

# **Additions and Deletions Report for** **AIA® Document C132® – 2019**

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## **PAGE 1**

**AGREEMENT** made as of the 17<sup>th</sup> day of June in the year 2024

...

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

...

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

...

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

...

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

## **PAGE 2**

Highway Renovation Project's Building and Site Programming

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

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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.

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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

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

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

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None

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

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None

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None

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Mr. Michael Moseley  
Highway Superintendent  
Town of Lansing – Highway Department  
10 Town Barn Road  
Lansing, NY 14882  
Ph:607-533-4328

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

...

Foundation Design, P.C.  
46A Sager Drive  
Rochester, NY 14607

(585) 458-0824  
(A subconsultant to Bergmann Associates / Colliers)

...

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

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

...

§ 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 ~~will~~ may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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

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§ 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 ~~B132™-2019, 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,

~~omission, omissions, or inconsistency in such services or information-information, in its capacity as a Construction Manager only.~~

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§ 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. ~~If any of the requirements set forth below are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager as set forth in section 11.7. 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 Manger, 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.

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§ 2.8.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$—) each accident, (\$—) each employee, and (\$—) policy limit. ~~One Million Dollars (\$1,000,000).~~

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§ 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 (\$—) per claim and (\$—) in the aggregate. ~~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.

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§ 2.9 The Construction Manager shall assist establish Procore as the project management software for the Owner, Architect, and other Project participants in establishing building information modeling and digital data protocols for the Project using 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 participants.

§ 2.10 A centralized electronic document management system will be used on the Project, and the Construction Manager shall be designated the Responsible Project Participant in section 3.5 of E203-2013, responsible for managing and maintaining the centralized electronic document management system. The centralized electronic document management system shall include all items listed in Article 3 of E203, and the following: (List any items to be included that are not listed in Article 3 of E203-2013.)

Intentionally omitted

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§ 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.

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The Construction Manager's Basic Services consist of those described in this Article 3, and include usual and customary Preconstruction and Construction Phase ~~Services. Services 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. ~~The Owner, Construction Manager, and Contractors may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.~~

**§ 3.2 Preconstruction Phase Preconstruction and Bidding Phase**

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**§ 3.2.3** The Construction Manager shall prepare, and deliver to the Owner, for the Owner's approval, a written Construction Management Plan that ~~includes, at a minimum, 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.

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**§ 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

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

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

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§ 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-quasi-governmental~~ authorities for inclusion in the Contract Documents.

§ 3.2.18 ~~Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.~~

§ 3.2.19 The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall assist the Owner and the Architect with the ~~development of the Bidding Documents, which consist of bidding requirements and proposed Contract Documents.~~ 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.

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

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

§ 3.3.1 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth ~~below and in AIA Document A232™ 2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.~~ If the Owner and Contractor modify AIA Document A232 2019, 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 ~~award-execution~~ of the initial Contract for Construction and terminates ~~on the date the Architect issues the final Certificate for Payment 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.~~

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§ 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 ~~review, analyze, schedule and~~ coordinate the overall sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work.

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§ 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.

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- .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 subject to based upon (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and 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. 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.

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§ 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, and provide 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 requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if the proposed changes are accepted or required by the Owner, prepare Change Orders or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents 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 ~~Initial Decision Maker~~ Architect and Owner in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.  
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~~§ 3.3.20 The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect.~~

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

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- .11 Photographs to document the progress of the Project;
- .12 Status reports on permits and approvals of authorities having jurisdiction; and

§ 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.

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§ 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, 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 ~~coordinate~~ monitor the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager ~~shall perform an inspection to confirm 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.

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

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

§ 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	Architect

	coordination	
§ 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

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~~§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Construction Manager as provided in Section 11.2.~~

§ 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.

...

- .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-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;
- ~~.2~~ .2 Services necessitated by the enactment or revision of codes, laws, regulations or official interpretations after the date of this Agreement;
- ~~.3~~ .3 ~~Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's other consultants or contractors;~~

...

- ~~.8~~ .8 ~~Assistance to the Initial Decision Maker.~~  
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.

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- ~~1~~ Providing assistance to the Initial Decision Maker 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.

~~§ 4.2.4 Except for services required under Section 3.3.30, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Construction Manager incurs additional cost in providing those Construction Phase Services.~~

~~§ 4.2.5 If the services covered by this Agreement have not been completed within (—) months of the date of this Agreement, 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.~~

...

~~§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's 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 design and construction scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.~~

~~§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, Document B201-2017.. The Owner shall provide the Construction Manager with a copy of the scope of services in the agreement executed between the Owner and Architect, and any further modifications to the Architect's scope of services in the agreement.~~

...

~~§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include 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.~~

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~~§ 5.8 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.~~

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

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

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

P

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

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

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

**§ 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.

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work ~~also includes the reasonable value of labor, materials, and equipment,~~

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and ~~shall~~ may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's ~~budget~~ 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 ~~Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, budget proposed, established or approved by the Owner's, or from any estimate, or evaluation, prepared or agreed to by the Construction Manager.~~

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§ 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 ~~Construction Manager's~~ estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

...

~~2 terminate in accordance with Section 9.5;~~

...

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.

...

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, ~~in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~ 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 ~~property~~ insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in ~~AIA Document A232-2019, General Conditions of the Contract for Construction. 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 The 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 ~~professional services under this Agreement. The Construction Manager's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Construction Manager's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.~~ 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, without limitation, to all consequential damages 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 9.7-9.7~~

## ~~§ 8.2 Mediation~~

~~§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

~~§ 8.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

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

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

(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

### ~~§ 8.3 Arbitration~~

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

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

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

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

### ~~§ 8.3.4 Consolidation or Joinder~~

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

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

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

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

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§ 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.

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§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Construction Manager 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, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Construction Manager's termination of consultant agreements including compensation for authorized Supplemental Services, together with Reimbursable Expenses then due and any costs incurred by reason of such termination.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Construction Manager terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Construction Manager the following termination fee:  
(Set forth below the amount of any termination fee, or the method for determining any termination fee.)

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 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.

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

...

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

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall provide professional credit for the Architect and the Contractors in the Construction Manager's promotional materials for the Project. The Construction Manager shall be given reasonable access to the completed Project to make

such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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

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

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

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§ 11.1.1 For Preconstruction Phase Services in Section 3.2; and Bidding Phase Services in Section 3.2 and for Construction and Close-Out Phase Services in Section 3.3:

:

...

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.

...

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

§

...

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.

...

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.

~~§ 11.4 Compensation for Supplemental and Additional Services of the Construction Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus percent (—%), or as follows:~~

~~(Insert amount of, or basis for computing, Construction Manager's consultants' compensation for Supplemental or Additional Services.)~~

~~§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants are set forth below, 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 and Construction Manager's consultants' normal review practices.~~

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

...

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

...

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

- ~~.1 Transportation and authorized out-of-town travel and subsistence;~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- ~~.3 Permitting and other fees required by authorities having jurisdiction over the Project;~~
- ~~.4 Printing, reproductions, plots, and standard form documents;~~
- ~~.5 Postage, handling, and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

~~.7~~ Professional photography, and presentation materials requested by the Owner; 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:

- ~~.8~~ If required by the Owner, and with the Owner's prior written approval, the Construction Manager's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Construction Manager's consultants;
- ~~.1~~ Travel to and from destinations outside the Town of Lansing, provided that all such travel must be pre-approved by the owner.
- ~~.9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.2~~ Project photographs, blue printing and other reproductions; and;
- ~~.10~~ Site office expenses; and
- ~~.11~~ Other similar Project related expenditures;
- ~~.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 plus percent ( %) of the expenses incurred consultants.

§ 11.7 Construction Manager's Insurance. If the types and limits of coverage required in Section 2.8 are in addition to the types and limits the Construction Manager normally maintains, the Owner shall pay the Construction Manager for the additional costs incurred by the Construction Manager for the additional coverages as set forth below. *(Insert the additional coverages the Construction Manager is required to obtain in order to satisfy the requirements set forth in Section 2.8, and for which the Owner shall reimburse the Construction Manager.)*

...

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

...

§ 11.8.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed 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.

...

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

...

§ 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~~ times provided, however, the rates are not subject to audit by Owner.

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§ 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).

...

.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

.3 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[ ] AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below: A201-2017, General Conditions of the Contract for Construction.  
(Insert the date of the E235-2019 incorporated into this agreement.)

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

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*(Printed name and title)*

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*(Printed name and title) Lee Sommerman, Sr Vice President*



## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:46:05 ET on 06/17/2024 under Order No. 4104246703 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document C132™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)