

# AIA<sup>®</sup> Document C132<sup>®</sup> – 2019

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

**AGREEMENT** made as of the 17<sup>th</sup> day of June in the year 2024  
(*In words, indicate day, month and year.*)

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

Town of Lansing, New York  
29 Auburn Road  
Lansing, NY 14882  
(607) 533-7054

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

LeChase Construction Service, LLC  
609 Erie Boulevard West  
Syracuse, NY 13024  
(315) 423-0015

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

Highway Renovation Project's Building and Site Programming  
Lansing Highway Department  
10 Town Barn Road  
Lansing, NY 14882

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

Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C  
280 East Broad Street, Suite 200  
Rochester, NY 14604  
(585) 232-5135

The Owner and Construction Manager agree as follows.

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

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

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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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.)*

Highway Renovation Project's Building and Site Programming

§ 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.)*

New Town highway garage facility, relocate and construct new salt barn, new fueling island, convert existing truck garage to Cold Storage

§ 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.)*

The Town of Lansing has approved a Bond amount of Fifteen Million Dollars (\$15,000,000.00) for the Project. Cost of construction "work" is expected to be around \$12.8 million, with \$2.2 million of incidental/soft costs.

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

.1 Design phase milestone dates, if any:

Dates provided by Colliers for OACM meeting on 3/28/24:

Schematic Design – 3/4/24 – 4/26/24  
Design Development – 4/29/24 – 6/21/24  
Construction Documents – 6/24/24 – 10/11/24  
Bid Phase – 10/14/24 – 11/8/24  
Project Award / Contracts – 11/11/24 – 12/6/24  
Construction Phase – 12/7/24 - TBD

**.2 Construction commencement date:**

Estimated (Based on Town approved LeChase proposal dated 11/17/23):  
December 2024

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

Estimated November 2025 (this is based on our proposal date, actual construction duration to be establish once scope is determined.

**.4 Other milestone dates:**

None

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

Competitive Bid with multiple bid packages per Wicks Law, with phased construction for new structure and modifications to the existing building.

**§ 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.)*

None

**§ 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.)*

None

**§ 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.)*

Mr. Michael Moseley  
Highway Superintendent  
Town of Lansing – Highway Department

Init.

10 Town Barn Road  
Lansing, NY 14882  
Ph:607-533-4328

§ 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:

T.G. Miller, P.C. Engineers and Surveyors  
605 West State Street, Suite A  
Ithaca, NY 14851  
(607) 272 6477

.2 Geotechnical Engineer:

Foundation Design, P.C.  
46A Sager Drive  
Rochester, NY 14607  
(585) 458-0824  
(A subconsultant to Bergmann Associates / Colliers)

.3 Civil Engineer:

Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C.  
280 East Broad Street  
Suite 200  
Rochester, NY 14604  
(585) 232-5135

.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.)*

Lee Sommerman – Senior Vice President  
Laird Updyke – Project Executive  
609 Erie Boulevard West  
Syracuse, NY 13204  
(315) 423-0015

§ 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 Construction Manager 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 Construction Manager shall appropriately adjust the Construction Manager's services, schedule for the Construction Manager's services, and the Construction Manager's compensation. 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. The Owner will contract directly with one or more contractors to provide the labor, materials, equipment, and services to complete the Work, herein after referred to as "Contractors" or "Prime Contractors" or "Multiple Prime Contractors."

§ 1.3 The parties shall 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.

*(Paragraph deleted)*

§ 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.

§ 2.2.1 intentionally deleted

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B201-2017, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 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. The Construction Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omissions, or inconsistency in such services or information, in its capacity as a Construction Manager only.

§ 2.5 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

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

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

§ 2.8 The Construction Manager shall maintain the following insurance until termination of this Agreement

§ 2.8.1 Commercial General Liability with policy limits of not less than Five Million Dollars (\$5,000,000.00) for each occurrence and Nine Million Dollars (\$9,000,000.00) in the aggregate for bodily injury and property damage.

CGU policies shall include personal and advertising injuries, products and completed operations aggregate coverages, XCU Hazard coverages, and contain Contractual Liability Broad Form coverages. All CGU and all other policies and coverages required under this Agreement shall also:

. Name the Owner as an Additional Insured, and Owner shall be notified of any changes in coverages, endorsements, or cancellations no less than 30 days before any changes take effect.

A. Be written for not less than minimum amounts herein stated, or greater if required by law, except that if Construction Manager procures any policy limits greater than the amounts required herein, then the higher limits shall apply as though stated and required herein.

B. Require that all Construction Manager's insurances shall be primary to any insurance maintained by Owner or its affiliates, and Owner's coverages shall be secondary and non-contributory to such insurances. All coverage shall include defense costs and shall apply to any liability arising from Construction Manager's acts, errors, or omissions.

C. Require all CGO coverages to apply on a per project and per location basis.

D. Waives any and all rights of subrogation against Owner and its affiliates, and each such insurance policy shall be endorsed to waive (or shall expressly waive) subrogation rights and claims against Owner and Additional Insureds. However, the existence or non-existence of such waiver or endorsement shall not affect Construction Manger's waivers or subrogation.

E. Provide that all insurance and policies be written on an occurrence basis, except for professional liability insurance, which may be written on a claims-made basis. If any coverage is written on a claims-made basis, any

retroactive date shall be no later than the effective date of this Agreement and continuous coverage shall be maintained, or an extended discovery period will be exercised, for a period of six years beginning from the time that services under this agreement are completed.

F. Provide that any deductibles or self-insured retentions shall be the sole responsibility of Construction Manager, and further that all coverages shall apply for the benefit of Owner and all Additional Insureds as if no deductible or self-insured retention applied.

G. Provide that all policies or provisions relating to products, completed operations and professional liability shall survive the termination or expiration of this Agreement.

**§ 2.8.1.1** Construction Manager shall furnish to Owner, upon request, certificates of insurance evidencing all identified insurance coverages (including without limitation, an Acord form) and, at least 30 days prior to the expiration of any policy, certificates evidencing additional or renewal policies. The failure to request or furnish certificates, or of any certificate, policy, or coverage, to meet the requirements of this Agreement, shall not excuse compliance herewith, nor constitute or be construed as a waiver by Owner or any Additional Insured.

**§ 2.8.1.2** Construction Manager shall bear the risk of loss with respect to any owned, leased, rented or borrowed vehicles, equipment, data, tools or other personal property. Construction Manager shall bear the risk of loss with respect to any of its expenses or loss of income or profits.

**§ 2.8.1.2** All subcontractors and consultants of Construction manager hired in respect of this project shall be required to carry and meet all of the insurance requirements state here, in including but not limited to coverage limits, primary-non-contributory coverage terms, additional insured requirements, and waivers of subrogation respecting and running in favor of Owner.

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

**§ 2.8.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability 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 Sections 2.8.1 and 2.8.2, 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.

**§ 2.8.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars (\$1,000,000).

**§ 2.8.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services and Contractor's Pollution Liability with policy limits of not less than Five Million Dollars (\$5,000,000) per claim and) in the aggregate.

**§ 2.8.6 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. However whenever coverage is not disclaimed and provided, then to the extent of coverage provided and actually paid, the insurance to be provided by the Contractors in accordance with Section 5.18 shall be primary with respect to any insurance coverage arranged for and required by Construction Manager under this Agreement.

§ 2.8.7 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.8.

§ 2.9 The Construction Manager shall establish Procore as the project management software for the Owner, Architect, and other Project participants.

§ 2.10

*(Paragraphs deleted)*

Intentionally omitted

§ 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.

§ 2.12 Subject to general insurance requirements set forth in the clauses and subsections of § 2.8 above, Owner shall purchase and maintain "all risk" Builder's Risk insurance upon the entire Project Work to the full completed and stored value thereof on a replacement cost basis. The policy shall name Owner, Construction Manager and Contractors as insured or additionally insured parties, and shall insure against all perils, with waivers of subrogation against any insured. Copies of all policies shall be promptly delivered to Construction Manager. Coverage shall apply to materials and property in storage, off premises, or in transit to the Project site. If the policy contains a deductible, Owner or Contractors shall be liable to the full extent of the deductible.

### 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 coordination and scheduling, cost estimating, and allocation of construction activities among the Prime Contractors. Services not set forth in this Article 3 are Supplemental or Additional Services.

#### § 3.2 Preconstruction and Bidding Phase

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

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

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, for the Owner's approval, a written Construction Management Plan that may include, 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 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. Notwithstanding anything herein to the contrary, Construction Manager will provide two (2) estimates during the Preconstruction Phase as part of the Basic Services: one (1) at the conclusion of the Schematic Design phase and one (1) after the detailed Design Development phase. Any additional estimates shall be considered Additional Services. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work

§ 3.2.7 The Construction Manager shall 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, 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.

§ 3.2.10 As the Architect progresses with the preparation of the 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 services of surveyors, 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.

*(Paragraph deleted)*

§ 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 issuance of the Bidding 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. Prior to the issuance of bid documents, the Construction Manager shall provide input and seek the Owner's direction as to the form and content of any proposed agreement between the Owner and Contractor to be included in the bid documents.

§ 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, , 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.

*(Paragraph deleted)*

### § 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, as may be modified by Supplementary General Conditions. If the Owner and Contractor enter into Supplementary General Conditions, then 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 execution of the initial Contract for Construction and terminates upon Final Completion and Final Payment, provided that in the event the duration of Basic Services is extended beyond the anticipated duration of the Project, through no fault of the Construction Manager, the Construction Manager's services for the extended period are compensated as provided in Article 11.

§ 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 Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the 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 Multiple Prime Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered 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 regular 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 Multiple Prime Contractors, the Construction Manager shall coordinate the overall sequence of construction and assignment of space in areas where the Multiple Prime 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. The Construction Manager shall advise the Owner regarding the performance by each of the Contractors. Disputes between any of the Contractors relating to the execution or progress of the Work or the interpretation of the requirements of the Contract Documents (except interpretations of the drawings and specifications which shall be referred to the Architect) shall be referred to the Construction Manager who will make such recommendations to the Owner as Construction Manager may deem necessary for the proper execution and timely progress of the Project.

§ 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 Multiple Prime 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 Multiple Prime Contractors collectively; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 3.3.12.3** The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated, 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 based upon (1) an evaluation of the Work for conformance with the Contract Documents; (2) results of tests or inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager at time of certification expressed in writing to owner and architect. 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 Prime Contractor solely and exclusively for purposes of coordinating the safety programs with and 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. Construction Manager shall not be responsible for safety of the Work or Prime Contractor's means and methods and has no ability to control safety activities or stop work for safety-related reasons.

**§ 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 known, reported, observed or suspected 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 and the Owner 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, Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations, and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation. The Construction Manager shall assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review and provide comments on proposed change orders and assist the Owner in negotiating change orders. After Change Orders or Construction Change Directives are prepared and signed by the Architect, the Construction Manager shall submit same to Owner for approval and execution. The Owner shall have the final approval or rejection of any Change Order or Construction Change Directive.

§ 3.3.18 The Construction Manager shall assist the Architect and Owner 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.

*(Paragraphs deleted)*

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§ 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 ; and
- .13 Any other items the Owner may require:

§ 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;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

§ 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 by others of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.24 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 and the Architect, 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 monitor the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager together with the Architect shall evaluate 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 and Construction Manager. Consent shall not be unreasonably withheld.

§ 3.3.30 Nothing in this Agreement shall be deemed to require, or authorize, or permit Construction Manager to perform any act which would constitute design services, testing or technical inspection services, or the practice of architecture, professional engineering, certified public accounting or law. The recommendation, advice, budgetary information and schedules to be furnished by Construction Manager under this Agreement are for the sole use of Owner and shall not be deemed to be representations or warranties or guarantees, or constitute the performance of licensed professional services. It is expressly understood that Construction Manager is not the guarantor or insurer of the Contract Documents, including the plans and specifications, or of any Work which is to be performed and managed by others.

§ 3.3.31 Nothing in this Agreement shall be construed to mean that Construction Manager assumes any of the responsibilities or duties of the Architect or other Design Professionals. The Architect is solely responsible for Project design and for performing in accordance with the agreement between the Architect and the Owner.

§ 3.3.32 Prompt written notice shall be given by the Construction Manager to the Owner and Architect if the Construction Manager becomes aware of any defect in the Work performed by the Contractors or Contractors' nonconformance with the Contract Documents. However, this provision shall not require the Construction Manager to notify the Owner of minor defects which are dealt with by the Architect or Construction Manager on a routine continuing basis.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Supplemental Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Construction Manager is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Construction Manager's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Construction Manager or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

| Supplemental Services  | Responsibility<br><i>(Construction Manager, Owner or not provided)</i> |
|--|--|
| § 4.1.1.1 Measured drawings  | Architect  |
| § 4.1.1.2 Tenant-related services  | Not Provided   |
| § 4.1.1.3 Commissioning  | Not Provided   |
| § 4.1.1.4 Development of a commissioning plan  | Not Provided   |
| § 4.1.1.5 Sustainable Project Services pursuant to Section 4.1.3                       | Not Provided   |
| § 4.1.1.6 Furniture, furnishings and equipment delivery, and installation coordination | Architect  |
| § 4.1.1.7 Furniture, furnishings and equipment procurement assistance                  | Not Provided   |
| § 4.1.1.8 Assistance with site selection   | Not Provided   |
| § 4.1.1.9 Assistance with selection of the Architect                                   | Not Provided   |
| § 4.1.1.10 Furnish land survey   | Not Provided   |
| § 4.1.1.11 Furnish geotechnical engineering services                                   | Not Provided   |
| § 4.1.1.12 Provide insurance advice  | Not Provided   |
| § 4.1.1.13 Provide supplemental Project risk analysis and mitigation strategies        | Not Provided   |
| § 4.1.1.14 Stakeholder relationships management  | Not Provided   |
| § 4.1.1.15 Owner moving coordination   | Not Provided   |
| § 4.1.1.16 Coordination of Owner's Separate Contractors                                | Not Provided   |
| § 4.1.1.17 Other Supplemental Services   | Not Provided   |

**§ 4.1.2 Description of Supplemental Services**

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Construction Manager's responsibility is provided below.

*(Describe in detail the Construction Manager's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

*(Paragraph 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. The Additional Services described in this Article are not included in Basic Services and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The Additional Services described in this Article shall only be provided if authorized in writing by the Owner. The Construction Manager will notify the owner in writing when Additional Services are necessary to secure written authorization to proceed from the Owner. Notwithstanding the foregoing, Construction Manager shall not be required to receive prior written notice before providing the Additional Services described in Section 4.3.2.3 if such prior notice cannot be obtained but shall provide notice of same as soon as possible thereafter. Notwithstanding anything to the contrary in this Agreement, Owner shall not be responsible to pay and the Construction manager shall not be entitled to receive compensation for any Additional Services if such services were required due to the fault of the Construction Manager or the Construction Manager's failure to perform in accordance with the terms of this Agreement, provided that nothing herein shall require Construction Manager to proceed with Additional Services directed by Owner if the Owner and Construction manager dispute whether such Additional Services are required due to the fault of the Construction manager or the Construction manager's failure to perform in accordance with the terms of the Agreement.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6. Services necessitated by sections 6.4 and 6.6 shall not be considered additional services;
- L.2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- .3
- .4 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .5 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work; or
- .8 Any event giving rise to a change in the Work that impacts the schedule and/or creates increased responsibility or need of service of the Construction Manager by no fault of its own.

§ 4.2.3 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Construction Manager's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Construction Manager of the Owner's determination. The Owner shall compensate the Construction Manager for the services provided prior to the Construction Manager's receipt of the Owner's notice:



- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.15.

*(Paragraph deleted)*

§ 4.2.5 If the services covered by this Agreement have not been completed within the anticipated durations for each applicable Phase of Basic Services as set forth herein,, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

## **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 the Owner's program, other 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 budget for the Cost of the Work or in the Project's scope and quality.

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

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B201-2017., The Owner shall provide the Construction Manager with a copy of the agreement executed between the Owner and Architect, and any further modifications to the agreement.

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

§ 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, 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.

*(Paragraphs deleted)*

§ 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 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 and other 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 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, 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 shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

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*(Paragraphs deleted)*

§ 5.17 Owner shall provide or require the Prime Contractors to provide Construction Manager with suitably furnished office space convenient to the Project, with phone and internet service.

§ 5.18 Owner shall include in all Contract Documents a requirement that any Prime Contractors having a contract with the Owner shall indemnify Construction Manager to the same extent that the Prime Contractors are required to indemnify Owner. In addition, Owner shall require that Prime Contractors name Construction Manager as additional insured on all insurance policies provided for the Project, except Worker's Compensation and Professional Liability.

§ 5.19 The Owner shall require the Contractors and for those whom the Contractor is responsible for to provide, by appropriate agreements, written where legally required for validity, waivers of subrogation on all policies each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

## 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 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 may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work, and 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 budget proposed, established or approved by the Owner's, or from any estimate, or evaluation, prepared or agreed to by the Construction Manager.

§ 6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

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

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

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

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

## ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

## 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 a court of competent jurisdiction located in Tompkins County, New York, said venue and jurisdiction being the sole and exclusive venue for any claims arising under this Agreement. Claims, disputes, or other matters in question between the Parties arising out of or relating to this Agreement, or breach thereof, shall be subject to and decided by the laws of the State of New York.

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

**§ 8.1.3.1** To the fullest extent permitted by law, Owner will indemnify, defend and hold Construction Manager and its officers, directors and employees harmless from and against all third party claims, damages, judgments, losses, demands, actions and expenses (including reasonable attorney's fees and expenses) by reason of any action taken or not taken, or recommendations made or not made by Construction Manager, provided same (i) are within the Scope of Construction Manager's authority or services hereunder (or hereafter made part of the services, such as being Additional Services or Supplementary Services) and (ii) do not constitute fault, negligence or misconduct on part of Construction Manager. In addition, the Owner shall cause all Contractors to agree to indemnify the Owner and Construction Manager and hold them harmless from all claims that may arise out of the Contractor's work on the Project.

**§ 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 to all consequential, incidental, indirect, special, punitive, or exemplary damages arising out of or related to the agreement, whether based on contract, tort, law or equity, and further including but not limited to claims seeking redress for any loss of profits, loss of the benefits of use, or loss of business, even if Contractor is apprised of the likelihood of such damages and even if such damage or loss was foreseeable. It is expressly understood and agreed that each and every provision of this Agreement that provides for a limitation of liability, a disclaimer of warranties, or an exclusion of damages is intended by the parties to be severable from any other provision and be a separable and independent element of risk allocation, duly intended to be enforced as such.

This mutual waiver is applicable, without limitation, to all damages waivers set forth above due to either party's termination of this Agreement, except as specifically provided in Section 9.7

*(Paragraphs deleted)*

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven 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. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.3** 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.

**§ 9.3.1** If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, the Construction Manager shall be entitled to compensation for services performed prior to such

order being issued. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction manager's services.

§ 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. Both parties shall have the opportunity to cure or to commence to cure prior to the expiration of the seven (7) day period (except that the Owner's failure to make payments due in accordance with this Agreement must be cured within said 7 day period) in which case the notice of termination shall be deemed withdrawn and with no force or effect.

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

§ 9.6 In the event of termination for any reason that is not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, including compensation for authorized Supplemental Services, together with Reimbursable Expenses then due and any costs incurred by reason of such termination.

*(Paragraphs deleted)*

§ 9.6.3 In the event this Agreement is terminated by the Construction Manager for substantial nonperformance by Owner, Construction Manager shall be entitled to be paid the amounts set forth in 9.6 above, plus any other damages for breach of contract to which it is entitled by law, subject in all cases to the disclaimers, limitations, and waivers as set forth in this Agreement, including but not limited to how claims and damages are affected by each thereof or the other terms, covenants, and conditions of this Agreement.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 The Fee for Construction Phase Services is based on one full-time, on-site representative. If additional on-site personnel are required by Owner, then such on-site personnel shall be provided at agreed-upon hourly rates.

. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 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.

*(Paragraphs deleted)*

## 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 and Bidding Phase Services in Section 3.2 and for Construction and Close-Out Phase Services in Section 3.3:

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

Owner shall pay Construction Manager a stipulated sum of \$643,778 (Six hundred forty-three thousand seven hundred seventy-eight dollars) payable in ten (10) monthly installments of sixteen thousand dollars (\$16,000) for Preconstruction/ Bidding AND Fourteen (14) monthly installments of thirty-three thousand (\$33,000) for Construction AND one (1) monthly installment of twenty-one thousand seven hundred seventy-eight (\$21,778) for Close-Out.

The stipulated sum set forth herein as compensation for Basic Services includes the Construction Manager's charges for personnel assigned to the Project, fringe and employment benefits, payroll taxes (FICA, FUTA, and SUTA), reimbursables (except as otherwise set forth in Section 11.6), general overhead and profit.

*(Paragraphs deleted)*

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§ 11.2 For the Construction Manager's Supplemental Services designated in Section 4.1.1, and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Construction Manager as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

The Construction Manager will provide any Additional Services as defined in Article 4.2 and 4.3 upon the written request of the Owner. Owner shall pay Construction Manager for Additional Services in accordance the hourly rates set forth in Section 11.5 for the time devoted by Construction Manager's personnel to providing Additional Services, plus those Reimbursable Expenses set forth in Section 11.6. Payment shall be made by Owner to Construction Manager for such Additional Services on a monthly basis without retention.

§ 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.)*

The Construction manager will provide any Additional Services as defined in Article 4.2 and 4.3 upon the written request of the Owner. Owner shall pay Construction Manager for Additional Services in accordance the hourly rates set forth in Section 11.5 for the time devoted by Construction manager's personnel to providing Additional Services, plus those Reimbursable Expenses set forth in Section 11.6. Payment shall be made by Owner to Construction Manager for such Additional Services on a monthly basis without retention.

*(Paragraphs deleted)*

§ 11.5 The hourly billing rates for services of the Construction Manager for Additional Services in Section 11.2 and 11.3 and for extended Basic Services as set forth below.. The rates are inclusive of all benefits, taxes, overhead and profit and shall not be subject to audit. The rates shall be adjusted in accordance with the Construction Manager's normal review practices.

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

| <b>Employee or Category</b> | <b>Rate (\$0.00)</b> |
|-----------------------------|----------------------|
| Senior Vice President       | \$175/hr             |
| Project Executive /VP       | \$175/hr             |
| Project Manager             | \$125/hr             |
| Superintendent (On-Site)    | \$125/hr             |
| Technical Services          | \$120/hr             |
| Safety Manager              | \$100/hr             |
| Accounting / Project Admin  | \$85/hr              |
| Employee or Category        | Rate (\$0.00)        |

Rates for any other personnel required for Additional Services shall be mutually agreed upon by the parties.

**§ 11.6 Compensation for Reimbursable Expenses**

**§ 11.6.1** Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional *(Paragraphs deleted)*

Services, Owner shall pay to Construction Manager the amount of all charges ("Reimbursable Expenses") in connection with Basic, Supplemental, and Additional Services for the following purposes:

- .1 Travel to and from destinations outside the Town of Lansing, provided that all such travel must be pre-approved by the owner.
- .2 Project photographs, blue printing and other reproductions; and;

*(Paragraph deleted)*

- .3 Purchases of site office and safety supplies.;

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

*(Paragraphs deleted)*

**§ 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 on the basis set forth in Section 11.1 for Basic Services, on the basis set forth in Sections 11.2 and 11.3 for Additional Services, and for Reimbursable Expenses as set forth in Section 11.6.. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty-five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

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

Two % (2%) , annual percentage rate, non-compounded.

**§ 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.

**§ 11.8.2.3** Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times provided, however, the rates are not subject to audit by Owner.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

*(Include other terms and conditions applicable to this Agreement.)*

§ 12.1 Construction Manager and Owner shall not be responsible for the consequences of Acts of God (such as tornado, flood, hurricane, etc.) each other's, Architects', consultants', Contractors' or vendors' (and their respective agents', employees', consultants', vendors', and subcontractors') acts, omissions to act, or failures to timely act; strikes, lockouts or other labor disturbances; riots, insurrections, or civil commotions; embargoes; shortage or unavailability of materials, supplies, labor and equipment, fire; unavoidable casualties; sabotage; vandalism; the requirements of law, statutes, regulations and other legal requirements or government authorities; casualties requiring reconstruction or repair of the Project or any part thereof; mold; site conditions; or any other matters beyond the reasonable control of Construction Manager or Owner.

§ 12.2 In the event that any term or provision, or part thereof, of the Agreement is held to be illegal, invalid or unenforceable under law, regulations or ordinances of any federal, state or local governments to which this Agreement is subject, such term or provision, or part thereof, shall be deemed severed from this Agreement and the remaining term (s) and provision, or part thereof, shall be deemed severed from this Agreement and the remaining term (s) and provision(s) shall remain unaffected thereby.

§ 12.3 Neither party shall unreasonably withhold or delay its consent or approval when requested by the other party.

§ 12.4 intentionally deleted

§ 12.5 This Agreement may not be orally amended, modified or terminated. This Agreement shall bind the successors and assigns of the respective parties.

§ 12.6 Any notice required to be given by the terms and provisions of this Agreement or by any law or governmental regulation, either by Owner or Construction Manager, shall be in writing and shall be deemed to have been served and given when sent by nationally recognized overnight carrier addressed to 609 Erie Boulevard West, Syracuse, NY 13204 for Construction Manager, with a copy to LeChase Construction Services, LLC, 205 Indigo Creek Drive, Rochester, New York 14626, Attn: General Counsel, and for Owner at the respective addresses set forth on the first page of this Agreement.

§ 12.7 The Construction Manager, as part of Basic Services, shall make a written record of all meetings, conferences, and decisions made between or among the Owner, Architect and/or Contractor(s), during the construction phase of the Project and which Construction Manager is a party to or aware of and considering any material condition or change in the requirement, scope, performance, and/or sequence of the Work, and provide a copy of such records to the Owner upon request. Such records shall include maintenance of a log to record the processing of all documents such as payment applications, change orders, request for information, etc. It is understood that the Construction Manager will prepare and provide a written record of weekly progress meetings held during the construction phase. In addition, the Construction Manager shall maintain minutes for pre-construction phase meetings held by the Owner, Architect and Construction Manager where the Construction Manager is present (limited to one per month).

## 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 AIA Document

*(Paragraphs deleted)*

A201-2017, General Conditions of the Contract for Construction.

*(Paragraphs deleted)*

.4 Other documents:

*(List other documents, if any, forming part of the Agreement.)*



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

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

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

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

\_\_\_\_\_  
*Lee Sommerman, Sr Vice President*