

DRAFT AIA® Document B132™ – 2019

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

AGREEMENT made as of the « » day of « » in the year «Two Thousand Twenty-Four»

(In words, indicate day, month, and year.)

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

«

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

«

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

«
, with scope and schedule TBD, and a budget of approximately \$,000,000»
« »

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

«

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™-2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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EXHIBIT A: PROJECT SCOPE, SCHEDULE, AND BUDGET

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 *This Agreement is based on the Initial Information set forth in this Section 1.1 and elsewhere in the Agreement and covers the Pre-Referendum Services described herein. Within sixty (60) days after voter approval of the referendum authorizing the Project contemplated by this Agreement (the referendum is anticipated for*

) the Owner and Architect will use their best efforts to reach agreement on Post-Referendum Services and fees described herein. If the voters of the Owner (School District) reject a referendum seeking authorization to proceed with the Project, the Owner shall compensate Architect for the Pre-Referendum services as set forth in Article 11.

§ 1.1.1 The Owner's program for the Project:

«See attached Exhibits»

§ 1.1.2 The Project's physical characteristics:

«See attached Exhibits»

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1 is as set forth in Exhibit A.

§ 1.1.4 The Owner's anticipated design and construction milestone dates are set forth in Exhibit A.

§ 1.1.5 The Owner intends the following procurement method for the Project:

«Competitive bidding with multiple Prime Contractors and/or procurement without competitive bidding in compliance with Owner's policies and procedure and applicable New York State law and New York State Education Department regulations, see §3.5.3»

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

«None»

§ 1.1.7 Intentionally omitted.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

«Superintendent of Schools or designee»

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

«The Construction Manager and, in some circumstances, the Owner's Board of Education»

§ 1.1.10 The Owner shall retain the following consultants and Contractors:

- .1 Construction Manager – identified on the cover page.

«TBD»

- .2 TBD

« »

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§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:

« »

« »

« »

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2 subject to Owner's prior written approval see Exhibits B-1 and B-2:

§ 1.1.12.1 Consultants retained under Basic Services, which may be changed by mutual written agreement of the Parties:

- .1 Structural Engineer:

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- .2 Mechanical Engineer:

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.3 Electrical Engineer:

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§ 1.1.12.2 Consultants retained under Supplemental Services:

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

<<None>>

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation or at the Owner's discretion terminate this Agreement without cause. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information. However, the parties agree that time is of the essence with respect to Architect's performance under this Agreement.

§ 1.3 The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202-2013, Project Building Information Modeling Protocol Form, or other agreed upon protocols, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser, as amended by the parties to that agreement. The Architect shall not be responsible for actions taken by the Construction Manager. All references to AIA Document C132-2019, Standard Form of Agreement between Owner and Construction Manager, shall mean such Standard Form of Agreement as it may be modified by the Owner and Construction Manager in writing and coordinated with the Owner-Architect Agreement. The Owner will promptly provide a copy of the Construction Manager's Agreement to the Architect, including any modifications thereto.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of Architect with respect to the Project. If at any time during the Project any such representative becomes unacceptable to the Owner (on any lawful basis), the Architect shall replace him/her with another representative who is mutually acceptable to the Owner and Architect. The members of the Architect's Design Team working on this Project (including consultants), along with their responsibilities and qualifications are set out in attached Exhibit D.

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

§ 2.6 The Architect shall maintain the following insurance for the duration of this Agreement and shall maintain Products and Completed Operations insurance coverage in effect for a period of two (2) years after Final Completion of the Work to be performed under the Contract Documents. All deductibles and premiums associated with the required insurance coverage shall be the responsibility of the Architect.

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

General Aggregate	\$2,000,000
Products Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$100,000
Medical Expense	\$10,000

§ 2.6.2 Commercial Automobile Liability Insurance covering owned and rented vehicles operated by the Architect with policy limits of not less than one million (\$1,000,000) combined single limit and aggregate for bodily injury and property damage. Including Bodily Injury and Property Damage for the operation of Any Auto (Symbol 1) used in connection with services to be completed by the Architect and all subcontractors and consultants, with the Owner named as an Additional Insured on a primary and a non-contributory basis, containing an Additional Insured Endorsement and a Waiver of Subrogation Endorsement attached, both reasonably acceptable to Owner.

§ 2.6.3 Umbrella Liability Insurance:

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

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

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

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

§ 2.6.6 At the request of the Owner, the Architect shall provide to the Owner for each of the insurance coverages required herein one original or one certified copy of the original policy of insurance, including all endorsements, plus one certificate of insurance, with a brief description of the project or service. The policies and certificates shall show the Owner as an Additional Insured on a primary and non-contributory basis on the Comprehensive General Liability, Automobile Liability, Umbrella or Excess policies. All such insurance shall be written without expense to the Owner by an insurance company authorized to provide insurance in the State of New York, shall be drawn on unmodified standard forms approved by the New York State Insurance Department by a Carrier rated A or better by Standard & Poor's or A.M. Best Rating Services or otherwise approved in writing by the Owner and shall protect the Architect, its subcontractors and consultants, and the Owner from liability for claims for personal injury, death and property damage which may arise from performance under this Agreement.

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

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

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

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

§ 2.7 The Architect acknowledges that failure to obtain the insurance coverage set out in this Agreement constitutes a material breach of contract.

§ 2.8 The Architect acknowledges that the Owner is a school district which is subject to various laws and regulations of the State of New York. The Architect represents that it is familiar with such laws and regulations as they pertain to the design, bidding and construction of the Project including, but not limited to, the requirements of Article 5-A of the General Municipal Law (sections 100 & ff., "Public Contracts"); Article 9 of the Education Law (sections 401 & ff., "School Buildings and Sites"); and Sub Chapter J, Part 155 of Title 8, Chapter II of the Codes, Rules and Regulations of the State of New York (Regulations of the Commissioner of Education, "Educational Facilities"), to the extent that they pertain to the Project. The Architect will exercise professional care and judgment to perform services in accordance with the requirements of these and other applicable laws, rules, and regulations.

§ 2.9 The Architect hereby represents to Owner that Architect is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder in compliance with the schedule for the Architect's services; that Architect has visited the site for the Project and reasonable familiarized itself with the local conditions under which the services required hereunder are to be performed and shall incorporate the observations in the performance of its services.

§ 2.10 The Architect with the assistance of the Construction Manager, shall prepare, file, apply for and secure all licenses, approvals, permits and authorizations as may be required by the State Education Department and any other governmental authority or agency having any jurisdiction over or interest in the project, all within the required time limits, or shall where appropriate ensure that responsibility for the same is incorporated in the Construction Documents as an obligation of the appropriate Contractor. The Owner and Construction Manager shall provide all information in its possession, and provide such other assistance, requested and reasonable required by the Architect to perform its obligations under this Paragraph.

§ 2.11 The Architect and the Owner agree that this Agreement shall automatically terminate without notice if the voters of the Owner (School District) reject a referendum seeking authorization to proceed with the Project and the Owner will not be liable for any expenses or fees except as specifically set out in Section 3.1 herein.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services necessary to accomplish the Owner's program and complete the Project. The Architect shall advise the Owner, at the earliest possible date, if it believes that any additional consultants are required to complete the Project. Moreover, the Architect will assist the Owner in the selection of consultants, where appropriate. The Architect's Basic Services include but are not limited to the pre-referendum phase services described in Architect's proposal dated _____, attached hereto and hereby incorporated by reference.

Pre-Referendum Services include:

All professional architectural and engineering services necessary to develop a comprehensive plan to present the items set forth in the Project, as outlined herein, to the Owner's (School District) voters in the form of a referendum. The Architect shall work cooperatively with the Owner's Construction Manager to provide pre-referendum services including identification of issues, preliminary analysis of the Project, detailed cost estimates based on area, volume, square footage or similar conceptual estimating techniques, alternative solutions, assisting the Owner in the prioritization of specific work scope items to determine what will be presented to the voters in a referendum, and attendance at board meetings and public meetings prior to the voter referendum date. The cost estimating shall take into consideration the Project schedule, including the New York State Education Department review and the timing of bidding of contracts, together with the Owner's intent to maximize state building aid for the Project. This shall also include review of the existing building conditions survey and other information from the Owner, or information already in the possession of the Architect.

Preparation of materials explaining Project Scope, Benefits, Costs, and Schedule, and review with the Owner's Board of Education prior to the referendum. An Architect's representative shall present the Project to the voters, if requested by the Owner.

Architect shall work with the Owner to assist with New York State building aid planning prior to the referendum vote.

Architect shall assist Owner with all required project filings including but not limited to: completion of a letter of intent for filing with NYSED; SEQRA and SHPO analysis, review, and approval including completion of any environmental assessment forms and coordination with the Owner's legal counsel; and define the scope of work for inclusion in the voter referendum proposition in coordination with Owner's legal counsel and bond counsel.

If the voters of the Owner (School District) reject a referendum seeking authorization to proceed with the Project, the Owner shall compensate Architect for the Pre-Referendum services as set forth in Article 11 hereof. Upon payment, this Agreement shall automatically terminate, and the Owner shall have no further liability for any services provided by the Architect.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency, in such services or information or if it will be unable to meet the agreed schedule for Architect's services.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services consistent

with Section 1.1.4 and Exhibit A for inclusion in the Project schedule prepared by the Construction Manager. The schedule shall include design phase milestone dates, anticipated dates when cost estimates or design reviews will occur, and allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except with the written approval of the Owner, be exceeded by the Architect. With the Owner's written approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. Any adjustments to the schedule shall be void and of no force and effect until such adjustments are agreed to in writing by the Owner.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

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

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall discuss with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in

developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents. The Construction Manager shall prepare a Schematic Design level estimate. The Architect and the Construction Manager shall agree to an estimate of the Cost of the Work prior to the Design Development Phase and shall report same in writing to the Owner. The Architect will present schematic plans to different levels of Owner's staff as reasonably requested by Owner.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and the completion of the cost estimate as provided in Section 3.2.6 at the conclusion of the Schematic Design Phase, the Architect shall take action as required and identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the revised Schematic Design Documents, if applicable. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate such revisions in the Design Development Phase.

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

§ 3.3 Design Development Phase Services

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

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents. It will then be determined whether there is enough information for an estimate by the Construction Manager.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.4, 6.5, and 6.6 and request the Owner's approval of the Design Development Documents. A meeting will be held between the Architect, Construction Manager and Owner to review the Construction Manager's findings. It will then be determined which items will be incorporated into the Construction Documents.

§ 3.4 Construction Documents Phase Services

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

§ 3.4.2 The Architect shall submit a complete set of Construction Documents, including all required forms and submittals, to the New York State Education Department's Office of Facilities Planning ("OFP") for review and approval. The Architect shall also furnish a copy of that submission to the Owner and Construction Manager. The

Architect will advise the Owner and Construction Manager of any necessary revisions to the Contract Documents mandated by OFP and any adjustments to the estimate of the Cost of the Work resulting from those revisions, seeing to it that the estimate does not exceed the Owner's Budget for the Cost of the Work. Should the revised estimate exceed the Owner's budget for the Cost of the Work, the Architect will develop and provide to Owner Construction Document alternatives which do not exceed that amount for review and approval by the Owner. Should this require a resubmittal of Construction Documents to OFP, Architect will be responsible for same, without additional compensation.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner and the Construction Manager in the development and preparation of: (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms and suggested legal notices and/or assistance with alternative procurement methods as set out in §3.5.3; (2) the form of agreements between the Owner and Contractors (AIA/A132-2019); and (3) the Conditions of the Contracts for Construction (General Conditions of the Contract for Construction (AIA/A232-2019 version) and Supplemental Conditions as required); (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms; and (5) any documents, certifications, or other materials required by Section 3.5.3. Upon the request of the Owner, the Owner's legal counsel shall review the proposed bidding and contract documents for legal sufficiency and the Architect shall make such modifications as the Owner's attorney deems to be in the interest of the Owner. However, notwithstanding the foregoing, the Architect's assistance and cooperation with the Construction Manager will not relieve the Construction Manager of responsibility to prepare the Invitation to Bidders, bid forms, General Conditions of the Contract for Construction and Supplemental Conditions and the form of Agreement between Owner and Contractor, which responsibility is primarily that of the Construction Manager.

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

§ 3.4.5 Upon receipt of the Construction Manager's information and completion of the Construction Manager's estimate of the Cost of the Work at the conclusion of the Construction Documents Phase, the Architect shall request the Owner's approval of the Construction Documents.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in: (1) obtaining either competitive bids in accordance with New York General Municipal Law, including without limitation the preparation of all notices and advertisements required thereby, or completion of other procurement methods as set forth in Section 3.5.3; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing Contracts for Construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents described in Section 3.4.3.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project, in one or more phases, by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and
- .4 organizing and conducting the opening of bids and subsequently documenting and distributing the bidding results, with recommendations to the Owner of the successful responsive and responsible low bidders.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders. The Architect shall also advise the Owner on the acceptability of apparent low bidders.

§ 3.5.2.4 If the lowest responsible bid, or the aggregate of the lowest responsible bids in the case of multiple prime contracts, submitted by qualified contractor(s), exceeds the limits of the Owner's budget for Cost of the Work, the Owner at its option shall:

- .1 give written approval of an increase in the Owner's budget for the Cost of the Work (and any corresponding reduction of other elements of Project Cost) to the Architect and Construction Manager;
- .2 authorize rebidding of the Project within a reasonable time;
- .3 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work; or
- .4 abandon the Project and terminate in accordance with Sections 9.5 and 9.6.

If the Project is bid in phases, then for purposes of this Section 3.5.2.4 the Owner's budget for the Cost of the Work shall mean the portion of the Cost of the Work which was established by the Owner for that part of the Project involved in such bid phase.

§3.5.2.5 If the Owner chooses to proceed under Section 3.5.2.4.3, the Architect shall make such modifications to the Construction Documents as may be necessary to bring the Contract Cost within the fixed limit, and shall perform such services with respect to approval of the State Education Department and to any rebidding processes as are required, all at no additional cost to the Owner. The Architect shall be entitled to compensation in accordance with this Agreement for all compensable services performed whether or not the Construction Phase is commenced.

§ 3.5.3 If the Owner chooses to procure any services or equipment through a method other than competitive bidding, including but not limited to New York State Contracts, Piggyback Purchasing pursuant to General Municipal Law 103(16), or Sole Source Purchasing, Architect shall assist Owner in completing such purchases including integration of work in Project design, provision of any certifications, document review, or other services reasonably requested by Owner.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition as modified, and the attached Architect-Construction Manager Coordination Matrix. If not attached hereto, the Architect agrees to work with the Construction Manager to reach mutual agreement on a Coordination Matrix and attach same as an exhibit to this Agreement and the Construction Management services agreement. If there is a conflict between this Agreement and the attached Coordination Matrix with respect to the allocation of responsibilities between the Architect and the Construction Manager, the Coordination Matrix shall be controlling. If the Owner modifies AIA Document A232-2019 after the date of this Agreement, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractors' failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for acts or omissions of the Construction Manager, or acts or omissions of the Contractors or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates 90 days after issuance of the State Education Department Certificate of Substantial Completion of the final phase, which in no event shall occur prior to issuance by the New York State Department of Education of a final Certificate of Occupancy for the Project, for each building.

§ 3.6.1.4 The Architect shall review and reconcile the Construction Schedule prepared by the Construction Manager as to constructability.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site, at a minimum, of at least once every two weeks, or more often if necessary, during the construction, or as otherwise required to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an Architect, and of other information received by the Architect, the Architect will exercise professional care and judgment in endeavoring to observe and report to the Owner defects or deficiencies in the work of any Contractor, Subcontractors, or their agents or employees, or any other person performing work on the Project. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or for the Project itself shall in no way alter the Architect's obligations or the Owner's rights under this Agreement.

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

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractors through the Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, and based on the Architect's observations and on its evaluations of the Contractor's Application for Payment, the Architect shall review and certify, or give the reasons for its refusal to certify, the application as follows:

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

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of

subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. The parties do not intend that the form or content of such Certificate shall in any way limit the obligations of the Architect or the rights of the Owner otherwise provided by this Agreement, unless specifically agreed in writing by the Owner.

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

§ 3.6.3.4 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule. The Architect and Construction Manager shall review and revise as necessary the submittal schedule in order to adhere to the approved Project Schedule and the General Conditions. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall thoroughly and timely review and take appropriate action upon, the Contractors' submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents in accordance with the Project schedule. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's review of a specific item shall not indicate approval of an assembly of which the item is a component. Should a Contractor fail to make a required 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 Architect shall notify the Owner 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractors to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy and communicate such criteria to the professional. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractors' design professionals, provided the submittals bear such professionals' seal and signature when submitted to the Architect. The Architect's review shall confirm conformance with information given and the design specifications contained in or consistent with the Contract Documents. To the extent permitted by New York State Law, the Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2.2, the Architect shall review and respond to requests for information about the Contract Documents with reasonable promptness. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents. The Architect is required to go back to the Contract Documents and update them in accordance with all Information Bulletins, Requests for Information and Change Orders.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The responsibilities associated with Change Order and Change Directive preparation and filing as between the Architect and the Construction Manager may be coordinated and determined and set out in a Coordination Matrix, if one is developed for this Project. The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager or Architect, as agreed (see the attached Coordination Matrix, if any) for the Owner's approval and execution in accordance with the Contract Documents and shall file same with the New York State Education Department as required.

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

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

§ 3.6.6 Project Completion

§ 3.6.6.1 On behalf of the Owner, the Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;
- .2 issue a Certificate of Substantial Completion, including the certificates required to be submitted to the NYSED, prepared by the Construction Manager or Architect, as agreed;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

The Architect's issuance of a final Certificate for Payment shall constitute a representation by the Architect to the Owner that based on the Architect's information, belief and professional judgment that: (1) each Contractor has submitted satisfactory evidence by way of affidavits and lien releases that all liens have been paid and that all claims of subcontractors, laborers, materialmen and suppliers of all Contractors and subcontractors and their agents have been paid in full; and (2) the Work has been completed and the quality of the Work is in accordance with the Contract Documents, in accordance with Section 3.6.3.2. Any exceptions to this representation must be set forth as such in writing signed by the Architect and by the Owner's Superintendent of Schools.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to: (1) check conformance of the Work with the requirements of the Contract Documents; and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid each of the Contractors, including the amount to be retained from the Contract Sum, if any, required to complete or correct the Work plus the amount necessary to satisfy any claims, liens, or judgments against the Contractor which have not been resolved, settled, or discharged.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractors, through the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractors under the Contract Documents.

§ 3.6.6.5 Prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager to review the facility operations and performance. When applicable, the 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 individuals or corporations of their warranty obligations.

§ 3.6.6.6 The Architect shall perform such other acts and services as may be reasonably requested by the Owner or as required by applicable law and regulations to constitute proper administration of the Project within the meaning of 8 NYCRR Chapter II, Subchapter J, Part 155, including but not limited to Part 155.2(b)(5)(i) of the Regulations of the Commissioner of Education.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES – Unless otherwise set forth herein or in an attached exhibit, TBD and approved by Owner in writing, in advance.

§ 4.1 All anticipated services not covered by the Basic Services lump-sum fee must be listed in the table below. The Architect shall not be entitled to any compensation for Supplemental Services unless agreed to in advance, in writing, by Owner. Notwithstanding anything to the contrary expressed elsewhere in this Agreement, no architectural services made necessary, in whole or in part, by the fault or omission of the Architect to perform its duties under this Agreement, shall be compensated as a Supplemental Service.

Supplemental Services – see Exhibit B-3	Responsibility <i>(Architect, Owner or Not Provided)</i>

§ 4.2 Architect's Additional Services

A written amendment to this Agreement must be signed by the Architect and the Owner prior to the commencement of any Additional Services which addresses: 1) the scope of the work to be performed; 2) the Architect's fee for same; and 3) the impact of the Additional Service(s) on the Project Schedule. Notwithstanding anything to the contrary expressed elsewhere in this Agreement, no architectural services made necessary, in whole or in part, by the fault or omission of the Architect to perform its duties under this Agreement, shall be compensated as an Additional Service.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser as modified by the parties. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement. The Owner shall furnish the services of a Construction Manager. The Construction Manager shall be responsible for creating the overall Project schedule in consultation with the Architect.

§ 5.3 The Owner shall, with the assistance of the Architect and Construction Manager, establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Construction Manager and Architect will work together and agree on the initial and all other estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify

the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.4 The Owner's representative authorized to act on the Owner's behalf with respect to the Project is set forth in §1.1.8 of this Agreement. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. It is understood that there will be some decisions that will be beyond the authority of the designated representative that require review and/or action by the Owner's Board of Education in such circumstances it is understood that making the required decision may take a longer period of time.

§ 5.5 Upon the request of the Architect, the Owner shall furnish existing 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 may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. If the surveys available from Owner are not sufficient for use by the Architect in connection with the Project, Architect shall obtain the required site survey(s) as a Supplemental Service.

§ 5.6 The Owner shall compensate the Architect (as an Additional Service) to perform geotechnical services, 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.

§ 5.7 The Architect, with the assistance of the Construction Manager, shall notify the Owner when to test and inspect. After notification, the Architect shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials as a Supplemental Service.

§ 5.8 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.

§ 5.9 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Architect's Instruments of Service.

§ 5.10 The Owner shall endeavor to facilitate communication between the Architect and the Construction Manager by participating in Project meetings. The Owner shall communicate with the Contractors through the Construction Manager. The Construction Manager will keep the Architect apprised of such communications.

§ 5.11 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractors to provide the Architect access to the Work wherever it is in preparation or progress, subject to strict compliance with the District's facility access procedures and infection control protocols.

§ 5.12 Notwithstanding anything to the contrary in this Article 5, the Owner shall be required to furnish information or services described in this Article 5 only to the extent that such information or service is both reasonably required and actually requested by Architect in order to perform Architect's services under this Agreement.

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. In addition, a mutually agreed upon allowance for contingencies (both design and construction) shall be included for market conditions at the time of bidding and for changes in the Work during construction. The Cost of the Work does not include the compensation of the Architect and Architect's consultants, compensation of Construction Manager and Construction Manager's consultants, the costs of the land, rights-of-

way, financing, or contingencies for changes in the Work (identified as such); or other costs that are the responsibility of the Owner.

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

§ 6.1.2 For purposes of this Agreement, the Project Cost shall be the total cost to the Owner of the Project, including, but not necessarily limited to, the Cost of the Work, the compensation of the Architect and the Architect's Consultants, the compensation of the Construction Manager and Construction Manager's consultants, the cost of other project representation, costs of land, rights-of-way, financing costs, legal fees, and all other costs associated with the Project. The Architect acknowledges that the Owner is bound by law to maximum project expenditure not to exceed the approved Referendum Amount. In other words, the Project Cost may be less than the Referendum Amount, but may never exceed the Referendum Amount.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and as set forth herein, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work shall be provided to the Owner in writing and shall represent the Architect's and Construction Manager's judgment as a design professional.

§ 6.3 The Owner shall require the Architect and the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services.

§ 6.3.1 The Architect shall collaborate with the Construction Manager, as a part of its Basic Service to assist with the preparation of detailed cost estimates prior to the award of Construction Contracts. If a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

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

§ 6.5 If the Construction Manager's estimate of the Cost of the Work 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, so long as the overall Project Cost does not exceed the Referendum Amount;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect, without additional compensation, shall make any required additional revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates or bids that exceed the Owner's budget for the Cost of the Work.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other documents or information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its intended use on the Project. If the Owner and Architect transmit

Instruments of Service or any documents or information in digital form, they shall agree on protocols governing the development, use, transmission, and exchange of such digital data as set out in Section 1.3.

§ 7.2 Original drawings and specifications and other documents, including those in electronic form, are Instruments of Service which, upon full payment by Owner as required by this Agreement or Owner's termination of this Agreement for cause under Section 9.4, become the property of the Owner and Architect may not use the Instruments of Service for any purpose not relating to the Project without Owner's consent. Owner shall be furnished with such electronic (in the form requested by Owner) and print reproductions of the Instruments of Service : (1) at the time of State Education Department Submission; (2) upon completion of the bid specifications; and (3) as Owner may reasonably require. Architect shall maintain rights to its proprietary information and design detail library.

§ 7.3 The Owner shall not use or authorize any other person to use the Instruments of Service on other projects involving other buildings or facilities. Any such use without the Architect's professional involvement or authorization will be at the Owner's sole risk and without liability to the Architect.

§ 7.3.1 In the event the Owner uses the Instruments of Service on other projects without retaining the authors of the Instruments of Service and without authorization from the Architect, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. In such event, the Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1.

§ 7.4 In the event the Owner chooses to complete the Work without the services of the Architect, the Owner shall be solely responsible thereafter for interpreting the Contract Documents and observing the Work of the Contractor to discover, correct or mitigate errors, inconsistencies, or omissions. If the Owner authorizes any deviations, recorded or unrecorded, from the documents prepared by the Architect, the Owner shall not bring any claim against the Architect and shall indemnify and hold the Architect, its agents and employees harmless from and against claims, losses, damages, and expenses, including but not limited to defense costs and the time of the Architect, to the extent such claim, loss, damage, or expense arises out of or results in whole or in part from such deviations.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than as provided by law.

§ 8.1.2 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement.

§ 8.2 Mediation

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

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

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Written 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 parties shall proceed to litigation with exclusive jurisdiction and venue in New York State Supreme Court for the County where the project is located. The prevailing party shall be entitled to receive its reasonable attorneys' fees and expenses recoverable under applicable law.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect through no fault of the Architect in accordance with this Agreement, then the Architect shall notify Owner of such failure, in writing, and Owner shall have 15 days to cure such failure. After 15 days, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give fifteen days' written notice and an opportunity to cure to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension.

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

§ 9.4 Either party may terminate this Agreement upon not less than fifteen 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.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. In the event the Owner terminates for convenience and without cause, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, provided that the Architect delivers all existing Project records, including Instruments of Service, held in its files or otherwise to the Owner in a useful and organized manner.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, provided that the Architect delivers all existing Project records, including Instruments of Service, held in its files or otherwise to the Owner in a useful and organized manner.

§ 9.7 Intentionally omitted.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

§ 9.9 In the event Architect fails to supply the Instruments of Service as set forth in Section 7.2, such failure shall constitute a material breach, and Owner shall be entitled to all resulting direct damages, consequential damages, and attorneys' fees.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as revised by the Owner and contained in the Contract Documents.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other.

§ 10.4 Intentionally omitted.

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

§ 10.6 As a local educational agency, Owner must comply with the Asbestos Hazard Emergency Response Act (AHERA) enacted by 15 U.S.C. §2641-2656. The Architect is responsible to review the Owner's AHERA reports and to specify in the Design Documents the location of existing asbestos. Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, however, that the Architect shall promptly advise the Owner in writing of the presence and location of any suspected hazardous materials or toxic substances of which the Architect becomes aware.

§ 10.6.1 In the event that during the course of the construction any material believed to contain asbestos is discovered, the Architect shall arrange for immediate testing of such material at the Owner's expense.

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

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. or 10.8.2. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after seven (7) days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.8.2 Architect acknowledges that Owner is subject to the disclosure requirements imposed by New York State law, including but not limited to the NYS Freedom of Information Law, and that subject to any applicable exceptions which may apply, Owner may be obligated to disclose information and produce copies of documents that are deemed "confidential" or "business proprietary" under the terms of this Agreement.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, regulations or ordinances of any federal, state, or local governments to which this Agreement is subject, or is otherwise invalid or unenforceable, then such term or provision, or part thereof, shall be deemed severed from this Agreement and the remaining term(s) and provisions(s) shall remain unaffected thereby.

§ 10.10 This Agreement, nor any obligations hereunder, may not be assigned to any other party without the express written permission of the other party. A sale of all or a majority interest in the Architect or a material change in the executive leadership of the Architect without the prior written consent of the Owner may be deemed an assignment in violation of the terms and conditions of this Agreement, at the option of the Owner.

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

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows, regardless of the number of phases or other project divisions:

TBD as set out in the Architect's proposal dated _____, attached hereto and incorporated herein by reference, subject to a written amendment of this Agreement approved by the Owner's Board of Education within Sixty (60) days after Project approval by the voters of the Owner (School District) at a referendum.

If the Parties are unable to reach agreement on Architect's Basic Services fees, this Agreement shall automatically terminate without notice and the sole liability of the Owner to the Architect shall be a not-to-exceed payment of \$ _____ for fees and expenses in connection with the Pre-Referendum services provided under this Agreement.

Stipulated sum of « » and 00/100 Dollars « ».

§ 11.2 Intentionally omitted.

§ 11.3 Intentionally omitted.

§ 11.4 Intentionally omitted.

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

Schematic Design Phase	«Ten»	percent («10 »	%)
Design Development Phase	«Twenty»	percent («20 »	%)
Construction Documents Phase	«Forty»	percent («40 »	%)
Procurement Phase	«Five»	percent («5 »	%)
Construction Phase	«Twenty-Five»	percent («25 »	%)
Total Basic Compensation	one hundred	percent (100	%)

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

§ 11.6 Intentionally omitted.

§ 11.7 Intentionally omitted.

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect directly related to the Project, as set forth in the Architect's proposal dated 2024

§ 11.9 Architect's Insurance Intentionally omitted.

§ 11.10 Payments to the Architect

§ 11.10.1 Intentionally omitted.

§ 11.10.2 Progress Payments

§ 11.10.2.1 The Architect shall invoice the Owner on a monthly basis. The dollar amount of each invoice will vary depending upon which phase the Project is in (as set forth in Section 11.5) and whether the phase has been completed on or before its anticipated completion date (as set forth in Section 1.1.4). For example, during the Schematic Design Phase, the Architect may only invoice the Owner (in equal monthly installments) up to 10% of its total fee for the Project (assuming the percentage set forth for that phase in Section 11.5 is 10%). As an example, if Section 1.1.4 states that the Schematic Design Phase will be completed in three (3) months, the Architect will be permitted to invoice the Owner three (3) times, in equal amounts, totaling 10% of its total Project fee. However, if any phase of the Project (as outlined in Paragraph 11.5) is extended beyond its corresponding anticipated completion date (as set forth in Section 1.1.4), the Architect shall not be permitted to invoice the Owner further until that phase is completed.

§ 11.10.2.2 Records of Reimbursable Expenses shall be attached to the Architect's monthly invoices.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 It is understood that the Construction Manager is retained by the Owner and is to protect the interests of the Owner during construction. The use of a Construction Manager by the Owner shall not diminish the responsibilities and obligations of the Architect in any way.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B132™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified by the parties;
- .2 AIA Document A232™–2019, General Conditions of the Contract For Construction, Construction Manager as Adviser Edition, as modified by the parties; and
- .3 If a listed exhibit is not attached Owner and Architect agree to add the exhibit as an amendment, subject to Owner's prior written approval:

Exhibit A – Project Scope, Schedule, and Budget

Exhibit B – Architect's lists:

B-1 authorized consultants under Basic Services

B-2 authorized consultants under Supplemental Services

B-3 authorized Supplemental and Additional Services under Article 4

Exhibit C - Architect-Construction Manager Coordination Matrix. If not attached hereto, the Parties agree to work with the Construction Manager to reach mutual agreement on a Coordination Matrix and attach same as an exhibit to this Agreement and the Construction Management services agreement. If there is a conflict between this Agreement and the attached Coordination Matrix with respect to the allocation of responsibilities between the Architect and the Construction Manager, the Coordination Matrix shall be controlling.

Exhibit D – Architect's Design Team

Exhibit E – Architect's Hourly Rates

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

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

OWNER *(Signature)*

« , Superintendent of Schools»

ARCHITECT *(Signature)*

« »« »

FILED