

THIS AGREEMENT made as of the ____ day of _____, 2022 between the Owner, East Islip Union Free School District, with offices for the transaction of business located at 1 Craig B. Gariepy Avenue, Islip Terrace, New York 11752 and the Construction Manager, _____ with offices for the transaction of business located at _____.

ARTICLE 1

DEFINITIONS

1. The "Project" is the Proposed Capital Improvements to be undertaken by the East Islip Union Free School District during the 2022-2023 school year.
2. The "Architect" is H2M Architects, Engineers, Land Surveying and Landscape Architecture, D.P.C., d/b/a/ H2M Architects + Engineers, its successors and/or assigns.
3. "Construction Budget" is the amount of money authorized by the voters of the East Islip Union Free School District for the capital improvement projects set forth in the 2022-2023 budget with propositions.
4. "Construction Documents" are the plans, specifications, and other documents provided by the Owner which outline the capital improvement work to be performed and specify the terms and conditions under which such work is required to be performed.
5. "Substantial Completion" are the dates set forth in the General Conditions for Construction defined as substantial completion dates.
6. "Contractors" are the contractors, vendors, suppliers, manufacturers and others who are to furnish the general construction work involved in the general construction of the work of the Project, and the electrical contractor, plumbing contractor, heating, ventilating and air conditioning, and/or general construction contractor, who each will respectively enter into separate agreements with the Owner for the work of the Project.

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

1. **General Responsibilities:** The Construction Manager shall perform the following construction administration services during the term of this Agreement:
 - a)
 - i) The Construction Manager shall provide sufficient organization, experienced personnel and management to carry out the requirements of this Agreement. The Construction Manager will provide and maintain a qualified, on-site field staff, with

sufficient authority to act on the Construction Manager's behalf, to manage the project, conform to the scope of services, and insure that the work is performed in compliance with the contract documents. In addition, the project executive assigned to the Project must be on-call for any problems that may arise during the course of Project.

- ii) The Construction Manager will provide administration management and related services necessary to coordinate the activities of the Construction Manager, Architect and Contractors, as well as coordination of the construction activities of the Contractors with one another. The Owner shall have the right to interview and approve all of the Construction Manager's personnel who will be working on-site. The Owner reserves the right to request the removal of any of the Construction Manager's personnel.

b) **Scheduling:**

- i) The Construction Manager, in consultation with the Owner and the Architect, shall develop a Project Master Schedule that establishes duration and responsibility for all major activities during all Phases of the Project. The Project Master Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, Contractor's responsibilities and the Owner's responsibilities with regard to anticipated design and construction. The Project Master Schedule shall account for school activities and events.
- ii) The Project Master Schedule shall be developed to incorporate tasks of the entire team, during both the Design and Construction Phases of Project. Said tasks shall include, but not be limited to requirements for functioning, cost, quality, time and logistics. The Construction Manager shall maintain and update the Project Master Schedule during the procurement of contractors phase and shall incorporate greater scheduling details as same become available.
- iii) The Construction Manager shall monitor the Project Master Schedule and shall report to the Owner and the Architect as to progress from the pre-bid phase through the post-construction phase and will notify the Owner and the Architect of any delays or problems and will recommend any corrective action necessary to meet the time requirements for the Project.
- iv) During the completion by the Architect of the construction documents, the Construction Manager shall update the Project Master Schedule so as to develop a detailed Construction Schedule for inclusion in the bidding documents to be made available to bidders on the Project. The Construction Schedule shall include the completion of each item of work, providing for all major elements of the Project such as phasing of construction and times of commencement and completion required of each Contractor performing the general construction work. The Construction Schedule shall include start and finish dates for procurement and construction activities and major milestones for each segment of work, incorporating the activities of Contractors employed to perform the work, including activity sequences and durations, allocation of labor and materials, processing but not approving Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time procurement. The Construction Manager shall develop said schedule so as to

- coordinate the work of the Owner's HVAC, electrical, plumbing, temperature control, and general construction contractors, as well as material suppliers and/or contractors under separate contract with the Owner.
- v) The Construction Manager shall provide the aforesaid Construction Schedule in sufficient quantities for distribution to the Owner, Architect and each of the Contractors with whom the Owner contracts.
 - vi) The Construction Manager shall update and issue the aforesaid Construction Schedule as required, but not less frequently than once a month, to show current conditions and revisions required by actual work progress. The Construction Manager shall provide the Owner and the Architect with copies of all schedules prepared hereunder.
 - vii) The Project Master Schedule shall be updated at least once a month and, where necessary, more frequently than once a month where the Owner requests a more frequent update of the Schedule.
- c) **Cost Estimating and Budget Analysis Services:**
- i) The Construction Manager will establish and maintain an accurate and up-to-date construction cost accounting system.
 - ii) The Construction Manager will prepare a minimum of three (3) detailed cost estimates for the building, construction and site development work. One (1) estimate will be provided at the completion of schematic design, one (1) at the completion of the design phase, and one (1) at the completion of construction documents. The cost estimates prepared by the Construction Manager shall identify all costs associated with the Project, including but not limited to construction costs, land acquisition costs, consulting fees, permit fees, testing and inspection fees, furnishings, equipment, inflation and contingencies.
 - iii) Each of these estimates shall be reconciled with the separate estimates to be prepared by the Architect and/or the Owner's estimator at each phase. The respective estimators shall convene and prepare the reconciled estimate for each phase (the "Reconciled Estimate for Phase ___").
 - iv) During the course of the Project, in cooperation with the Architect, the Construction Manager shall update and refine the estimate of Construction Cost by submitting a monthly anticipated cost report as the work progresses, which will show actual costs for activities in progress and estimates for uncompleted tasks, and incorporating approved changes as they occur. The Construction Manager shall advise the Owner if it appears that the Construction Cost may exceed the projected costs by identification of variances between actual and budgeted or estimated costs, and advise the Owner whenever projected costs are anticipated to exceed budgets or estimates. The Construction Manager shall provide the Owner and the Architect with copies of any and all written estimates of cost prepared by it and shall recommend appropriate alternative courses of action where it is anticipated that the projected costs will exceed the Owner's budget. Under no circumstances may the Construction Manager authorize or recommend work which exceeds the Owner's budget for the Project.

- v) The Construction Manager will use the capital projects software to maintain project records.
- d) **Progress Meetings with the Owner and Architect:**
 - i) The Construction Manager shall be present at pre-construction conferences, job meetings, and special meetings as necessary, to be attended also by the Architect, the Board or its designee, and/or the Contractors performing the work on the Project.
 - ii) During the course of the Project, the Construction Manager will be responsible for the scheduling and conduct of weekly meetings with the Owner and Architect to review the status of the Project, identify strategies for the completion of the design and construction phases of the Project and to address items which require action by either the Construction Manager, Owner, Architect or Contractors on the Project. The Construction Manager shall prepare summary reports of said meetings and shall distribute said reports to both the Owner and the Architect.
 - iii) The Construction Manager, in consultation with the Owner and Architect, will conduct bi-monthly meetings at the job site to discuss job progress, resolve problems, and make decisions. The Construction Manager will prepare and distribute meeting minutes. The Construction Manager shall conduct weekly Project meetings with Contractors, the Owner and the Architect and shall generate written minutes of said meeting within five (5) business days following such meeting. Such minutes shall be distributed to the Owner and the Architect. The Construction Manager shall generate where necessary and appropriate a proposed agenda for said meetings and shall forward said agenda to the Architect. The Architect shall review, add any design issues requiring discussion and forward to the Construction Manager at least two (2) days prior to the meeting. Upon receipt of the Architect's comments, the Construction Manager shall incorporate the Architect's agenda items into the final agenda developed for the Project meeting and generate written minutes of said meeting prior to the next scheduled Project meeting. Such minutes shall be distributed to the Owner, Architect, and Contractors. The representative of the Construction Manager conducting said Project meetings shall not be the same individual charged with daily observation of the progress of the work as set forth in paragraph c hereof; but shall consult with the on-site individual(s) to determine critical items to be addressed at the Project meetings, or alternatively shall be scheduled at times when critical work on the Project is not being performed.
- e) **Monthly Progress Reports:** The Construction Manager will prepare and distribute monthly reports to the Owner and the Architect on the project budget, cash flow analysis, the status of the project schedule, and on general project information.
- f) **Testing and Inspection Services:** The Construction Manager will assist the Owner in selecting and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.
- g) **Maintenance of the Project Record:** The Construction Manager will maintain current and

orderly records of all documents related to the Project (the "Project Record"), including but not limited to drawings, specifications, submittals, samples, schedules, correspondence, meeting minutes, catalog data, directives, change orders, etc. The Construction Manger shall maintain records at the site in an orderly manner. These records shall include correspondence, Contract Documents, Change Orders, Construction Change Authorizations, Architect's Supplemental Instructions, reports of site conferences, Shop Drawings, Product Data, Samples, supplementary drawings, color schedules, purchases, materials, equipment, applicable handbooks, maintenance and operating manuals and instructions, records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations which have been certified by qualified surveyors or professional engineers, requests for payment, requisitions, and names and addresses of Contractors, subcontractors, and principal and material suppliers, warranties, and material safety data sheets, and all other documents related to this Project. Said records shall be made available to the Owner at all times.

- h) The Construction Manager acknowledges that it will abide by and respect the duties, authority and responsibility of the Owner's Architect and will cooperate with the exercise of the powers, duties and responsibilities of the Architect. The Construction Manager shall not make any changes to the Architect's designs.

2. **Planning Phase:**

- a) Design Documents and Cost Estimate Review: Review the accuracy and completeness of the preliminary design documents and cost estimates at key phases of the Project and provide a written report detailing this review and analysis. Promptly notify the Architect/Engineer and District of any problems or omissions. Generate independent cost estimates at preliminary design document completion (100%).
- b) Constructability Review: Review the project drawings and specifications and provide written recommendations to the Architect/Engineer detailing any design problems or omissions identified in the drawings and specifications. Help to identify and resolve coordination conflicts in the design documents.
- c) The Construction Manager shall develop a preliminary construction implementation plan to determine implementation of proposed projects. The Construction Manager shall provide for conceptual cost requirements and public presentations.
- d) The Construction Manager will assist the Owner in the development of a calendar of events/activities at which to discuss the proposed projects, including suggestions regarding format and types of materials to have available. The Construction Manager shall attend and/or facilitate public meetings, as necessary.

3. **Pre-Construction Phase Services:** After approval of the projects and prior to the submission of construction documents to the New York State Education Department for approval, the Construction Manager's responsibilities, to the extent not previously set forth, shall include the following:
- a) The Construction Manager shall provide recommendations on relative feasibility of scope of construction contracts, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost. The Construction Manager shall recommend to the Owner alternate approaches to design and provisions for systems, materials and equipment. The Construction Manager will perform a minimum of two (2) Value Engineering Studies: one (1) at the beginning of the schematic design to evaluate systems, and one (1) at the completion of the design phase to evaluate details and finishes. The Construction Manager shall generate a report for each study which includes (1) a cost analysis of systems, materials and/or equipment available for use on the Project and shall review such systems, materials and equipment for constructability; and (2) recommendations on the selection of systems, details, and finishes. The final selections shall be made in consultation with the Owner and the Architect, prior to the preparation of final construction documents.
 - b) The Construction Manager shall advise on the separation of the general construction work into Contracts for various categories of work. The Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (a) the work of the Contractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate Contractor, (c) the likelihood of jurisdictional disputes has been minimized, and (d) proper coordination has been provided for phased construction.
 - c) The Construction Manager shall investigate, review and recommend a schedule of the Owner's selection and purchase of materials, building systems, and equipment requiring long lead time procurement.
 - d) The Construction Manager shall make recommendations to the Owner and Architect concerning the need for and location of temporary construction facilities, equipment, materials and services for use by Contractors. The Construction Manager, in coordination with the Architect, shall prepare and coordinate construction phasing to address the Owner's operational requirements during construction. The Construction Manager will review and analyze access routes to the Project site, and shall develop and coordinate a logistics plan for inclusion in the bidding documents. The logistics plan shall address such issues as site access, construction fencing and temporary facilities, and shall meet the requirements of the Education Law and the Commissioner's regulations promulgated thereunder.
 - e) The Construction Manager shall review and be familiar with all working drawings, specifications, and other contract documents. The Construction Manager will review design documents, as they are developed in order to avoid potential problems and to minimize potential change orders. The Construction Manager will review drawings and

specifications at the completion of the schematic design, design development and construction developmental phases for constructability and conformance to the program budget and schedule. Upon review, the Construction Manager shall inform the Owner and the Architect as to whether the drawings, specifications and other contract documents are consistent with each other and that no major conflicts, errors, or omissions exist. The Construction Manager, in conjunction with the Architect, will review and provide input to the Owner as appropriate to the general and special conditions of the specifications prepared by the Architect's and/or Owner's counsel.

- f) The Construction Manager shall assist the Owner in obtaining building permits and special permits, except for permits required to be obtained directly by the various Contractors. The Construction Manager, in conjunction with the Owner, shall verify that the Owner has paid construction related 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.
- g) The Construction Manager will provide, with Owner approval, introduction to local building fire officials to keep them abreast of Project status.

4. **Procurement of Contractors:** The Construction Manager shall assist the Owner and Architect in procuring Contractors as follows:

- a) The Construction Manager will identify potential contractors and suppliers and develop their interests in bidding the project to insure a competitive bidding environment. The Construction Manager will investigate potential bidders and suppliers to determine their ability to meet project requirements. The Construction Manager shall seek to develop Contractor interest in bidding on the Project and shall make recommendations to encourage identification and participation of qualified contractors who may bid. At no time shall the Construction Manager have any discussions with potential bidders concerning the Project except to advise that the Project will be advertised for bid and the location for obtaining the bidding documents.
- b) The Construction Manager shall assist the Architect and Owner in establishing bidding and/or negotiation schedules.
- c) The Construction Manager will establish and implement procedures for the bidding process including the distribution of bid documents, the issuance of addenda, the holding of pre-bid conferences, the receipt of bids, and the bidding schedule. The Construction Manager shall assist in the Owner's effort to obtain the services of Contractors to perform the work of the Project by providing:
 - i) assistance in the review of plans and specifications;
 - ii) assistance in the preparation of bidding documents;
 - iii) assistance in the receipt of bids.

- d) The Construction Manager, in consultation with the Owner and the Architect, will schedule, organize, and conduct pre-bid conferences in a manner consistent with the bid schedule.
 - e) The Construction Manager, in consultation with the Owner and the Architect, will receive and evaluate the bids and recommend the award of contracts and shall prepare an analysis of bids received.
 - f) The Construction Manager along with the Architect will conduct pre-award conferences with bidders to review their bids and to further familiarize the successful bidders with the terms and conditions of the contracts, plans and specifications, as well as their ability to meet the requirements of the Project based upon the bid price.
 - g) The Construction Manager will review bonds and insurance submitted by contractors for compliance with contract documents. Final approval of the bonds and insurance to be performed by the Owner or its legal counsel.
 - h) In the event that the bids exceed the Project budget, the Construction Manager shall assist the Architect to (a) rebid the Project within a reasonable time, and/or (b) provide such modifications in the Contract Documents as is necessary to bring the cost of the Project within budget. If the Project Budget of Construction Cost is exceeded by the lowest bona fide bidder, the Construction Manager, without additional charge, shall cooperate with the Owner and Architect as necessary to bring the Construction Cost within the fixed limit. However, if the Construction Manager has notified the Owner that their low estimate exceeds the Project Budget and the Owner decides to bid the Project without changes as recommended by the Construction Manager and the lowest bona fide bidder exceeds the Project Budget, the costs incurred by the Construction Manager to bring the Construction Cost within the fixed limit, will be additional services and charged for time spent at the hourly rates set forth herein.
5. **Construction and Post Construction Phase Services:** The Construction Manager will provide the following services during the construction phase:
- a)
 - i) The Construction Manager shall monitor Contractors hired to perform the work of the Project to determine adequacy of workforce and equipment, conditions which may cause delay in the completion of the work, and the availability of necessary materials and supplies. The Construction Manager shall monitor the work to be performed by the Contractors to reasonably determine that such work is in proper condition for installation of subsequent work. However, the Construction Manager shall not be responsible for the means, methods and/or techniques used by the Contractors on the site.
 - ii) The Construction Manager shall maintain a list of the names, addresses and telephone

numbers of the members of the Contractors who can be contacted in the event of an off-hours emergency at the building site. The Construction Manager shall provide copies of said list to the Owner at the commencement of each Contractor's work and shall update same and distribute to the Owner as necessary.

b)

i) On a daily basis, the Construction Manager shall observe the progress and quality of the work at each stage of repair/renovation or construction to determine that it is proceeding in accordance with the contract documents. The Construction Manager shall provide full-time daily and continuous on-site observation. The primary representative of the Construction Manager at the site and at meetings with the Owner and/or the Architect shall be approved by the Board of Education. Said primary representative shall not be changed without the prior approval of the Superintendent of Schools and/or the Board of Education. All other representatives to be assigned to the Project must be approved by the Superintendent of Schools and/or the Board.

ii) The Construction Manager shall maintain a written daily diary or log book recording the Contractor's time and activities related to the Project, weather conditions, nature and location of work being performed, number of workers present at the site(s), equipment in use, contractor activities, verbal instructions and instructions and interpretations given to the Contractor, work being performed which may result in a claim for additional compensation by a contractor, and specific observations. From time to time, the Construction Manager shall supplement the daily log or log book with photographs and/or videotaping of the progress of the work so that a pictorial history of the progress of the job is maintained, photographs and/or videotaping shall also be made of defective, delayed and incomplete work when the same is discovered. Additionally, the Construction Manager shall maintain a list of visitors, their titles, and time and purpose of their visit. On a weekly basis, the Construction Manager shall forward copies of its daily log to the Owner and Architect.

c) The Construction Manager shall review the safety programs developed by each Contractor as required by the Contract Documents and make a recommendation to the Owner as to appropriateness of the submitted safety programs for the Project as well as compliance with the safety requirements of all federal, state and local agencies having jurisdiction. The Construction Manager will monitor the safety program developed by each contractor, record any safety violations, and make recommendations for improving safety conditions. Nothing herein shall relieve Trade or Prime Contractors of their primary responsibilities, for the safety of their employees, the students, the staff of the Owner and the general public.

d) The Construction Manager shall obtain from the Contractors a schedule reflecting the required submittals for the Project and shall review same for accuracy and completeness, taking into account the time frames within which the Architect is required to review same and the time frames within which the Contractor is required to commence any work reflected in such submittals. The Construction Manager shall revise such schedule as necessary and submit an approved schedule to the Architect, the Owner and the

Contractors for their respective use.

- e) The Construction Manager shall forward Requests for Information by the Contractors to the Architect and the Owner for review and response by the Architect. The Construction Manager shall advise the Owner if the Architect's responses to such Requests for Information are untimely and shall recommend to the Owner appropriate courses of actions.
- f) The Construction Manager shall visit local manufacturing facilities to validate the production/quality/lead times for materials and equipment to be used on the Project.
- g) The Construction Manager shall arrange for on behalf of the Owner or secure services necessary for delivery and storage, protection and security for Owner-purchased materials, systems and equipment which are a part of the Project, until such items are incorporated into the Project.
- h) The Construction Manager will review contractor's construction schedules, observe construction progress, and report deviations from the schedule that might delay project completion. The Construction Manager will consult with contractors to develop and implement corrective actions necessary to meet the schedule included in the bid documents. The Construction Manager shall advise the Owner in writing of an event or work that may result in a claim for a change in the contract sum or contract time, and shall advise the Owner of the manner in which the Construction Manager will address the issue. The Construction Manager will review contractor's construction schedules, observe construction progress, and report deviations from the schedule that might delay project completion. The Construction Manager shall record the progress of the Contractors' work. The Construction Manager shall periodically consult with the Owner regarding the foregoing.
- i) The Construction Manager, in consultation with the Owner and Architect, will coordinate the selection of independent testing agencies, review inspection and testing reports, and make recommendations regarding the results of inspections and testing activities. As appropriate, the Construction Manager shall make recommendations to the Architect regarding special inspection or testing of work not in accordance with the provisions of the Contract Documents whether or not such work has been fabricated, installed or completed. The Construction Manager shall notify the Owner and the Architect(s), if in his/her/its opinion, the work does not conform to the Contract Documents or requires special inspection or testing.
- j) The Construction Manager upon notice to the Owner and Architect, shall reject work which does not conform to the requirements of the Contractor's agreement with the Owner, and shall have the authority to stop work which is not being performed by a contractor in accordance with the Contract Documents.

- k) The Construction Manager shall review any specified construction or installation procedure (including those recommended by any product manufacturer) to be used by the Contractors engaged by the Owner.
- l) On a daily basis, the Construction Manager shall verify that the site and construction materials and equipment stored at the site are protected from weather, theft damage and all other adversity.
- m) The Construction Manager shall monitor all required temporary access walkways, both interior and exterior, temporary partitioning and the like necessary to complete the operations. The Construction Manager shall enforce the requirement that all Contractors maintain in an unobstructed condition all entrances and/or exits from present buildings. In the event that the Contractors on the Project fail to maintain such unobstructed condition, the Construction Manager shall immediately notify the Contractor performing work at the site in question. If said Contractor is unable to make immediate correction of the condition, the Construction Manager shall notify the Owner of its intent to arrange for the removal of the obstruction, the cost of which shall be back-charged to the Contractor.
- n) The Construction Manager shall require that workers on the site not use any existing facilities at the site, including without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner.
- o) The Construction Manager shall require that only such vehicles, trucks and equipment necessary for the work are parked or stored within the work area as are absolutely necessary for performing the work, for the length of time that particular phase of work is performed.
- p) The Construction Manager shall require that the Contractors have on site and/or stored at the site only material and equipment which is to be used directly in the work. After equipment is no longer required for the work, the Construction Manager shall require that the Contractors promptly remove same from the Project site.
- q) The Construction Manager shall require that each Contractor's work will be confined to areas at the site permitted by law, ordinance, permit and the Contract Documents and shall ensure that the Contractors do not unreasonably encumber the site with material or equipment.
- r) The Construction Manager shall require Contractors to keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract Documents. At completion of the work, the Construction Manager shall require Contractors to see that all waste materials, rubbish, tools, construction equipment, machinery and surplus materials have been removed from the site by the Contractors.
- s) The Construction Manager, in accordance with the Architect, will develop and implement

a procedure for the review and processing of contractor payment applications. The Construction Manager will evaluate the contractor's schedule of values to insure accurate and appropriate payments. On a monthly basis, the Construction Manager shall request and review pencil copies of applications for payment for each Contractor. The Construction Manager's review of such applications for payment shall include a review of each line item of work reflected on the monthly application and the amount of monies requested by the Contractor for payment. Such review shall be for the purpose of determining whether the work has progressed to the point indicated. In accordance with Labor Law, section 220, the Construction Manager shall receive and forward to the Owner certified payroll records from each Contractor as well as "after the fact" waivers of mechanic's liens from subcontractors and for material suppliers performing work for the Contractor. Upon review of the "pencil copy" of a monthly application for payment, the Construction Manager shall return said application to the Contractor with a notation that the application for payment as revised is subject to additional review and certification by the Architect and shall direct the Contractor to submit a typed application for payment to the Construction Manager for certification. The Construction Manager shall certify said application and submit same to the Architect for review and certification.

- t) The Construction Manager, in consultation with the Architect and Owner will develop and implement a system for review and processing of change orders. The Construction Manager will estimate the cost of all change orders, insure the validity of the change orders, and negotiate the cost of change orders with the contractors on behalf of the Owner. The Construction Manager shall maintain cost accounting records on authorized work performed under change orders, unit cost, or additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records. In conjunction and cooperation with the Architect, the Construction Manager shall review, approve and sign all Project Change Orders.
- u) The Construction Manager shall forward to the Architect any and all Contractor's requests for extensions of time from contractors, together with its observations as to merit of such requests.
- v) The Construction Manager will coordinate, monitor, and document for testing, calibration, and start-up of all equipment and building systems. The Construction Manager, in conjunction with the Owner, shall witness and report on each start-up and testing procedure performed. The Construction Manager shall collect samples, tag and arrange for the appropriate testing of each (e.g. concrete, mortar, adhesives, core samples and the like).
- w)
 - i) When the Construction Manager considers each Contractor's work or a designated portion thereof substantially complete, the Construction Manager shall advise the Architect and shall prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. Upon review by the Architect of the list of incomplete or unsatisfactory items of work by the contractor, the Construction

Manager will assist the Architect in the preparation of a list of deficiencies (punch list) and will coordinate all correction by contractors. Following the Architect's issuance of a Certificate of Substantial Completion of the Project or designated portion thereof, the Construction Manager shall evaluate the completion of the work of the Contractors and make recommendations to the Architect when work is ready for final inspection. The Construction Manager shall observe and record the progress of the Contractor toward the completion of the work required by said lists.

- ii) The Construction Manager shall prepare for the Architect a summary of the status of the work of each Contractor, listing changes in the previously issued punch list(s) and recommending the times within which Contractors shall complete uncompleted items on their Certificate of Substantial Completion of the Work.
- x) The Construction Manager shall enforce the provisions of the General Conditions of the contract for construction outlined between the Owner and Contractors performing the work.

ARTICLE 3

THE OWNER'S RESPONSIBILITIES

1. The Owner shall retain an Architect whose services, duties and responsibilities are described in the agreement between the Owner and the Architect. Actions taken by the Architect as agent of the Owner shall be the acts of the Owner, and the Construction Manager shall not be responsible for them, except to the extent the Construction Manager's administration responsibilities are affected thereby, in which event the Construction Manager shall assist the Architect in its execution of said actions.
2. The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.
3. The Owner shall furnish such legal, accounting and insurance counseling services as may be necessary for the Project.
4. The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents.
5. The services, information and reports herein before required shall be furnished at the Owner's expense, and the Construction Manager shall be entitled to rely upon their accuracy and completeness.
6. If the Owner observes or otherwise becomes aware of any fault or defect in the Project, or non-conformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Construction Manager and the Architect.
7. The Owner reserves the right to perform work 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 work cooperatively with said Contractors on the Project in an effort to achieve completion of construction timely.

8. The Owner shall use its best efforts to furnish the required information and services to the Construction Manager and to render approvals and decisions as expeditiously as necessary for the orderly progress of the Construction Manager's services and work of the Contractors.
9. The Owner will provide office space for the use of Construction Manager's field staff, within the Owner's offices or facilities and in reasonable proximity to the Project, equipped with desks and telephones. The Owner may choose to provide such office facilities, equipment, supplies and services through the Contractors as included within the bidding documents.
10. The Owner shall provide a builder's all-risk insurance policy for protection against claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
11. The Owner shall require Contractors engaged by it to include Construction Manager as an additional insured.
12. The Owner shall designate a representative who shall be fully acquainted with the Project and who has authority to issue and approve Project Construction Budgets, render decisions promptly, and furnish information expeditiously. Change orders shall be approved by the Board of Education.
13. Trade discounts, rebates and refunds, and returns from sale of surplus materials and equipment shall accrue to the Owner.

ARTICLE 4

PAYMENTS TO THE CONSTRUCTION MANAGER AND FIXED FEE

1. The Construction Manager shall not be entitled to payment for its services during the Planning Phase. The Owner will pay the Construction Manager _____. The term Construction Cost is defined as follows:
 - a. Construction Cost shall include the cost at current market rates of labor and materials as evidenced by the actual bids submitted to the Owner and awarded in connection with the Project. In the event bids are not awarded, "Construction Cost" shall be defined as the cost at current market rates of labor and materials to be furnished to the Owner and all elements designed by the Architect, plus a reasonable allowance for the Contractor's overhead and profit.

- b. Construction Cost does not include the compensation of the Architect and Architect's consultants, construction management fees, clerk of the works fees, the costs of the land, rights-of-way, financing, or other costs which are the responsibility of the Owner.
2. Payments for the Construction Manager's construction services will be made by the Owner to the Construction Manager as follows:

Pre-Construction and Procurement of Contractors Phase: 20%

Construction Phase: 70%

Post Construction Phase: 10%

3. The Owner will make payment to the Construction Manager based upon the progress of the work by the Contractors during each phase of services. The Construction Manager will invoice the Owner on the first of each month for services provided during the previous month. The Owner will make payment within thirty (30) days of the next regularly scheduled Board meeting, provided a voucher is submitted at least fourteen (14) days prior thereto.
4. If the Project is suspended or abandoned in whole or in part by adoption of a written resolution of the Owner for more than twelve (12) months, the Construction Manager shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment.
5. The fees set forth herein shall be the only compensation due the Construction Manager and no monies may be invoiced other than for payments set forth in this Article 4.
6. In the event excess monies remain in the bond referendum Project budget and the Owner determines to perform additional capital improvement work to its facilities within the scheduled timeframe, the Construction Manager shall perform the functions outlined in this Agreement within the fee structure set forth in this Article 4. No additional fees shall be invoiced by the Construction Manager for such services.

The Construction Manager shall be reimbursed for the following expenses:

- a) Overnight mail.
- b) Certified mail return receipt requested.

ARTICLE 5

CONSTRUCTION MANAGER'S ACCOUNTING RECORDS

Records of costs pertaining to services performed shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 6

TERMINATION OF AGREEMENT

1. This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
2. This Agreement may be terminated by the Owner upon at least fourteen (14) days written notice to the Construction Manager in the event that the Project is permanently abandoned.
3. This Agreement may be terminated at the convenience of the Owner upon seven (7) days notice to the Construction Manager. In such case, the Construction Manager shall be compensated for all services performed prior to the termination date.
4. In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for all services performed prior to the termination date. In addition, the Owner shall further assume and become liable for obligations, commitments and unsettled claims of which the Owner has prior notice, including claims made by third parties after the effective date of termination.

ARTICLE 7

MISCELLANEOUS PROVISIONS

1. This Agreement shall be governed by the Laws of the State of New York; venue in the County in which the Project is located.
2. As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued, in any and all events not later than the relevant date of substantial completion of the Project, and as to any acts or failures to act occurring after the relevant date of substantial completion of the Project, not later than the date of issuance of the final Project certificate for payment. In the event of termination of the Agreement pursuant to Article 6, paragraph 1, the applicable statute of limitations shall commence on the effective date of the termination.
3. Nothing contained in this Agreement shall be deemed to require or authorize the Construction Manager to perform any act which would constitute the rendering of professional services other than as a Construction Manager, as that term is defined herein.

4. Notwithstanding any language to the contrary, nothing in this Agreement shall be construed or interpreted so as to require or allow the Construction Manager to assume any duty, role, obligation or responsibility to perform any function, task, activity, obligation or duty properly that of the Architect pursuant to the terms of the Agreement between the Owner and the Architect, or as a matter of law pursuant to the terms of the appropriate sections of the Education Law or other laws, rules, regulations or promulgations pertaining to the practice of architecture in the State of New York.
5. The extent of the duties, responsibilities and limitations of authority of the Construction Manager as a representative of the Owner during construction shall not be modified or extended without the written consent of the Owner, the Architect and the Construction Manager, which consent shall not be unreasonably withheld.
6. In the event of a dispute between the Architect and the Construction Manager, said dispute shall be referred to the Owner for suggested resolution. The Owner's determination shall be final and binding on the Construction Manager and the Architect, provided said determination does not violate applicable laws and regulations, or is not contrary to requirements of the contract herein.
7. With respect to each Contractor's own work, the Construction Manager shall not have control over or charge of the work and Construction Manager shall not be responsible for construction means, methods, techniques, sequences or procedures, and/or for safety precautions and programs in connection with the work of each of the Contractors, since these are solely the Contractor's responsibility. The Construction Manager shall not have control over or charge of acts or omissions of the Contractors, subcontractors, or their agents or employees, or any other persons performing portions of the work not directly employed by Construction Manager.
8. Unless otherwise provided in this Agreement, the Construction Manager and the Construction Manager's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Owner shall defend, indemnify and hold harmless Construction Manager and its agents, officers, employees and consultants from and against any and all claims, judgments, demands, costs, attorneys' fees, actions, or suits relating to or arising out of hazardous or toxic materials being present at the site.
9. Any and all claims, disputes or other matters in question between the parties to this Agreement arising out of or relating it to this Agreement or breach thereof shall be subject to resolution in a Court of competent jurisdiction venued in Suffolk County, New York.
10. By signing the within Agreement, the Construction Manager warrants and represents to the Owner that it is familiar with the requirements specifically pertaining to public school construction in the State of New York. The Construction Manager acknowledges that the

Project is a public works project pursuant to the General Municipal Law and Education Law of the State of New York and represents that it is familiar with the requirements for award of contracts pursuant thereto.

11. No failure or delay on the part of the Owner in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of any right, power or privilege.

12. Any and all notices required to be given under this Agreement shall be sufficiently given when delivered personally or one (1) day after being sent courier overnight service (such as Federal Express) or three (3) days after being sent by registered or certified mail return receipt requested, addressed to each party as follows:

a) As to the Owner:

East Islip Union Free School District
1 Craig B. Garipey Avenue
Islip Terrace, New York
Attention: Superintendent of Schools

b) As to the Construction Manager:

INSERT CONSTRUCTION MANAGER NAME, ADDRESS

13. Nothing herein shall be deemed to create a contractual relationship between the Construction Manager and any other parties to the Project, including but not limited to the Architect, subcontractors, or material suppliers on the Project. This Agreement is intended solely for the benefit of Owner and Construction Manager and is not intended for the use or benefit of any other party. Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of law.

14. The Construction Manager agrees that all documents, reports, materials, or other subject matter prepared, procured or produced in the rendition of the services under this Agreement are and shall remain the property of the Owner upon final payment for the services rendered hereunder or termination of this Agreement as set forth in Article 6 hereof, and all such documents, reports, materials, or other subject matter shall be delivered to the Owner as specified in this Agreement or upon any termination thereof. The Construction Manager may retain a record copy of all documents.

15. The Construction Manager shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

16. Neither Owner nor Construction Manager shall assign or transfer its interest in whole or in part in this Agreement, whether by assignment or novation, without the prior written consent of the other.

ARTICLE 8

EXTENT OF AGREEMENT

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 the Construction Manager.

ARTICLE 9

INSURANCE

1. The Construction Manager shall purchase and maintain insurance for protection from claims under worker's or workmen's compensation acts; claims for damages because of bodily injury, including personal injury, sickness, disease or death of any person; and from claims arising out of the performance of this Agreement and caused by negligent acts for which the Construction Manager is legally liable. The amount of such coverage shall be maintained as set forth in Appendix A and shall be approved by the Owner's insurance representative.
2. The Owner shall purchase and maintain property insurance upon the entire Project for the full cost of replacement as of the time of any loss.
3. The Owner shall purchase and maintain such boiler and machinery insurance as may be required or necessary.
4. To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, its consultants, agents and employees of any of them from and against all claims, damages, losses and expenses resulting in bodily injury and/or property damage, including, but not limited to, attorneys' fees to the extent arising out of or resulting from any omission, fault, or neglect of Construction Manager, or any subcontractor of Construction Manager, excluding any claims, damages, losses and expenses arising from and limited to the extent of the Owner's own negligence.
5. To the fullest extent permitted by law, all Contractors hired to perform work to be completed as an extension of this Agreement will hereby assume and agree to indemnify, defend and hold harmless the Construction Manager, the Owner, its partners and/or subsidiaries, the Architect, and their respective agents, officers and employees (hereinafter collectively "indemnities") from and against any and all claims, suits, damages, liabilities, professional fees, including attorneys' fees, costs, court costs, expenses and disbursements relating to any

death, personal injury or property damage, including the loss of use thereof, brought or assumed against any of the indemnities by any person or firm, arising out of or in connection with or as a consequence of performance of the Work of the Contractor, as well as any additional work, extra work or add-on work whether caused in whole or in part by the Contractor or any person or entity employed, either directly or indirectly, by the Contractor, including any subcontractors thereof and their employees.

ARTICLE 10

**ADDITIONAL SERVICES
CONSTRUCTION MANAGER**

1. The following services shall be compensated to the Construction Manager as additional services:
 - a) Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work as long as this damage was not the fault of the Construction Manager.
 - b) Providing services made necessary by the default of the Contractor, or by failure of performance of the Contractor under the Contract for Construction, unless the time limitations for the provision of basic services have not been exceeded. In the event of default of the Contractor only work performed by the Construction Manager in assisting the Owner in obtaining the services of a substitute Contractor, meeting with the Contractor's surety company and meeting with the Owner's legal counsel shall be an additional expense.
 - c) Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, or as a witness thereto unless (1) subpoenaed by a party other than the Owner or (2) the Construction Manager is party to said proceedings.
2. The Construction Manager shall be compensated for services provided pursuant to this Article 10 on an hourly basis in accordance with the hourly rate schedule set forth in Appendix B.

ARTICLE 11

TERM OF AGREEMENT

The term of the within Agreement shall be from the date this Agreement is executed and shall continue until project close out.

Dated: _____ East Islip Union Free School District

By: _____

Dated: _____ By: _____

APPENDIX A

Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Construction Manager hereby agrees to effectuate the naming of the School District as an additional insured on the Construction Manager's insurance policies, with the exception of workers' compensation and errors and omissions insurance.

- II. The policy naming the School District as an additional insured shall:
- Be an insurance policy from an A.M. Best rated "secured" or better, New York State licensed insurer;
 - Provide for 30 days notice of cancellation;
 - The School District shall be listed as an additional insured by using endorsement CG 2010 11 85 or equivalent. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance; and,
 - State that the organization's coverage shall be primary coverage for the School District, its Board, employees and volunteers.
- III. The Construction Manager agrees to indemnify the School District for any applicable deductibles.
- IV. Required Insurance:
- **Commercial General Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate.
 - **Automobile Liability**
\$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.
 - **Workers' Compensation**
Statutory Workers' Compensation and Employers' Liability Insurance for all employees.
 - **Construction Manager's Errors and Omissions Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of the Construction Manager performed under the contract for the School District. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. If the Construction Manager is providing environmental services, the errors & omissions policy must be endorsed to include coverage for these services.
 - **Excess Insurance**
On a follow-form basis (excess insurance applies over the Construction Manager's commercial general liability insurance and professional errors and omissions insurance), with limits of \$3,000,000 each occurrence and aggregate.

- V. The Construction Manager acknowledges that failure to obtain such insurance on behalf of the School District constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the School District. The Construction Manager is to provide the School District with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities.

- VI. The School District is a member/owner of the New York Schools Insurance Reciprocal (NYSIR). The Construction Manager further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the School District but also NYSIR, as the School District's insurer.

SAMPLE

APPENDIX B
HOURLY RATES

SAMPLE