. If the Construction Manager observes any unsafe practices by a Contractor or those for whom the Contractor is responsible, the Construction Manager shall immediately advise the Contractor of the practice the Construction Manager believes to be unsafe and, if not corrected by the Contractor, promptly notify the Owner for Owner action.

**§ 3.3.14** The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents. Documents, exercise its best efforts consistent with the professional standard of care to guard the Owner against defects and deficiencies in the Work, and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager, in consultation with the Owner and Architect, shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

**§ 3.3.15** The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. If, however, the Construction Manager observes any safety program or action at the site as being improper or contrary to applicable laws and rules, the Construction Manager will immediately advise the Owner of the situation in writing, with notice to the responsible Contractor to take necessary corrective action, and shall thereafter notify the Owner if corrective action has not been taken. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements



of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's breach of this Agreement and its negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

**§ 3.3.17** The Construction Manager shall review ~~requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives and provide comments on requests for changes and proposed change orders, and assist the Owner in negotiating change orders, and, if they are accepted by the Owner, prepare change orders and construction change directives that incorporate the Architect's modifications to the Contract Documents.~~ Construction Documents. After change orders or construction change directives are prepared and signed by the Architect, the Construction Manager shall submit same to Owner for approval and execution.

**§ 3.3.18** The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of ~~Claims, subject to Section 4.3.1.7:Claims.~~

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

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

PAGE 12

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

...

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

...

None.

PAGE 13

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate and monitor the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

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

§ 3.3.27 The Construction Manager shall secure and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written ~~consent of the Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors.~~ Consent shall not be unreasonably withheld. amendment to this Agreement signed by the Owner and the Construction Manager.

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

...

§ 4.1 Additional Services listed below are not included in Basic ~~Services~~-Services, unless so identified in this Agreement as Basic Services, but may be required for the Project. Both Contingent and Optional Additional Services shall be compensated only with the prior written approval of the Owner, which shall include the amount of or method of determining the compensation for such Additional Services. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

**PAGE 2**

§ 4.1.1 Measured drawings	<u>Not Provided</u>	
§ 4.1.2 Architectural interior design (B252 <sup>TM</sup> -2007)	<u>Not Provided</u>	
§ 4.1.3 Tenant-related services	<u>Not Provided</u>	
§ 4.1.4 Commissioning (B211 <sup>TM</sup> -2007)	<u>Not Provided</u>	
§ 4.1.5 LEED <sup>®</sup> certification (B214 <sup>TM</sup> -2012)	<u>Not Provided</u>	
§ 4.1.6 Furniture, furnishings, and equipment design (B253 <sup>TM</sup> -2007)	<u>Not Provided</u>	

...

N/A

...

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6; 1.1.6, unless the same was caused by the failure of the Construction Manager to perform its obligations under this Agreement;

...

.3 ~~Preparation of documentation for alternate bid or proposal requests proposed by the Owner;~~  
Intentionally omitted;

.4 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~Intentionally omitted;

...

.1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision ~~Maker.~~Maker, unless the same was caused by the failure of the Construction Manager to perform its obligations under this Agreement.

.2 To the extent the Construction Manager'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.~~Work, through no fault of the Construction Manager.

...

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

**§ 5.1** ~~Unless otherwise provided for under this Agreement, the Owner shall with the assistance of the Architect and Construction Manager provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.~~Project. Notwithstanding the foregoing, the Construction Manager acknowledges that it is retained to assist the Owner in developing the final program, proper requirements, objectives, and schedule, as part of its Basic Services.

...

**§ 5.4** ~~The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.~~Edition, as modified. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

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



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

...

**§ 5.8** The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction ~~Manager~~ Manager, in writing and in advance, to furnish them as an Additional Service, when the Construction Manager 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 obtain and furnish tests, inspections and reports required by law or the Contract ~~Documents,~~ Documents when so notified by the Construction Manager or Architect as appropriate, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**PAGE 3**

**§ 5.11** The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services. The Owner's failure or omission to so notify shall not relieve the Construction Manager of its duties under this Agreement. The Owner shall have no duty of observation, inspection, or investigation.

...

**§ 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 furniture, fixtures and equipment,~~ the costs of the land, rights-of-way, financing, legal fees, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

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

**§ 6.2** ~~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 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.~~ In entering this Agreement, the Construction Manager

acknowledges that a budget has been established by the owner for the Cost of Work for the Project and that this budget is of cardinal importance. The Construction Manager shall consult with the Architect to determine what materials, equipment, component systems, and types of construction will be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternates in the Contract Documents in accordance with the Owner's budget. In the event the Owner's Cost of Work budget is exceeded at any time by the estimate of the Cost of Work, the Construction Manager, as part of its Basic Services, shall recommend and (to the extent that such modifications are accepted by the Owner) implement such modifications as are necessary to eliminate such excess in order to bring estimated costs within the Owner's Cost of Work budget. In the event the Construction Documents are completed and the actual bids for construction obtained by the Owner result in costs exceeding the latest established estimate of the Cost of Work, the Owner may approve the increased costs or cooperate with the Architect and Construction Manager in revising the scope of the Project as required to reduce the Cost of Work. Services of the Construction Manager for such revisions are part of Basic Services.

§ 6.3 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. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager. Notwithstanding the foregoing, the Owner is entitled to rely on the estimates of the Cost of the Work prepared by the Construction Manager and nothing in this section or elsewhere in the Contract Documents limits the Construction Manager's obligations under this Agreement, including without limitation those under Sections 2.2.1, 3.2.4, 3.2.7, 3.2.17 and 6.2.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 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 Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 — implement any other mutually acceptable alternative.

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager 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. § 7.1 The restrictions, limitations, and licenses set forth in this Section apply as between the Architect and the Construction Manager, but not necessarily the Owner, whose rights and obligations with respect to the specified matters are set forth exclusively in the written agreement between the Owner and the Architect. The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractors is described. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Construction Manager's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Project. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction

Manager on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner and Architect. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of the Construction Manager's services under this Agreement. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

**PAGE 4**

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with 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 Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1, the Supreme Court for the County of Onondaga. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by the laws of the State of New York.

§ 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 Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Construction Manager 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 Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. The Construction Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage. Notwithstanding the limits of any insurance provided or maintained by the Construction Manager, and to the fullest extent allowed by law, the Construction Manager agrees for itself, and to cause its subcontractors, to indemnify, defend and hold harmless the Owner and its respective agents, officers, employees, board members or directors from and against any and all claims of third parties resulting in liabilities, losses, obligations, fines, liens, penalties, actions, judgments, damages, costs (including, without limitation, reasonable attorneys' fees and expenses incurred in connection therewith and in the enforcement of this indemnification), charges, expenses and demands of whatever kind in connection with and/or arising from or out of the following: (i) any negligent, willful or wrongful act, or negligent errors or omissions, resulting in bodily injury (including death), personal injury or property damage by the Construction Manager, the Construction Manager's subcontractors, their respective officers, employees, servants, agents, suppliers, invitees, successors and assigns; (ii) any breach of this Agreement; or (iii) any statutorily imposed liability for injury to employees or failure to comply with any laws or regulations affecting the Construction Manager's services. The Construction Manager's duties and obligations pursuant to this paragraph shall survive the termination or expiration of this Agreement and shall not be limited by any provision herein requiring the Construction Manager to maintain specific insurance coverages.

§ 8.1.4 The Construction Manager 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 Construction Manager's services, the Construction Manager 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 Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be 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 Agreement, 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~~

PAGE 5

[  ] 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, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. 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 questions 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 law or fact 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 Construction Manager 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 Construction Manager under this Agreement.~~

~~§ 8.2.5 Unless otherwise agreed in writing, the Construction Manager 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 Construction Manager in accordance with this Agreement, except for matters specifically relating to the dispute.~~

~~§ 9.1 If the Owner persistently fails to make payments to the Construction Manager in accordance with this Agreement, except to the extent that non-payment is due to the Construction Manager's material breach of this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to terminate or suspend services, the Construction Manager shall give seven-fourteen (14) days' written notice and opportunity to cure to the Owner before terminating or suspending services. Unless payment in full of undisputed amounts is made by the Owner within fourteen (14) days following the Owner's receipt of such notice, the termination or suspension will take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted, subject to negotiations by the parties.~~

~~§ 9.2 If the Owner suspends the Project, Project for thirty (30) consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted, 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 Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.~~

~~§ 9.4 ~~Either~~ Subject to the conditions for the Architect's termination due to non-payment under Section 9.1, either party may terminate this Agreement upon not less than seven (7) 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, the termination without prejudice to the party receiving such notice to attempt cure of the default, acceptance of such cure to not be unreasonably withheld.~~

**PAGE 6**

~~§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager 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, due, provided that the Construction Manager delivers all existing Project records held in its files or otherwise to the Owner in a useful and organized manner. There will be no termination expenses paid to the Construction Manager in any case.~~

~~§ 9.7 Termination Expenses are in addition to compensation for the Construction Manager's services and include expenses directly attributable to termination for which the Construction Manager is not otherwise compensated, plus an amount for the Construction Manager's anticipated profit on the value of the services not performed by the Construction Manager, as set forth below. If, after notice of termination for cause, it is determined for any reason that Construction Manager was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued without cause by the Owner.~~

~~§ 9.7.1 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services performed, costs incurred by reason of such termination and reasonable overhead and profit on Preconstruction services not completed during the Preconstruction Phase.~~

~~§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such termination, along with reasonable overhead and profit on services not completed during the Construction Phase.~~

~~§ 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, as modified, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.~~

**PAGE 7**

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

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

§ 10.11 This Agreement, including the exhibits specifically identified herein, constitutes the entire agreement between the parties and incorporates all prior understandings in connection with the subject matter hereof. This Agreement may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which such change, waiver, discharge or termination is sought to be enforced.

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

§ 10.13 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.

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

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

§ 10.16 The Construction Manager agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. The Construction Manager agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized representatives of the Owner, and further agrees to provide necessary staff support in the performance of such audit. The Construction Manager agrees to maintain for a period of three (3) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the



performance of this Agreement; however, this period shall be extended beyond three (3) years for any and all records and information pertaining to unresolved questions and matters that have been brought to the Construction Manager's attention.

PAGE 8

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:3.2 and Construction Phase Services in Section 3.3:

...

Stipulated sum of \$ \_\_\_\_\_.

...

§ 11.1.2 For Construction Phase Services in Section 3.3:

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

...

N/A

...

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

§ 11.4 Compensation for Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus \_\_\_\_\_ percent (\_\_\_\_%), or as otherwise stated below:

Manager.

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

...

See 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;

...

.5 ~~Postage, handling and delivery;~~ Overnight or other expedited delivery charges;

...

.8 ~~Construction Manager'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 Construction Manager'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.~~

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants ~~plus percent (—%) of the expenses incurred; consultants.~~

PAGE 9

§ 11.7.1 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.

§ 11.7.2 Unless otherwise agreed, 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 Construction Manager'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 Construction Manager; 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.

§ 11.7.3 ~~The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding. If the Construction Manager is in default under the terms of this Agreement or otherwise fails to substantially perform pursuant to the Agreement, the Owner shall have the right to withhold payments due or to become due to the Construction Manager in an amount commensurate with any loss or damage which may result to the Owner from the Construction Manager's conduct or omission.~~

§ 11.7.4 ~~Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates~~ Expenses shall be attached to the Construction Manager's monthly invoices. Records of the Construction Manager's expenses and hours pertaining to this Project shall be kept in accordance with generally accepted accounting standards for construction managers, which standards shall be consistently applied. Said records shall be available to the Owner at mutually convenient times or its authorized representative for inspection and copying during regular hours for three years after the date the Owner accepts the Project.

...

N/A

## **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 12:50:54 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 C132™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, 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)*