

AIA® Document C132® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the [] day of [] in the year []
(In words, indicate day, month and year.)

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

Ossining Public Library
53 Croton Avenue
Ossining, NY 10562
[]

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

Calgi Construction Company, Inc
56 Lafayette Ave, Ste 350
White Plains, NY 10603
[]

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

Ossining Public Library Pre-Project Bond Referendum
[]
[]

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

Lothrop Associates
333 Westchester Avenue
White Plains, NY 10604

The Engineer:
Simpson Gumpertz & Heger (SGH)
With an office at:
525 7th Avenue New York, NY 10018

The Architect and the Engineer are collectively referred to herein as (“the Architect”).

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Owner and Construction Manager agree as follows.



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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.

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

§ 1.1.1 The Owner's program for the Project:

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

See Exhibit A "Proposal" (a copy of which is attached hereto and hereby incorporated into this Agreement).

§ 1.1.2 The Project's physical characteristics:

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

See Exhibit A "Proposal"

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

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

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

- .1 Design phase milestone dates, if any: See Exhibit A "Proposal".

.2 Construction commencement date:

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 1.1.5 INTENTIONALLY DELETED

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

(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235–2019 is incorporated into this Agreement, the Owner and Construction Manager shall incorporate the completed E235–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

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

Karen LaRocca-Fels, Library Director

Ossining Public Library

53 Croton Avenue

Ossining, NY 10562

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

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

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

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

.1 Land Surveyor:

.2 Geotechnical Engineer:

.3 Civil Engineer:

.4 Contractors, as defined in Section 1.4:

.5 Separate Contractors, as defined in Section 1.4:

.6 Other, if any:

(List any other consultants retained by the Owner.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Section 2.5:

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

Dominic Calgi, President

Calgi Construction Company, Inc.

56 Lafayette Ave, Ste 350

White Plains, NY 10603

§ 1.1.13 The Construction Manager's staffing plan as required under Section 3.3.3 shall include:

(List any specific requirements and personnel to be included in the staffing plan, if known.)

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

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

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

§ 1.2 The Owner and the Construction Manager may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, if needed the Owner and the Construction Manager shall adjust, as necessary, the Construction Manager's services, schedule for the Construction Manager's services, and the Construction Manager's compensation upon review by the Owner of the submission by the Construction Manager, in writing, of the rationale therefor and setting forth the proposed adjustments. The Owner will perform such review and report the findings of that review in writing to Construction Manager promptly. Although the Construction Manager, hereunder, shall be entitled to adjustments in compensation due to delay, there will be no adjustments for the Construction Manager's compensation due to any delay or rescheduling of the Bond Referendum.

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

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

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. The Construction Manager shall visit the construction site and familiarize itself with the requirements of the Project. The Construction Manager shall use its best skill and judgment to keep the Project Work costs and times within the Owner approved estimates of costs and times for completion of the Project Work.

§ 2.2.1 The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish its professional skill and judgement in cooperation with and in reliance upon the services of an architect. The Construction Manager agrees to furnish efficient business administration, supervision and Construction Management at all times and in an expeditious and economical manner consistent with the interests of the Owner.

§ 2.2.2 All services provided by the Construction Manager hereunder shall be performed in a prompt manner and shall be in accordance with the professional standards applicable to such services with respect to the type of Project contemplated by this Agreement. The Construction Manager shall be responsible for all services provided hereunder whether such services are provided directly by the Construction Manager or by any consultants or subcontractors hired by the Construction Manager. The Construction Manager will perform all duties and services and make all decisions promptly and without unreasonable delay and

will give this Project such priority in its office as is necessary to cause the construction management services hereunder to be timely and properly performed.

§ 2.2.3 The Construction Manager acknowledges that the Owner is a public library subject to various laws, rules, and regulations. The Construction Manager represents that it is familiar with and will perform all services in accordance with the applicable laws, rules, and regulations as they pertain to the design, bidding, and construction of capital improvement projects.

§ 2.2.4 The Construction Manager represents and warrants that it is financially solvent and experienced in and competent to perform the Construction Management services set forth herein.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect pursuant to the contract(s) between the Architect and the Owner. 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, logs, as well as organized photographic documentation of the progress of the Work.

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

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

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

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

§ 2.8 The Construction Manager must obtain and keep in full force the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager as set forth in section 11.7.

§ 2.8.1 Commercial General Liability with policy limits of not less One Million Dollars (\$ 1,000,000) for each occurrence (per project basis) Two Million Dollars (\$ 2,000,000) in the aggregate (per project basis); \$2,000,000 products and completed operations; \$1,000,000 personal and advertising injury; \$100,000.00 fire damage; \$10,000 medical expense.

§ 2.8.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less **One Million Dollars (\$ 1,000,000)** per accident for bodily injury, death of any person, and property damage for owned, hired, borrowed and non-owned motor vehicles, along with any other statutorily required automobile coverage.

§ 2.8.3 Workers' Compensation and New York State Disability: Statutory Worker's Compensation (C-105.2 or U-26.3) and New York State Disability Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

§ 2.8.4 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less **One Million Dollars (\$1,000,000)** per claim **Two Million Dollars (\$ 2,000,000)** in the aggregate.

§ 2.8.5 **Umbrella/Excess Insurance:** \$5,000,000.00 each occurrence and aggregate. Umbrella/Excess coverage must be on a follow-form basis or provide broader coverage over the required auto liability and general liability coverages.

The Construction Manager may achieve the required limits and coverage through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under this Article 2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.8.6 Additional Insured Obligations. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Construction Manager hereby agrees to effectuate the naming of the Owner as an additional insured on the Construction Manager's insurance policies, with the exception of its workers compensation, New York State disability, and professional liability policies. Each policy naming the Owner as an additional insured must be from an A.M. Best rated "A-" or better insurer, licensed in New York State; and state that the Construction Manager's coverage is primary and non-contributory coverage for the Owner, its Board, employees, and volunteers with a waiver of subrogation in favor of the Owner for all coverages including workers' compensation.

The Owner must be listed as an additional insured by using standard or other endorsements that extend coverage to the Owner for on-going operations (CG 20 38) and products and completed operations (CG 20 37). The decision to accept an endorsement rests solely with the Owner. Completed copies of the endorsements must be attached to the certification of insurance.

§ 2.8.7 The Construction Manager must submit to the Owner certificates of insurance and copies of endorsements indicating the required coverages for the Owner's approval prior to the commencement of any Work. The certificate of insurance must describe the specific services provided by the Construction Manager that are covered by the commercial general liability policy and the umbrella/excess policy. At the Owner's request, the Construction Manager will provide a copy of the declarations page of its liability and umbrella policies with a list of endorsements and forms. If so requested, the Construction Manager will provide a copy of the policy endorsements and forms.

§ 2.8.8 The Construction Manager must notify the Owner in writing thirty (30) calendar days prior to any lapse in coverage. Upon the Construction Manager's acquisition of a new, renewed, or modified policy, the Construction Manager must file with Owner a copy, or a certificate evidencing the procurement, of such policy.

§ 2.8.9 The Construction Manager hereby indemnifies the Owner for any applicable deductibles and self-insured retentions, all of which are the sole responsibility of the Construction Manager, to the extent not covered by the applicable policy.

§ 2.8.10 If a policy is written on a "claims-made" basis, the retroactive date must pre-date the inception of this Agreement.

§ 2.8.11 The Construction Manager acknowledges that failure to obtain such insurance on behalf of the Owner constitutes a material breach of this Agreement and subjects the Construction Manager to liability for damages, indemnification and all legal remedies available to the Owner. The Construction Manager must provide the Owner appropriate proof evidencing that the above requirements have been met, prior to the commencement of Work by the Construction Manager. The failure of the

Owner to object to the contents of a certificate or absence of same is not a waiver of any and all rights held by the Owner or obligations of the Construction Manager hereunder.

§ 2.9 The Construction Manager shall assist the Owner, Architect, and other Project participants in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 2.10 A centralized electronic document management system will be used on the Project, and the Construction Manager shall be responsible for managing and maintaining the centralized electronic document management system.
(List any items that are to be included in the centralized electronic management system.)

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

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

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

§ 3.1.1 General Requirements

§ 3.1.1.1 The Construction Manager acknowledges that the Project may be changed, supplemented or amended from time to time by or with the approval of the Owner without invalidating this Agreement and that all such work shall be executed under the terms and conditions of this Agreement, unless otherwise provided in this Agreement. The Owner acknowledges that such changes, supplements and/or amendments may necessitate changes to the Cost of the Work, the time to perform the Work, and the Owner's Budget.

§ 3.1.1.3 The Construction Manager shall, as required by this Agreement, assist the Owner in establishing and furnishing project administration and construction management services necessary and appropriate for the development, approval and construction of the Project, in the most expeditious and economical manner consistent with the stated interests of the Owner.

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

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

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the information and 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.

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

§ 3.2.4 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction

Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that affect the Project's timely completion.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and will work with the Owner, and any other professional they contract with, to assist with constructability reviews required by applicable laws, rules or regulations. The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered in advance of construction, obtaining the required reviews and approvals of authorities having jurisdiction over the Project, and the occupancy requirements of the Owner.

§ 3.2.6 Based on the preliminary design and information prepared or provided by the Architect and other Owner consultants, the Construction Manager shall prepare, for the Architect's review and Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques, including the establishment of sufficient contingency to reasonably anticipate the development of the Project's design documents.

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

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

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

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

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

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

§ 3.2.13 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts for Construction. The Construction Manager shall review the Drawings and Specifications and make 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.

§ 3.2.14 The Construction Manager shall make recommendations about, and coordinate the ordering and delivery of, materials in support of the schedule, including those that must be ordered in advance of construction.

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

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

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

§ 3.2.18 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval. In the event that 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, if possible, inclusive of scope changes as may be necessary.

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2019, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

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

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

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

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors.

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

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

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual costs and budgeted or estimated costs. If a 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 include them in the Construction Manager's progress reports.

§ 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.

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

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

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

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

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

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

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

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

omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

§ 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 the proposed changes are accepted or required by the Owner, prepare Change Orders or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.

§ 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 participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

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

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

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

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

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

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

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

- .1 Contractors' work force reports;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates; and

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

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

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

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

§ 3.3.26 When the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractors. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall perform an inspection to confirm the completion of the Work of the Contractors and make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection. The Construction Manager shall assist the Architect in conducting the final inspection.

§ 3.3.27 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractors: (1) certificates of insurance ; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractors under the Contract Documents, including warranties and similar submittals.

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

§ 3.3.29 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect, and Contractors. Consent shall not be unreasonably withheld.

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

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 INTENTIONALLY DELETED

§ 4.2 Construction Manager's Additional Services

§ 4.2.1 The Construction Manager may provide Additional Services after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.2 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities. The Owner shall provide the Construction Manager with a copy of the scope of services in the agreement executed between the Owner and Architect, and any further modifications to the Architect's scope of services in the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

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

§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 INTENTIONALLY DELETED

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

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

insurance, including professional liability insurance, as appropriate to the services or work provided.

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

§ 5.12 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.

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

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

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

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

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. 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; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget for the Cost of the Work, and the estimates of the Cost of the Work prepared by the Construction Manager, represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials; or equipment; the Contractors' methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Construction Manager.

§ 6.3 INTENTIONALLY DELETED

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

§ 6.5 In the event the estimated Cost of Work or the Cost of Work is exceeded at any time, Construction Manager as part of its Basic Services, shall recommend modifications as are necessary to attempt to eliminate such excess in order to bring costs within the Owner's budget. In the event the construction documents are completed and the actual bids for construction obtained by the Owner result in costs reasonably exceeding the latest established construction estimate, the Owner may approve the increased costs or cooperate with the Architect and Construction Manager if revising the scope of the Project is required to reduce the construction cost. Services for such revisions shall be considered part of Basic Services.

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 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 the 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 To the fullest extent permitted by law, the Construction Manager indemnifies and will defend and hold harmless the Owner, its employees, agents, representatives and members of the Board of Trustees from and/or against all third-party claims, suits, damages, liabilities, losses and expenses (including, but not limited to, reasonable attorney's fees and disbursements) to the extent arising out of or resulting from any culpable omission, fault, or neglect of Construction Manager, or any subcontractor of Construction Manager, excluding any claims, damages, losses and expenses arising from and limited to the extent of the Owner's negligence, recklessness or willful misconduct.

In the event that any legal proceeding is instituted or that any claim or demand with respect to the foregoing be asserted by any person in respect of which indemnification may be sought from an indemnifying party under the provisions of this Paragraph, the Owner will promptly notify the Construction Manager of the legal proceeding, claim or demand, and give the Construction Manager an opportunity to defend same and settle same without any cost to the Owner, and will extend reasonable cooperation to the Construction Manager in connection with such defense, which will be at the expense of the Construction Manager. In the event that the Construction Manager fails to defend the same within a reasonable length of time, or advise that such defense has been assumed by an insurer, which for this purpose may not exceed, absent good cause, thirty (30) calendar days, the Owner is entitled to assume the defense thereof, and the Construction Manager is liable to repay the

Owner for all its expenses reasonably incurred in connection with said defense (including reasonable attorney's fees, disbursements, expert witness fees and settlement payments). The failure of the Owner to notify the Construction Manager of a legal proceeding, claim or demand, will not relieve the Construction Manager of any obligation that the Construction Manager has pursuant to this Paragraph unless and only to the extent that the failure to notify the Construction Manager materially prejudices the Construction Manager.

The Construction Manager agrees not to enter into any waiver, release or settlement of any legal proceeding, claim or demand for which indemnification may be sought hereunder without the prior written consent of the Owner (which consent will not be unreasonably withheld or delayed).

All of the provisions of this Paragraph will survive the expiration or sooner termination of this Agreement.

§ 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 Article 9.

§ 8.1.5 In the event of any dispute between the Owner and the Construction Manager or the Construction Manager and any other person with respect to the Project, the Construction Manager shall continue to perform its duties under this Agreement without interruption or delay, pending the resolution of the dispute and the Construction Manager shall not directly or indirectly stop or delay the performance of the Project. In the event of a dispute between Owner and Construction Manager, Owner shall continue payments to Construction Manager pursuant to this Agreement, except for any item(s) in dispute. Nothing contained herein shall be construed to mean that Construction Manager shall be required to perform out of scope Work without a written agreement, signed by both Construction Manager and Owner, detailing to time and compensation for such out of scope Work.

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

§ 8.2 Mediation

§ 8.2.1 Intentionally Omitted.

§ 8.2.2 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, with the written consent of both the Owner and Construction Manager, be submitted to non-binding mediation before a mutually agreed upon mediator. Any such mediation shall be completed within thirty (30) days of submission and each party shall cooperate in the process.

§ 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.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, 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.

§ 8.3 INTENTIONALLY DELETED

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 Subject to Section 8.1.5, persistent failure of the Owner to make payments to the Construction Manager in accordance with this Agreement through no fault of the Construction Manager 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 suspend services, the Construction Manager shall give fourteen days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Construction Manager all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services, inclusive of overhead and profit. The Construction Manager's fees for the remaining services and the time schedules shall be negotiated and, if necessary, equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to the effective date of the 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 inclusive of overhead and profit. The Construction Manager's fees for the remaining services and the time schedules shall be negotiated and equitably adjusted.

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

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Upon determination of a court of competent jurisdiction that termination of Construction Manager for cause was wrongful, such termination shall be automatically deemed converted to a termination for convenience and Construction Manager's remedy for such termination shall be limited to compensation for services performed prior to the effective date of termination, together with any reimbursable expenses then due, overhead and profit. In the event that Construction Manager, its surety, any person or entity acting on Construction Manager's or its surety's behalf, or any other person or entity, challenges a for cause termination by the Owner, and a court of competent jurisdiction determines that termination of Construction Manager for cause was not wrongful, Owner shall be entitled to all costs and expenses, including reasonable attorney's fees, incurred in defense of such claim.

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Construction Manager for services performed prior to the effective date of the termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Construction Manager's termination of consultant agreements.

§ 9.7 Intentionally omitted

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

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

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

§ 10.4 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 Hazardous Materials

§ 10.6.1 Hazardous Materials are materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are or may hereafter be regulated by any federal, state or local law authorities.

§ 10.6.2 Notification. If at any time prior to the commencement of or during the progress of the Work, the Owner or Construction Manager becomes aware of the actual or suspected presence of Hazardous Materials at the Project site and not addressed in the Contract Documents, the party becoming so aware shall promptly notify the other party, the Architect and Contractors in writing of the presence, location and composition of the Hazardous Materials.

§ 10.6.3 Discovery. If any known or suspected Hazardous Materials are discovered at the Project site and not addressed in the Contract Documents, the Construction Manager shall immediately direct Contractor(s) to stop work in the immediate area of the condition and the Construction Manager shall immediately report the condition to the Owner and Architect in writing.

§ 10.6.4 Remediation. The Owner shall be solely responsible for corrective measures and/or remedial action as to Hazardous Materials not addressed in the Contract Documents. The Construction Manager shall not be required to resume its services prior to receipt of certification by an independent licensed laboratory and, if required by applicable law, the approval by the appropriate government authority, that the Hazardous Materials have been removed or rendered harmless. Nothing contained herein shall place liability on Construction Manager for the presence of any such Hazardous Materials at the Project site.

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

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

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or

contractors in order 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.

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

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

§ 10.11 THE CONSTRUCTION MANAGER HEREBY CONFIRMS THAT, TO THE EXTENT REQUIRED BY LAW, IT HAS IMPLEMENTED A WRITTEN ANTI-SEXUAL HARASSMENT POLICY THAT MEETS OR EXCEEDS THE REQUIREMENTS OF NEW YORK LABOR LAW SECTION 201-G AND THAT ANNUAL TRAINING REGARDING THIS POLICY IS AND WILL BE PROVIDED TO ALL OF ITS EMPLOYEES CONSISTENT WITH LAW.

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:

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

See Exhibit A "Proposal"

§ 11.1.2 Intentionally Omitted.

§ 11.

Intentionally Omitted.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Construction Manager as follows:

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

See Exhibit A "Proposal"

§ 11.4 Intentionally Omitted.

§ 11.5 Intentionally Omitted.

§ 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: See Exhibit A "Proposal"

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus ten percent (10 %) of the expenses incurred.

§ 11.7 Intentionally omitted.

§ 11.8 Payments to the Construction Manager

§ 11.8.1 Initial Payment

§ 11.8.1.1 Intentionally Omitted.

§ 11.8.2 Progress Payments

§ 11.8.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. The Construction Manager must submit monthly invoices (in a form and substance satisfactory to the Owner) for the services provided under this Agreement. Compensation for Reimbursable Expenses and Additional Services of the Construction Manager's consultants will not be paid unless the invoice submitted by the Construction Manager includes a detailed written explanation of the basis for each Reimbursable Expense and Additional Service and adequate supporting documentation is attached thereto, including, but not limited to invoices and receipts received from third parties. Compensation for services being performed on the basis of hourly rates will not be paid unless the invoice submitted by the Construction Manager includes the date of the services, the name and title of each employee performing services, the length of time expended by each employee, and a detailed description of the services.

§ 11.8.2.2 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, 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.

ARTICLE 12 INTENTIONALLY DELETED

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C132™–2019, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 INTENTIONALLY DELETED
- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

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

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

See Exhibit A "Proposal"

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

OWNER (Signature)
(Printed name and title)

(Printed name and title)

User Notes:

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EXHIBIT A

Construction Manager Proposal Dated September 6, 2024