

**BOARD MEETING:** Regular  
**DATE:** Wednesday, January 18, 2017  
**TIME:** 6:00 p.m.  
**PLACE:** Naples High School Cafeteria

I. Meeting Called to Order

II. Roll Call

III. Adopt the Agenda of the Regular Meeting of January 18, 2017 (Board Action)

IV. Executive Session (Board Action)

V. Pledge of Allegiance

VI. Public Comments: The Board of Education invites you, the residents of our school community, to feel comfortable in sharing matters of interest or concern that you might have with us. The Board President will be happy to recognize those of you who wish to speak. We would ask that you come forward and please identify yourself before presenting your thoughts.

Those items brought to the attention of the Board during this time may be taken under consideration for future response or action. (*Individual comments will be limited to three minutes.*)

As a matter of courtesy, we ask that issues related to specific School District personnel or students be brought to the attention of the Superintendent of Schools privately. Thank you for this consideration.

Board Reponse: The Board of Education is committed to keeping communication open and transparent. The Board of Education President will be working with the Board and the Superintendent to make every effort to respond to public comments directed to the Board of Education at previous meetings, during the next scheduled meeting.

VII. Points of Interest

VIII. Superintendent Recognitions & Updates

- Points of Pride
- Claims Auditor Report
- Department Chair Reports:
  - Fine Arts: Julie Austin
  - Library: Katie Infantino and Colleen Betrus
- Board of Education Reflection on Department Chair Reports
- Capital Improvement Update

IX. Administrative Reports

- Elementary Principal
- Secondary Principal
- Director of Pupil Personnel
- Student Representative

X. Board Reports

- WFL BOCES
- Budget Committee
- Facilities Committee

XI. Minutes

- Regular Meeting of January 4, 2017

XII. Election Services Agreement

XIII. Capital Project

- Construction Manager Contract: Watchdog Building Partners

XIV. Student Appeal

XV. Contractual Agreement

XVI. Business

- Establish Civil Service Positions

XVII. Personnel

- Retirement Resignation
  - Teacher
- Resignation
  - Teacher Aide
- Appointment:
  - School Bus Monitor

XVIII. Consent Agenda Items

- Committee on Special Education & Committee on Preschool Special Education Actions
- Student Teacher
- Volunteers
- Substitutes
  - Teacher
  - Food Service Helper

XIX. Adjournment

## Regular Meeting

January 18, 2017

Minutes of a Regular Meeting of the Board of Education of Naples Central School held on Wednesday, January 18, 2017 at 6:04 p.m. in the Naples High School Cafeteria.

Members Present:	Robert Brautigam	Robert Hotchkiss
	Joseph Callaghan	Gail Musnicki
	Carter Chapman	Maura Sullivan
	Brent Gerstner	Margo Ulmer
	Jacob Hall	Seth Price

Members Absent:

Also Present: Matthew Frahm, Mitchell Ball, Kristina Saucke, Karen Mead, E. Bridget Ashton and Aubrey Krenzer.

Guests: Evelyn Letta, Libby Pompeo, Julie Austin, Shirley Austin, John Holtz, Shirley Riffle, and Barbara Howard.

A quorum being present, the meeting was called to order at 6:04 p.m. by Board President Margo Ulmer.

**Motion: Jacob Hall**

**2nd: Brent Gerstner**

Resolved, that the Board of Education approves the agenda of the Regular Meeting of January 18, 2017 as presented.

**Voting Yes: 9**

**Motion Carried**

**Voting No: 0**

**Motion: Jacob Hall**

**2nd: Robert Brautigam**

Resolved, that the Board of Education approves calling an executive session at 6:05 p.m. for the purpose of discussing the employment history of a particular person or persons, and to hear an appeal of a student's suspension.

**Voting Yes: 9**

**Motion Carried**

**Voting No: 0**

**Time out of Executive Session: 7:07 p.m.**

### **Public Comments**

None

### **Board Response**

None

### **Points of Interest**

Board of Education Member Gail Musnicki spoke about a conversation with Ralph Undercoffler regarding a letter that Superintendent Matthew Frahm sent him last week.

Board of Education President Margo Ulmer noted that former Board of Education Member Barb Howard has a new granddaughter.



Board of Education Member Robert Brautigam spoke about Robotics.

Superintendent Matthew Frahm noted that Diane Payne's mother has passed away.

**Superintendent Recognitions & Updates**

Superintendent Matthew Frahm spoke about some "Points of Pride" including a visit by Darryl Abraham, an upcoming conversation with Mr. Abraham, the Elementary School composting program and Celeste Elliot, a technology integration conversation between staff members and instructors from Keuka College, and a community presentation following the Visioning/Strategic Planning Process.

District Claims Auditor Evelyn Letta presented a quarterly Claims Auditor report for the period ending December 31, 2016.

Fine Arts Department Chair Julie Austin presented a Fine Arts department report and outlined various resources that the department and district has to offer students.

A period of question and comment by the Board of Education followed the Department Chair report.

Board of Education Members reflected on department chair reports given over the last couple of months and provided some commentary.

Business Administrator Mitchell Ball presented a capital project report and spoke briefly about the L&D Holdings property purchase agreement, the Watchdog Building Partners contract, continued conversations with the architect about project cost and scope, and the upcoming timeline of events.

**Administrative Reports**

Secondary Principal Bridget Ashton outlined items that appeared in the monthly Board of Education Report and spoke briefly about midterm and regents testing as a celebration of learning and project based learning.

Elementary School Principal Kristina Saucke spoke briefly about composting, digital citizenship, and a thank you to Julie Austin.

Director of Pupil Personnel Services Karen Mead outlined items that appeared in the monthly Board of Education Report and spoke briefly about secondary transitions into careers and adulthood.

Student Representative Seth Price spoke briefly about interscholastic sports, extracurricular activities; charitable activities, student academics, student activities; and student clubs.

**Board Reports**

Board of Education 1<sup>st</sup> Vice President and Facilities Committee Member Joseph Callaghan reviewed items as discussed in the Facilities Committee Meeting including the Darryl Abraham artwork, potentially incorporating High School artwork into the design of the building, and potential intervenor funding relating to a proposed windmill project by an outside corporation.

Board of Education 2<sup>nd</sup> Vice President and Budget Committee Member Jacob Hall reviewed items as discussed in the Budget Committee Meeting including the budget timeline, state aid financing, tax cap estimates, the Affordable Care Act, Bullet Aid, a potential Teachers

Retirement Reserve, the 1 to 1 digital device plan for grades 4 through 12, bus purchase planning, a tour of the Bloomfield Central School District Technology Department, and a Budget Presentation on February 15<sup>th</sup>.

Mrs. Ulmer reviewed items as presented at the WFL BOCES Meeting including a celebration for newly tenured staff, substance abuse training, SAFE Schools training, and a joint conference planning session with Rural Schools Association.

**Motion: Brent Gerstner**

**2nd: Robert Hotchkiss**

Resolved, that the Board of Education approves the minutes of the following meetings:

- Regular Meeting of January 4, 2017

**Voting Yes: 9 Motion Carried**

**Voting No: 0**

**Motion: Maura Sullivan**

**2<sup>nd</sup>: Gail Musnicki**

**WHEREAS**, the Board wishes to obtain election services from Ontario County, for and on behalf of its Board of Elections, to be received in connection with its annual meeting and election on May 16, 2017; and

**WHEREAS**, Ontario County has agreed to provide election services to the School District; and

**WHEREAS**, the Board, after careful consideration of an agreement for the provision of election services by Ontario County to the School District, wishes to execute the agreement.

**NOW THEREFORE BE IT RESOLVED**, that, the Board of Education hereby accepts and agrees to:

1. Execute the agreement for the provision of election services by Ontario County, for and on behalf of its Board of Elections, to the School District in connection with the School District's annual meeting and election on May 16, 2017.
2. This resolution shall take effect immediately.

**Voting Yes: 9 Motion Carried**

**Voting No: 0**

**Abstentions: 0**

**Motion: Robert Brautigam**

**2nd: Joseph Callaghan**

**WHEREAS**, the School District has retained SEI Design Group Architects, DPC to provide architectural & engineering services during all design and construction phases of the upcoming Capital Improvements Project; and

**WHEREAS**, the School District desires to retain Watchdog Building Partners to provide Construction Management Services in accordance with the proposed agreement which is on file with the District Clerk and approved by legal counsel.

**NOW, THEREFORE, BE IT RESOLVED** that:

1. The Board of Education authorized the Superintendent of Schools to execute the contract with Watchdog Building Partners as Construction Manager for the upcoming Capital Improvements Project and agrees to adopt the proposed AIA C132-2009 agreement

between Naples Central School District and Watchdog Building Partners in accordance with the recommendation of its legal counsel, Ferrara Fiorenza PC.

2. This Resolution shall take effect immediately.

**Voting Yes: 9 Motion Carried**

**Voting No: 0**

**Abstentions: 0**

**Motion: Robert Brautigam**

**2<sup>nd</sup>: Carter Chapman**

Resolved, that the Board of Education table the motion to accept or deny the appeal regarding the student disciplinary hearing pending additional discussion in Executive Session.

**Voting Yes: 9 Motion Carried**

**Voting No: 0**

**Motion: Joseph Callaghan**

**2<sup>nd</sup>: Brent Gerstner**

Resolved, that the Board of Education approves the negotiated agreement by and between the Superintendent of the Naples Central School District and the Naples School District Assistant Superintendent for Business for the period of January 18, 2017 through June 30, 2022.

**Voting Yes: 9 Motion Carried**

**Voting No: 0**

**Motion: Jacob Hall**

**2<sup>nd</sup>: Carter Chapman**

**Resolved, that upon the recommendation of the Superintendent, the Naples Central School District Board of Education approves the following Business resolutions as presented:**

- Resolved, that the Board of Education authorizes the creation of the following positions on the Ontario County Department of Civil Service roster for our District effective January 5, 2017:
  - Two (2) School Bus Monitor positions
  - One (1) Typist position

**Voting Yes: 9 Motion Carried**

**Voting No: 0**

**Motion: Carter Chapman**

**2<sup>nd</sup>: Joseph Callaghan**

**Resolved, that upon the recommendation of the Superintendent, the Naples Central School District Board of Education approves the following personnel item as presented:**

- Resolved, that the Board of Education approves the retirement resignation of Cynthia Bero, French Teacher, with regret, effective October 14, 2017.
- Resolved, that the Board of Education approves the resignation of Wendy Fairbrother, Teacher Aide, with regret, effective January 13, 2017.
- Resolved, that the Board of Education appoints the following:
  - Stacy Fleischman, 4915 Route 245, Naples, NY 14512, to a probationary appointment as School Bus Monitor, effective January 19, 2017 at the rate of \$9.80/hour.

**Voting Yes: 9 Motion Carried**

**Voting No: 0**

**Motion: Maura Sullivan**

**2nd: Gail Musnicki**

**Resolved, that the Board of Education, upon the recommendation of Superintendent Matthew Frahm, approves the Consent Agenda Items as presented:**

a. Resolved, that the Board of Education approves committee recommendations from the following meetings:

- Committee on Special Education actions of January 11, 2017.
- Committee on Preschool Special Education actions of January 3, 2017 and January 4, 2017.

b. Resolved, that the Board of Education approves the following Student Teacher:

<u>Name</u>	<u>Placement</u>	<u>Supervising Teacher</u>
Ian Wentzel	High School Science: Spring 2016-17	Jonathan Betrus – 8 weeks
Ian Wentzel	High School Science: Spring 2016-17	Maureen Russell – 8 weeks

c. Resolved, that the Board of Education hereby approves the following Volunteers:

<u>Name</u>	<u>Position</u>	<u>Address</u>
Elizabeth Richardson	Volunteer	8091 State Route 245, Naples, NY 14512
Thomas Mannella	Volunteer	32 Thrall Street, Naples, NY 14512

d. Resolved, that the Board of Education hereby approves the following Substitute Appointment:

<u>Name</u>	<u>Position</u>	<u>Address</u>
Linda Berryman	Teacher	27 East Avenue, Naples, NY 14512

e. Resolved, that the Board of Education hereby approves the following Substitute Appointment *effective January 12, 2017*:

<u>Name</u>	<u>Position</u>	<u>Address</u>
Judy Meredith	Food Service Helper	6075 Italy Valley Road, Naples, NY 14512

**Voting Yes: 9**

**Motion Carried**

**Voting No: 0**

**Motion: Joseph Callaghan**

**2nd: Brent Gerstner**

Resolved, that the Board of Education approves calling an executive session at 8:30 p.m. for the purpose of discussing the employment history of a particular person or persons, and to hear an appeal of a student's suspension.

**Voting Yes: 9**

**Motion Carried**

**Voting No: 0**

**Time out of Executive Session: 8:56 p.m.**

**Motion: Gail Musnicki**

**2nd: Brent Gerstner**

Resolved, that the Board of Education denies the appeal regarding the student disciplinary hearing of a specific student.

**Voting Yes: 9**

**Motion Carried**

**Voting No: 0**

**Abstentions: 0**

**Motion:**       **Joseph Callaghan**

**2nd:**           **Maura Sullivan**

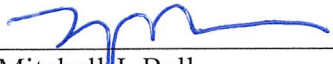
There being no further business, the Regular Meeting of January 18, 2017 is hereby adjourned at 9:04 p.m.

**Voting Yes: 9**

**Motion Carried**

**Voting No: 0**

Dated this 18th day of January, 2017

  
\_\_\_\_\_  
Mitchell J. Ball  
District Clerk

## Board of Education Auditor Report – January 2017 Board Meeting

From October 1, 2016 - December 31, 2016 I have approved warrants 0055-0096 for a total amount of \$4,731,914.38 for the second quarter of the 2016-2017 fiscal year. The following errors have occurred and were corrected:

1. (5) Backup paperwork missing information (missing signatures, requisitions, conference forms, remit address change.)

A total of 5 errors from 588 transactions (0.85%)

Respectfully submitted,

  
Evelyn Latta

## **Fine Arts Department**

### **BOE Report 2016-2017**

#### **Members:**

Julie Austin - Department Chair, General Music K-2, Music Therapy, 4-6 Elementary Chorus

Amanda Erickson - General Music 3-5, Instrumental Music 4-6

Margaret Flanigan - General Music 6 & 8, Vocal Music 7-12

Phil Bariteau- Instrumental Music 7-12

Abby Castle- Art Ed. K-2, 4&5, Technology 4-6

Melissa Neubauer - Art Ed 3 & 6-12

Paul Frazer - Art Ed 7-12

Katie Infantino - Elementary Media Center K-6

## **STUDENT ENGAGEMENT**

### **Points of Pride:**

- Approximately 95% of students at Elementary School in Chorus and Band
- Continuing to offer engaging electives such as guitar theory, and 7th & 8th grade art
- Collaborating to help support student engagement ie. Integrated projects document,
- Art students working behind the scenes on the musical sets, Art Club at the ES helping to create various pieces for Rally's and special events,
- Offering opportunities for students to stay after school and participate in art and music activities
- Marching Band has the most students involved of all extra curricular activities
- Student Artwork is displayed in regional and congressional art shows
- Students choosing to participate in Solofest has increased over the past 3 years
- Abby Castle has been supporting project based learning with Seth Almekinder's 5th grade class

### **Areas for Growth:**

- A new auditorium that will bring our programs and performances of all groups into the 21st century
- Planning a Sr. High choral trip to perform and be adjudicated
- Collaborating with the Historical society to offer a student art show

## **STEAM ENHANCEMENT**

### **Points of Pride:**

- New STEAM lab at Elementary School being used by many grades
- Providing STEAM experiences through Arts In Ed programs with 1st grade and Kindergarten
- Supporting the 7th grade Project based learning project the past 3 years
- Incorporating students in Art classes into set building and other production aspects of the musical, such as sound and light engineering

### **Areas for Growth:**

- Expanding our Art Department to accommodate for increases in student enrollment in Art classes and electives, as well as to provide support for the increased opportunities for creating Visual art (STEAM lessons, PBL, and Makerspace all in multiple grade levels)
- Continued development and improvement of the spaces used for creating and performing within our district
- Exposing students to local STEAM companies and career opportunities

- Introducing Project- Based learning within our disciplines and supporting projects within other areas of each building
- Working on SMART board for the auditorium and HS band room
- Improving the lighting system in the Auditorium
- Incorporating Video and Audio recording of our performing groups to expand use of technology and software

### **ELA Literacy Program Development**

#### **Points of Pride:**

- Creating the Integrated Projects Document which will serve as a focal point for all curriculum documents and help to create an interdisciplinary approach at the Elementary level
- In the elementary school we are incorporating more story books that help to supplement our music and art lessons and encourage reading within other aspects of school life
- Students who are involved in creating visual art and music are engaging their brains in the processes that are required for reading and writing
- Exposing students to various world cultures through the arts supports the ELA material throughout all grade levels

#### **Areas of Growth:**

- Creating opportunities for collaboration at the Jr/Sr High level between the Fine Arts and Core subjects

**We appreciate the continuous support of the Board of Education and our administration for our programs, and for recognizing that the Arts is a way to improve, enhance and enrich the academic experience of our students in Naples. We welcome you to join us in our classrooms and rehearsals anytime!**



## **STUDENT ENGAGEMENT:**

### **Elementary Media Center:**

#### **Points of Pride:**

- Elementary Student Council-connects school with community (local and international service activities)
- STEAM lab (Makerspace room)

#### **Areas of Growth:**

- Work with elementary teachers to create and implement PBL at all grade levels (May)

### **Jr.-Sr. High:**

#### **Points of Pride:**

- Annual Project Based Learning (PBL) experiences at the 7th grade level
- Student choice in English Literature Studies at the 7th & 8th grade as well as incorporating higher level questioning through Bloom's Taxonomy
- Use of technology (NoodleTools program) to enhance 10th grade research project as well as help students become college ready
- Field trip to enhance the English 7 curriculum-7th grade trip to *A Midsummer Night's Dream* at Nazareth College
- Celebrate *Teen Read Week* and *Teen Tech Week* activities to engage students with the library

#### **Areas of Growth:**

- Taking the annual PBL 7th grade experience to the next level-year long exposure, more student choice in the unit

## **STEAM ENHANCEMENT:**

### **Elementary Media Center:**

#### **Points of Pride:**

- Makerspace has grown
- STEAM day earned by students through good behavior
- Addition of coding books to collection

#### **Areas of Growth:**

- Provide a STEAM project challenge each month in Makerspace

### **Jr.-Sr. High:**

#### **Points of Pride:**

- Hosting an Hour of Code in December during 9th periods

- Integration of technology into many research papers and projects through tools, such as NoodleTools and Turnitin.com

**Areas of Growth:**

- Investigate adding a Makerspace in the high school

**ELA LITERACY PROGRAM DEVELOPMENT:**

**Elementary Media Center:**

**Points of Pride:**

- Booktalks to students
- Read first ten minutes of media center
- Bookfair (twice a year)
- Battle of the Books Grades 5 & 6

**Areas of Growth:**

- Battle of the Books for more grades, such as 3 and 4

**Jr.-Sr. High:**

**Points of Pride:**

- English Literature Studies (7th and 8th grade levels)
- Work with multiple departments (English, History and Special Education) on an interdisciplinary 10th grade research paper
- Promote literacy through Battle of the Books (3 times a year)
- Promote reading through student driven book club (work in conjunction with Mrs. Weller)

**Areas of Growth:**

- Working with the English department doing ELA curriculum mapping with Literacy Coach



## Naples Elementary School Board of Education Updates ~ January 2017

### Learning Walks

This year Naples is collaborating with Marcus Whitman and Canandaigua to provide peer-to-peer professional development in the form of Learning Walks. Learning Walks are an opportunity to visit others' classrooms with the goal of getting great ideas to bring back to your own classroom. They are usually a full day that includes 5-6 visits and plenty of time to discuss and debrief, both with colleagues from Naples and the other two districts. This year we are focusing on the intermediate (3-5) and middle (6-8) levels. In November, Naples and Marcus Whitman teachers met in Canandaigua to visit classrooms there. In December, Naples is hosted teachers from the other two districts. In January, Canandaigua and Naples teachers are traveling to Marcus Whitman. The response has been overwhelmingly positive. The following are comments that visitors left our Naples teachers in summary notes:

- *Impressed by great energy in the building*
- *Positive culture among staff and students*
- *Kids so polite and well-behaved in the hallways*
- *Kids engaged in every classroom*
- *Great to see how comfortable kids were with technology - allowing it to be integrated easily and fluidly*
- *Kids working independently and taking initiative*
- *Insanely engaging*
- *Creative, above and beyond, engaging, unifying, and risky*
- *Incorporation of technology to inspire discussion*
- *I want to be a student in your class!*

### David Miller Visit

David Miller is the program advisor for online teaching and learning programs at Warner School of Education (U of R.) He met several Naples teachers at edcampFLX this fall and asked if he could come visit Naples to see how we are integrating technology (specifically iPads.) Dr. Miller visited a number of classrooms at the elementary and middle school level and was so impressed by what he saw that he asked if he could return for another visit. He commented on the fluency of both students and teachers he observed as well as the "bonus" skills observed students using. These include skills students learn in addition to the specific content drawing digital graphs using snap to grid technology, written online communication, and the ability to comfortably manage and navigate between multiple apps. Dr. Miller is working on putting

together a consortium of school working on a "digital conversion" to create a sort of a clearinghouse for ideas and space for practitioners to share ideas.

### **NYSCATE (and future plans)**

This year nine staff members (5 elementary, 4 high school) had the opportunity to go to NYSCATE, the statewide technology in education conference. Naples teachers presented two well-attended sessions. Jaime Weller and Anneke Radin-Snaith led a session titled "Tools of Engagement". Diana DiGrande, Alice Fitch and Anneke Radin-Snaith discussed "Blended Learning in the Primary Classroom" with approximately fifty NYSCATE attendees. Teachers also had the opportunity to attend a variety of sessions and hear some great keynote speakers. Several sessions and one of the keynotes focused on digital citizenship. In place of a second keynote, NYSCATE showed the thought-provoking film "*Screenagers*". As usual, staff returned from NYSCATE energized and full of ideas!

On January 20<sup>th</sup>, Anneke Radin-Snaith, Carrie Grove, Abby Caste, Deb Wordingham, Katie Infantino, Rick Jaus and I will meet for a second planning session on digital citizenship at the Elementary School. With all of the tremendous benefits of technology comes the increased need for more instruction regarding safety and responsibility.

### **Keuka College Partnership**

Annie Almekinder and Nancy Marksbury from Keuka College visited the Elementary School on Thursday 1/7 to meet with teachers who attended the Technology Integration PD at Keuka last summer. They were interested to hear how teachers are applying their learning as well as how teachers would like to move forward with this collaboration. We are exploring opportunities for Annie and Nancy to come back to Naples and model some tech integration lessons as well as continued summer collaboration.

### **Collaboration with our Instructional Coach Carrie Grove:**

- Monthly curriculum mapping continues. Carrie facilitates grade level team meetings that focus on creating ELA curriculum maps, as well as any necessary updates to our Math curriculum maps. Carrie has also worked with teams to fill in and update the Integrated Projects document. This cross content resource supports Special Area Teachers in the planning of lessons that support grade level curriculum topics.
- Organization and Scheduling of Tier III RTI meetings with Mrs. Mead.
- Support for teachers in AIMSweb and RTIm
- Visits to K-2 classrooms for direct coaching/curriculum support
- Safety Patrol recruitment (December) and interviews (January)
- Currently benchmarking all students UPK-6 using Fountas and Pinnell text levels
- Taught some math lessons to help with sub coverage

- Staff newsletter "Learning Bytes" (with Anneke) to provide staff with updates and resources
- Toured professor from Warner School of Education at the U of R to elementary classrooms to see our blended learning
- Assistance in organizing and creating a schedule for learning walks
- Carrie and I planned professional development for our January faculty meeting focused on Response to Intervention (RTI). Resources are attached. ☺

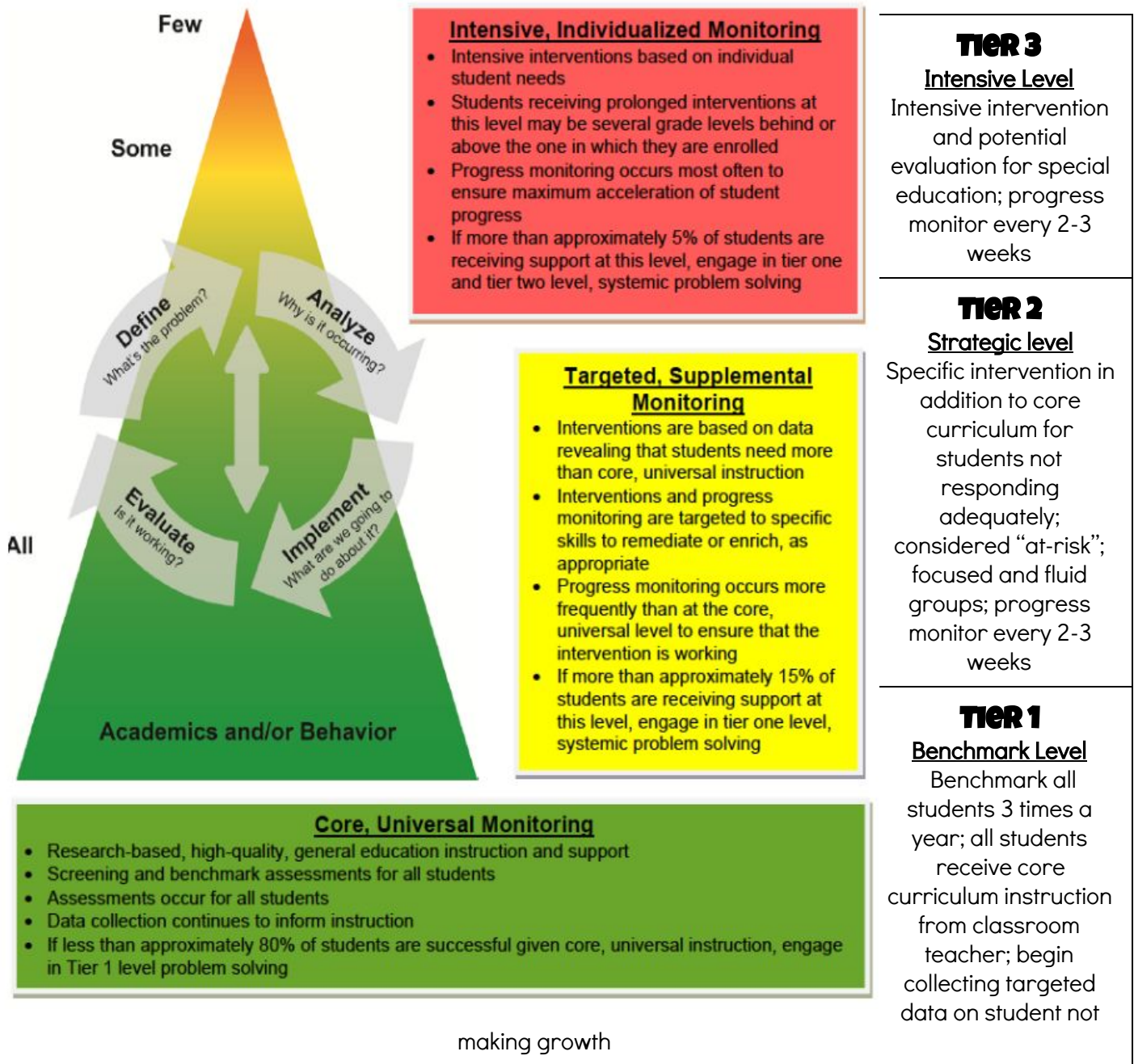


A few weeks ago I had the opportunity to meet with Celeste Arlie about a great opportunity for our school. For those of you who do not know Celeste, she used to teach here at Naples Elementary on our 6th grade team. She currently works training staff for the Veterans Crisis Hotline, and also helps run a composting program in Prattburgh with her boyfriend. Celeste has been working with our food service department on composting food from the kitchen, and we are now expanding this to include all of the uneaten food from our Elementary cafeteria!

This week Celeste was in our school to explain composting to our students and teach them the process in the cafeteria. Celeste sent a short video link for students to watch before the presentations. She also provided closed containers for teachers interested in composting snack food in their classrooms. Celeste will spend as much time as necessary to help students become comfortable and independent in the process. Our facilities department will simply roll the compost can out to the loading dock and it will be picked up every day.

I am so excited to get this program started at our school! I have been part of so many conversations about food waste, and what a terrific opportunity for our students to learn about composting and the benefits to the environment! Celeste will bring compost rich soil to students in the spring so they can plant with it, and will also work with our outdoor learning committee to provide compost for our courtyard planting. ☺

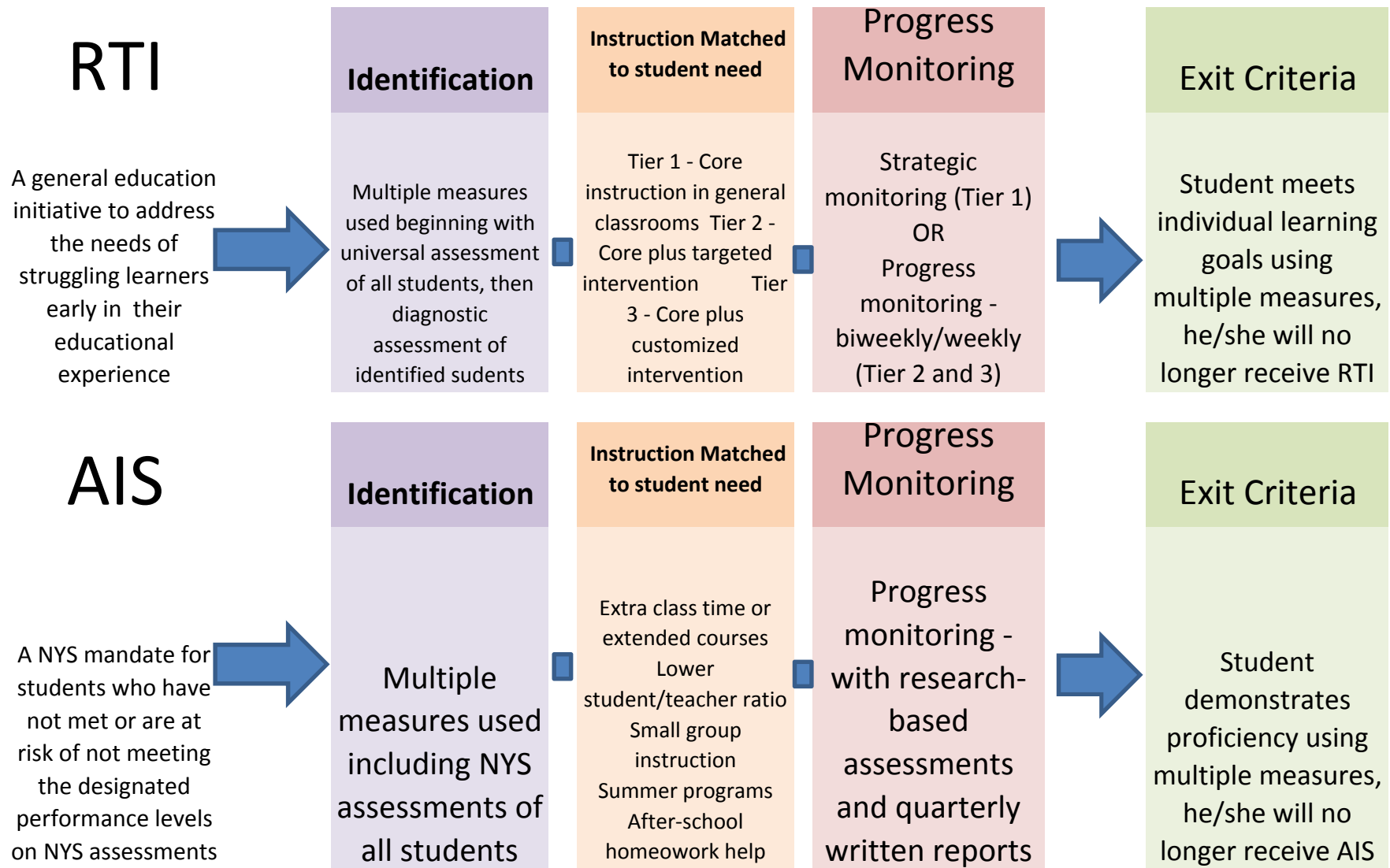
# What is RTI? Response to Intervention



## Remember:

- ALL students receive 30 minutes of intervention at their level.
- Do more than 20 minutes of reading, writing and talking and less “stuff”.
- Ask: “Is this going to make kids more proficient and reflective readers?”
- Kids who respond to differentiated instruction DO NOT belong in Tier 2 or 3.

## RTI & AIS - Providing Customized Services to Students Based on Need



<b>Case Information:</b>					
<b>What to Write:</b> Record the important case information, including student, person delivering the intervention, date of plan, start and end dates for the intervention plan, and the total number of instructional weeks that the intervention will run.					
<b>Student:</b>			<b>Date Intervention Plan Was Written:</b>		
<b>Date Intervention is to Start:</b>		<b>Date Intervention is to End:</b>		<b>Total Number of Intervention Weeks:</b>	
<b>Description of the Student Problem:</b> 					
<b>Intervention:</b>					
<b>What to Write:</b> Write a brief description of the intervention (s) to be used with this student. TIP: If you have a script for this intervention, you can just write its name and attach the script to this sheet.					
<b>Materials:</b>			<b>Training:</b>		
<b>What to Write:</b> Jot down materials (e.g., flashcards) or resources (e.g., Internet-connected computer) needed to carry out this intervention.			<b>What to Write:</b> Note what training –if any—is needed to prepare adult (s) and/or the student to carry out the intervention.		
<b>Progress- Monitoring:</b>					
<b>What to Write:</b> Select a method to monitor student progress on this intervention. For the method selected, record what type of data is to be used, enter student baseline (starting-point) information, calculate an intervention outcome goal, and note how frequently you plan to monitor the intervention. Tip: Several ideas for classroom data collection appear on the right side of this table.					
<b>Type of Data Used to Monitor:</b>			<div style="text-align: center;"><b><u>Ideas for Intervention Progress-Monitoring</u></b></div> <ul style="list-style-type: none"> <li>• Existing data: grades, homework logs, etc.</li> <li>• Cumulative mastery log</li> <li>• Rubric</li> <li>• Curriculum-based management</li> <li>• Behavior report card</li> <li>• Behavior Checklist</li> </ul>		
<b>Baseline:</b>		<b>Outcome Goal:</b>			
<b>How often will data be collected? (e.g., daily, every other day, weekly):</b>					



# Naples HS Board of Education Report

January 2017 ~ Happy New Year!



## Celebrations

- The entire Naples High School community celebrates the arrival of the Darryl Abraham masterpiece in the atrium. It is a source of pride for all!
- Julie Sherwood from the Daily Messenger visited Naples HS on 1/11/17 and wrote the feature article, ***Sculpture delights at Naples school.*** Click [here](#) for story.
- Many thanks to the many faculty and staff members who participated in our first Celebration of Giving! It was wonderful to share some wholesome holiday cheer and laughs as a learning community!
- Congratulations to Trevor Wolinski for being recognized Top of the Trade in Auto Technology II.
- Kudos to Luke Ash for being acknowledged as Top of the Trade in Electrical Trades.
- Wow! Johnathon Lee was recognized for being Top of the Trade in Culinary Arts.
- Congratulations to Jared Rohr and Zach Dormer for earning Eagle Scout status!



# High School Updates

## "Wrapping Up" 2016

The High School closed 2016 in a celebration of learning and music:

- Alumni Panel, Periods 1 & 3 - Thank you to Matt Frahm and Bill Murphy for coordinating this even for students!
- Winter Concert for ES students and staff in Auditorium, Period 2
- Winter Concert for HS students and staff in Auditorium, Period 4
- Jazz Band Performances during Lunch A and B



## Winter Dance 1/7/17

- The Sophomore Class sponsored a Winter Dance on Saturday, 1/7/17 from 7:00 - 10:00. Approximately 130 students were in attendance and enjoyed an evening of food, friends, music, dancing and fun.

## HS Robotics Club 1/7/17

- The HS Robotics Club kicked off their build season on Saturday, 1/7, at Spencerport HS.

## All Star Circus

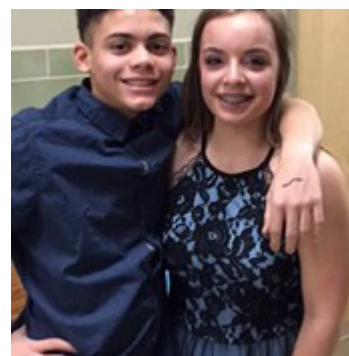
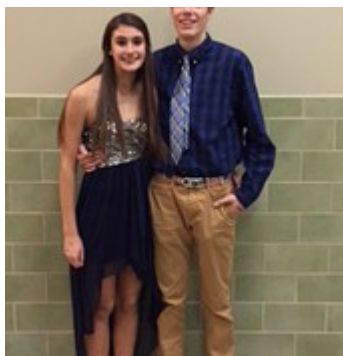
- The Yearbook Club sponsored the ***Cole All Star Circus*** on Saturday, 1/7/17 at 1:00

## Darryl Abraham Visit

- Darryl Abraham visited and shared his experience(s) with Paul Frazer and Melissa Neubauer's art classes on 1/11 and 1/12.

## Counseling Department Update

- Course Catalog will be edited this month and be emailed to parents of 8th graders in preparation for the optional 4-year parent/student planning sessions that typically occur in February. All students in 8th grade will create a 4-year base plan that will be edited year-to-year. If parents are unable to attend, a copy will be sent home for their review. Students in grades 8th - 9th (and also 10th and 11th with Bill!) will be meeting in late winter/early Spring to edit their plans and discuss next year's schedule.



## Midterms and Regents



Regents and Midterms are scheduled from 1/24 - 1/27.

- Midterm and Regents schedules and proctoring assignments have been shared with faculty and staff.
- Many thanks to Aubrey Krenzer, Anneshia VanBortel, and Bill Murphy for their tireless efforts on the creation of the Regents / Midterms master schedule!
- Students are scheduled to have half days on 1/25 - 1/27.
- Communication to families about midterms and Regents will be shared week ending 1/13.
- For access to NYS January Regents schedule, access link below.

<http://www.p12.nysed.gov/assessment/schedules/2017/regents-117.pdf>

[www.p12.nysed.gov](http://www.p12.nysed.gov)



## Instructional Highlight, By Anneke Radin Snaith

### 7th Grade PBL

In response to student feedback wanting more choice and staff feedback looking for a more global focus, the 7th grade project looks a bit different this year. We are focusing on the United Nations Global Sustainability Goals. The driving questions for this year's project are:

1. How do we do our part in reaching the UN Sustainability Goals of 2030?
2. What actions can we take locally, nationally, and globally?

Staff have been meeting with 7th graders monthly, in varying formats, to give them an introduction and some background information. Students will be doing the bulk of their research in English class this month and working on their exhibits during the first week of February. We anticipate our Global Sustainability Expo to be Friday afternoon, February 3rd (and you are all invited). At this time, students will vote on which group's solution the whole cohort will work to carry out. This final segment of the project will occur in late spring.



## Professional Development

### January 9 Faculty Meeting

Student engagement is at the heart of optimal learning and academic achievement. As we all know (and research supports), technology enhanced instruction is becoming a widely supported approach to stimulating increased levels of student engagement.

Given the relevance of student engagement and the commitment / implementation of 1:1 devices in our district, the focus of the 1/9 faculty meeting was professional development specific to this topic. Four different breakout sessions were developed and offered to teachers to choose from:

- Technological Tools of Engagement
- Turn Key Training - Round Table Discussion
- Chromebook and iPad "Swap Meet"
- Town Hall Meeting - Technology Integration

### Sneak Peek - February 6 Faculty Meeting

Professional dialogue surrounding student engagement has included discussion surrounding how to best support students who demonstrate socio emotional learning needs and / or mental health concerns. In effort to support teachers in this area, the February 6 Faculty Meeting will focus on socio emotional learning and mental health. Break out workshop sessions include:

- Working with Students who Struggle with Depression and Anxiety
- Disengaging from the Conflict Cycle
- Knowing the Signs
- Lost at School, Examining the Work of Ross Green





## Upcoming Events

### January

- 1/18: BoE Meeting and Dept. Reports 7:00
  1. Julie Austin
  2. Colleen Betrus
- 1/19 & 1/20: 1.0 FTE SS Interviews (PM)
- 1/23: Department Chair Meeting
- 1/24-27/17: NYS January Regents Exams, Visit site for exam schedule - <http://www.p12.nysed.gov/assessment/schedules/2017/regents-117.pdf>
- 1/25 – 1/27: Midterms for all students 7 – 12

1/27: End of 2nd Marking Period

- 1/27-28: JH/SH All County Music Festival hosted by Naples Central School
- 1/25-28: Educon - Science Leadership Academy, Anneke et. al
- 1/25 - 1/27: Half Days for Students
- 1/30: Department Meetings
- 1/31: Leadership Meeting 2:00 - 4:00 (Bridget, Aubrey, Anneke)

### February

- 2/1: 2nd Marking Period Grades due
- 2/1: NTA Liaison Meeting 8:00 (Bridget, Phil, Tom, Chad)
- 2/1: BoE Meeting 7:00 HS Cafe
- 2/1-2/2: 7th Grade Project Based Learning Events (AM only)
- 2/2: District Mentor's Meeting
- 2/3: Project Based Learning Expo - PM
- 2/3: FLTCC Sophomore Field Trip
- 2/6: Faculty Meeting
- 2/10: District Spelling Bee
- 2/10: Junior Class Valentine's Day Dance
- 2/17: Spelling Bee "Snow Date"

### March - Music in our Schools Month

- 3/1: District Safety Team Meeting
- 3/3: Senior Citizen Prom

- 3/3 - 3/5: HS Drama Production - ***Beauty and the Beast***
- 3/9: HS Safety Team Meeting
- 3/27: HS SDM Meeting
- 3/28-30/17: NYS Grades 3-8 ELA Assessments, Paper Based
- 3/27- 4/3/17: NYS Grades 3-8 ELA Assessments, Computer Based
- **April**
- 4/6: NHS Inductee Ceremony
- 4/7-8: NYSSMA Solo Festival
- **May**
- 5/2-4/17: NYS Grades 3-8 Math Assessments, Paper Based
- 5/1-8/17: NYS Grades 3-8 Math Assessments, Computer Based
- 5/11: District Mentor's Meeting
- 5/11 - 5/13: Senior Trip, NYC
- 5/13: Marching Band - Lilac Festival
- 5/20: Marching Band - Seneca Falls Pageant
- 5/22: HS SDM Meeting
- 5/24 - 6/2: NYS Grade 8 Science, Performance Test (one day exam within date range)
- 5/27-28: Marching Band Overnight @ 1000 Islands
- 5/27: Marching Band - Fulton Memorial Day Parade
- 5/28: Marching Band - Theresa Rotary Cup Competition
- 5/29: Marching Band - Naples Memorial Day Parade
- **June**
- 6/1: JRSR High School Art Show and Concert
- 6/3: Marching Band - Pageant of Gorham
- 6/5: NYS Grade 8 Science, Written
- 6/10: Marching Band - Painted Post
- 6/13: Elementary Art Show and Concert
- 6/16-18: Adirondack Trip
- 6/20: Senior Parent Banquet
- 6/13-22/17: June REGENTS Examinations, Visit site for exam schedule - <http://www.p12.nysed.gov/assessment/schedules/2017/regents-617rev.pdf>
- 6/23: Graduation Rehearsal
- 6/24: GRADUATION

**NAPLES CENTRAL SCHOOL**  
**NAPLES, NEW YORK 14512**



Board of Education Report

Karen J. Mead, Director of Pupil Personnel

January 18, 2017

On January 20<sup>th</sup> our secondary building will host our regional representative for Adult Career and Continuing Education Services – Vocational Rehabilitation (ACCES-VR). Parents of potentially eligible seniors and juniors have recently received a letter regarding the visit and may schedule time with Mr. Louis Labriola on the 20<sup>th</sup>. Time with Mr. Labriola will allow students and parents to review the ACCES-VR application process and services the student may be able to receive as they transition from high school and into higher education or the work force.

This opportunity to meet with our representative is a follow-up activity for seniors and juniors identified for support services with NCS. During annual planning meetings this past fall, the students and parents received general information about the ACCES-VR agency and the application materials for their review, consideration and completion. Mrs. Rebecca Slade and Mr. Bill Murphy have worked collaboratively to reach out and support the students and their families with any of their questions or needs for additional forms. Their efforts have been quite focused in hopes of engaging more students with the ACCES-VR agency, as numbers in the past have been lower than we would like to see. At this time, Mrs. Slade and Mrs. Kathy Grayson are working together to schedule all meeting requests.

Below is a list of possible supports and services ACCES-VR may offer eligible students after their completion of high school.

- Vocational Counseling and Guidance
- Assessments and evaluations
- Rehabilitation Technology
- Special Transportation
- Adaptive Driver Training
- Work Readiness
- Training including tuition, related fees, required textbooks
  - Vocational
  - College
- Tutor, Reader and Note Taker services
- Youth Services
- Physical and mental restoration services
- Medical care for acute conditions arising during the program

- Modifications to homes, vehicles and worksites
- Job Development and Placement
- Work Try Out & On the Job Training
- Job Coaching
- Occupational tools and equipment
- Goods, inventory, equipment and supplies for self-employment
- Occupational and business licenses

Attached is the brochure shared with all potentially eligible students and their families this past fall. It expresses the process, responsibilities of all parties and possible supports/services during and after high school.



## YOUR RESPONSIBILITIES

- Keep all appointments with my ACCES-VR counselor
- Let my counselor know if I change my address or phone number or email
- Follow medical and treatment recommendations
- Send my counselor my grades or progress reports
- Let my counselor know if I have any problems that will interfere with my plan
- Contact my counselor when I get a job!

Fill in this information at your first meeting with your VR counselor.

My counselor (VRC) is \_\_\_\_\_

Phone \_\_\_\_\_

Email address \_\_\_\_\_

Counselor's assistant (VRCA) is \_\_\_\_\_

Phone \_\_\_\_\_

Email address \_\_\_\_\_

## THE ACCES-VR PROCESS

- Student makes an informed choice to apply for ACCES-VR
- Student completes application packet
- VR Counselor determines eligibility
- VR Counselor and student choose an appropriate employment goal
- VR Counselor and student develop an Individualized Plan for Employment (IPE)
- Student acquires skills and supports
- Student gets and keeps a job
- VR Counselor closes case as a **SUCCESS!**

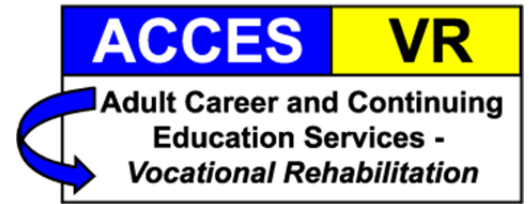
## KEEPING IN TOUCH WITH ACCES-VR

- *By telephone to your VRC or VRCA*  
Listen to the message - it is often customized to let the caller know the person's schedule and activities  
Leave a clear message - your name, your phone number, what you are calling about, and times to call you back
- *By mail* - note the counselor's name on the envelope
- *By email* - sometimes the quickest
- *By appointment* - be responsible - arrive on time - call ahead to cancel if you can't make it

\*\*\*\*BRING THIS TO YOUR 1<sup>ST</sup> MEETING WITH YOUR ACCES-VR COUNSELOR\*\*\*\*

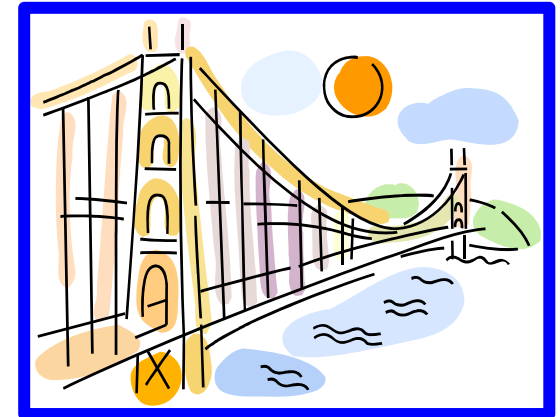
ACCES-VR Central Administration  
Transition and Youth Services  
NYS Education Building Annex  
89 Washington Avenue room 560  
Albany, NY 12234  
800 222-JOBS

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## USER-FRIENDLY GUIDE TO TRANSITION SERVICES

FOR  
HIGH SCHOOL STUDENTS,  
THEIR PARENTS, AND THEIR  
TEACHERS



a bridge to your future

The University of the State of New York  
The State Education Department  
Adult Career and Continuing Education Services  
Vocational Rehabilitation  
Albany, New York 12234  
<http://www.acces.nysed.gov/vr>



## APPLYING FOR ACCES-VR SERVICES

IEP/CSE planning or other school discussions prior to junior year should include the consideration of a referral to ACCES-VR so that you can make an **informed choice** about applying. You don't need to have an IEP to apply!

Transition staff at your school will help you decide when you should apply, help you complete forms, send forms home for your parent or guardian to complete/sign, and send the entire packet to ACCES-VR once it's complete.

ACCES-VR is **Voluntary**. You **choose** if you want to apply for services or not.

## ELIGIBILITY FOR ACCES-VR SERVICES

There are four things student and counselor must establish to determine eligibility for ACCES-VR services.

- That the student has a *disability*
- That the disability creates a *barrier* to employment
- That the student can *benefit* from rehabilitation services
- That *vocational rehabilitation services are required* to achieve employment

Having an IEP or a 504 plan does not guarantee eligibility for ACCES-VR. All of the above criteria must be met according to federal vocational rehabilitation guidelines.

Important steps:

- When you are determined eligible or ineligible you will get a letter.
- If you are eligible, services will not begin until you have met with your counselor and developed a plan.

## MEETING WITH YOUR ACCES-VR COUNSELOR

While you are still attending high school:

- You **may** meet at your school.
- Your parent or guardian will be invited
- A transition staff person at the high school will help schedule these meetings.

At the first meeting:

- Your ACCES-VR counselor will talk with you about your plans when you leave high school.
- You will talk about your ideas about a job goal and the services you will need to become employed.

Once you leave high school:

- Meetings will be at our district office or in a community **location**.
- You will schedule these meetings directly with your ACCES-VR counselor.

## DEVELOPMENT OF THE EMPLOYMENT GOAL

Everything ACCES-VR does is directed toward helping you to reach an employment goal.

You will meet with your ACCES-VR counselor as often as you need, to:

- Choose a realistic and achievable goal.
- Decide how you will gain the skills you will need to do the job.
- Decide what help you need to find a job.
- Figure out what supports you need to keep a job and who will be able to provide them.

## SERVICES TO HELP YOU GET A JOB

All services are directed toward helping you to reach an **employment goal** and are based on your **individual** needs.

Examples of types of services include:

- Vocational counseling
- Assessment for career planning
- Assessment for assistive technology needs
- Purchase of assistive technology (\*)
- Funding toward the cost of education or training after high school (\*)
- Assistance with some transportation costs (\*)
- Funding for academic support services (note takers, tutors)
- Job readiness and job placement services to help you get and keep a job (may include job coaching)

\*means family income is considered

ACCES-VR is MORE than financial assistance.

- Yet some services ARE based on your family income (\*) - see above
- You **may** need to provide your family tax return and records of expenses annually.



**NAPLES CENTRAL SCHOOL**  
**136 NORTH MAIN STREET**  
**NAPLES, NEW YORK 14512**



**ELECTION SERVICES AGREEMENT**

This Election Services Agreement (“Agreement”) is entered into between Ontario County, for and on behalf of its Board of Elections, with offices at 74 Ontario St. Canandaigua, NY 14424 (hereinafter referred to as the “Board of Elections”) and the **Naples Central School District Board of Education**, with offices at **136 North Main Street, Naples, NY 14512** (hereinafter referred to as the “School Board”).

WHEREAS, the School Board will hold an election on the 16th day of May, 2017, and is seeking the assistance of the Board of Elections in providing election services consisting of the provision, programming and usage of Help America Vote Act (“HAVA”) compliant Voting Machines, all equipment and machine supplies necessary to conduct voting operations upon the voting machine; as well as assistance concerning voting operations prior to and on the day of the election; and

WHEREAS, pursuant to Section 3-224 of the New York State Election Law, the Board of Elections may permit school districts within the County to use its Voting Machines and other equipment, for the conduct of elections, upon such terms and conditions as shall be fixed by the Board of Elections and agreed to by the School Board; and

WHEREAS, pursuant to Education Law §2035(1), the School Board is authorized, if the Board of Elections shall consent thereto, to use voting machines belonging to the Board of Elections.

NOW THEREFORE, the parties hereto hereby enter into this Agreement applicable to the **Naples Central School District Election** being held on the 16th day of May, 2017, and any subsequent revote(s) related thereto (hereinafter referred to as the “Election”) as follows:

1. The Board of Elections shall provide, program, test, deliver, install, prior to election day and retrieve after Election Day, pairs of one (1) optical scan Voting Machine and one (1) HAVA compliant ballot marking device, with privacy booths (collectively referred to as “Voting Machines”) for each polling site designated by the School Board for the school election to be held on the 16th day of May, 2017, in a number deemed adequate upon mutual agreement between the parties. However, the Board of Election’s obligation to provide such Voting Machines shall be subject to their availability. For purposes of this Agreement, the Voting Machines shall not be available at the time or times as may be required under the law. The Board of Elections shall notify the School District within forty (40) business days of the Election Day if the Voting Machines are unavailable for the Election.
2. The Board of Elections has provided a list of trained Election Inspectors to the School Board. No later than two (2) weeks prior to the Election, the School Board will send to the Board of Elections a list of Election Inspectors appointed by the School Board in accordance with Education Law Section 2025(3)(b) for review by the Board of Elections. Only Election Inspectors approved by the Board of Elections shall be used by the School Board in the Election. After such approval is given, no subsequent changes or substitutions may be made to the list of Election Inspectors without prior approval by the Board of Elections.

3. The School Board shall provide the Board of Elections and the contact designated in Exhibit A to this Agreement, with the proposed ballot template as prepared by Phoenix Graphics in Rochester, NY no later than forty (40) calendar days prior to the Election. The School Board, or its designee, shall verify to the Board of Elections that it has reviewed and approved of the ballot template by signing copies of said ballot PDF no later than fifteen (15) calendar days prior to the Election, which signed copies shall be sent to the contact designated in Exhibit A to this Agreement. No later than fifteen (15) calendar days prior to the Election, the School Board, or its designee, shall forward to the Board of Elections, sent to the contact designated in Exhibit A to this Agreement, said approved ballot template, including the names of candidates for the Board of Election, their positioning on the ballot, and any budget question(s) identified by the School Board in a PDF format to Phoenix Graphics for the purpose of creating test ballots and Election Day Ballots. The School Board shall be responsible for all printing and formatting costs as invoiced by Phoenix Graphics to the School Board. All notifications under this paragraph, except for invoicing and payment, shall be made by both email and facsimile to the contacts designated in Exhibit A.
4. The Board of Elections shall utilize the ballot layout approved by the School Board, created and defined by Phoenix Graphics and create the live ballot for programming the machines and test ballots to test and tabulate the results cast upon the ballot.
5. The Board of Elections shall provide the services of Board of Elections staff to conduct pre-election testing of the Voting Machines, deliver the Voting Machines and, any other associated equipment, supplies, and provide technical assistance as needed before and on Election Day. On Election Day, Board of Elections staff shall respond with reasonable promptness to any School District polling location should a situation arise where technical assistance is needed, or the School District's election inspectors are unable to address the situation. The Board of Elections will not conduct a post-election audit unless authorized or directed to do so in accordance with the provisions of the Education Law.
6. Board of Elections staff shall be reasonably available to respond to the School Board's polling site(s) should a Voting Machine problem arise on Election Day. Only Board of Elections staff may move, adjust, service, or repair Voting Machines.
7. The School Board shall pay for all costs incurred by the Board of Elections for the services provided under this Agreement. This fee shall cover all costs associated with the equipment and services provided by the Board of Elections under this Agreement, including, but not limited to, costs associated with programming, testing, delivery, installation, servicing, repair, maintenance, retrieval, transportation and impoundment of the election machines; on-call technical staff available to immediately respond to polling locations in the event technical assistance is needed; and post-Election re-testing and auditing of Voting Machines, as well as billing for services provided under this Agreement. Such fee shall further include, but not be limited to, wages and benefits of Board of Elections staff or contractors providing the services, mileage, equipment, transportation costs, etc. contemplated under this Agreement. The fee for Voting Machine Technicians is \$20.00 per hour, per technician. The School Board shall pay the actual amount invoiced by the Board of Elections to the County of Ontario within thirty (30) days of receipt of an invoice. The School Board shall also be responsible for payment to Phoenix Graphics for services they provide under paragraph three (3) above, and the additional fee to be paid by the School Board as set forth in paragraph eight (8) below.



8. The School Board shall be responsible and liable for the Voting Machines provided to it hereunder, including associated equipment and supplies, while the School Board is in possession thereof. The School Board shall take all steps reasonably necessary to ensure the security of Voting Machines, equipment and supplies. The School Board further agrees that any and all Voting Machine mechanical problems/issues on Election Day will be resolved only by individuals designated by the Board of Elections for such purpose, and not by Election Inspectors appointed by the School Board. The School Board further agrees to pay for the reasonable repair or replacement costs incurred as a result of damage to any Voting Machine(s), or associated equipment and/or supplies as a result of the negligence of the School Board or its agents or employees.
9. The Board of Elections and/or Ontario County shall NOT be liable for any voting machine and/or equipment failure or malfunction during the 16th day of May, 2017 Election; nor shall they be liable for any costs incurred by the School Board or the **Naples Central School District** as a result of such failure or malfunction. The School Board and the **Naples Central School District** shall fully indemnify and defend Ontario County and/or the Board of Elections – including the employees, agents or subcontractors thereof -- against any claims, lawsuits, or other demands (including attorney's fees and all associated costs) arising from the School District's use of the Board of Elections voting machines. The School District's duty to defend hereunder shall attach immediately upon notice to the School District from Ontario County or the Board of Elections of receipt of such claim, lawsuit or demand. The defense and indemnification obligations provided herein shall survive the expiration or termination of this Agreement, whether occasioned by this Agreement's expiration or earlier termination.
10. It is acknowledged that regarding all aspects of the Election, the aforementioned Election Inspectors shall be deemed to be agents and/or employees of the School Board; and are NOT, and shall not hold themselves out to be, employees or agents of the Board of Elections or Ontario County, nor make any claim to any rights accruing thereto, including but not limited to Workers Compensation, Unemployment Benefits, Social Security or retirement plan membership or credit. The School Board shall comply, at its own expense, with the provisions of all federal, state and local laws, rules and regulations applicable to the School Board as an employer of labor or otherwise.
11. Prior to execution of this Agreement, the School Board shall provide proof that it is carrying general liability insurance with coverage of at least \$1,000,000 per occurrence, \$50,000 Fire Damage, \$1,000,000 general aggregate, and shall name the Ontario County Board of Elections and Ontario County as additional insureds on said policies, and provide proof thereof. Such insurance shall remain in place through at least ninety (90) days after the Election.
12. This Agreement shall be subject to the approval of the **Naples Central School District Board of Education** as well as the Ontario County Board of Supervisors.
13. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.
14. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Agreement on the date(s) set forth below.

**COUNTY OF ONTARIO**

By:

\_\_\_\_\_  
Mary Q. Salotti, Elections Commissioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael J. Northrup, Elections Commissioner

Dated: \_\_\_\_\_

**ONTARIO COUNTY ADMINISTRATOR**

By:

\_\_\_\_\_  
Mary Krause, County Administrator

Dated: \_\_\_\_\_

Approved as to manner and form of execution

By:

\_\_\_\_\_  
Arthur L. James III, Assistant County Attorney

Dated: \_\_\_\_\_

**NAPLES CENTRAL SCHOOL DISTRICT**

By:

\_\_\_\_\_  
Matthew T. Frahm, Superintendent of Schools

Dated: \_\_\_\_\_

Approved by the **Naples Central School District Board of Education** by resolution adopted on the **18th** day of **January, 2017**.

\_\_\_\_\_  
Mitchell J. Ball, District Clerk

## EDUCATIONAL INSTITUTION ACKNOWLEDGMENT

STATE OF )  
COUNTY OF )  
:SS.: )

On the \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_ before me personally appeared \_\_\_\_\_, known to me to be the person who executed the within instrument, who being duly sworn by me did depose and say that s/he resides at \_\_\_\_\_ in the Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; that s/he is \_\_\_\_\_ of \_\_\_\_\_, the Institution described in said instrument; that, by authority of the Board of Education of said Institution, s/he is authorized to execute the foregoing instrument on behalf of the Institution for the purposes set forth therein; and that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on behalf of said Institution, as the act and deed of said Institution.

Notary Public



**AIA**<sup>®</sup>

# Document C132<sup>™</sup> – 2009

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

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

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

Naples Central School District  
136 North Main Street  
Naples, New York 14512  
585-374-7900

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

Watchdog Building Partners  
3445 Winton Place, Suite 235  
Rochester, New York 14623  
585-760-7855

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

Naples Central School District  
Capital Improvement Project 2017

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

SEI Design Group Architects, DPC  
224 Mill Street  
Rochester, New York 14614  
585-442-7010

The Owner and Construction Manager agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

This document is intended to be used in conjunction with AIA Documents A132<sup>™</sup>–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232<sup>™</sup>–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132<sup>™</sup>–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232<sup>™</sup>–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.



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3	SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
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7	COPYRIGHTS AND LICENSES
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12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in Exhibit "A". [Need to attach a document that describes the project scope that has been completed by Owner & Architect]  
*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.1.1 The Owner's program for the Project:  
*(Identify documentation or state the manner in which the program will be developed.)*

The District wishes to undertake a new Capital Improvement Project to repair, upgrade or improve several areas at the Naples Elementary School and at the Naples Bus Garage. The following is our understanding of the project scope, including but not limited to:

- 1) Naples Elementary School: Replacement/Reconfiguration of the Bus Loop and associated parking areas. Replacement/Reconfiguration of the main entry/main office to create a secure entry/main office.
- 2) Naples Bus Garage: Provide a new Bus Garage on District land recently acquired and remove the existing Bus Garage.

§ 1.1.2 The Project's physical characteristics:  
*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

The documentation for the program must be prepared by the School District and the Architect and incorporated by reference as Exhibit "A."

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
*(Provide total and, if known, a line item breakdown.)*

Init.

Has been completed by Owner/Architect. The Construction Manager shall prepare the Construction Budget.

Project Cost: \$ \_\_\_\_\_  
Referendum Amount: \$ \_\_\_\_\_

*(Paragraphs deleted)*

§ 1.1.4. The Construction Manager, in accordance with its professional skill and judgment, shall review the Architect's Project Schedule set forth in Architect's contract and prior to the submission of design to the State Education Department, shall prepare its own Project Schedule which shall be a detailed milestone schedule showing dates for the following:

:

Completion of Design Documents: November 2017

Submission to SED: End November, 2017

SED Review and Approval: May 2018 (6 Months)

Bidding: July 2018 Construction to be completed on or before September 1, 20\_\_:

\_\_\_\_\_  
[List major elements of work]

Construction to be completed September 2, 20\_\_ - June 30, 20\_\_.

\_\_\_\_\_  
[List major elements of work]

Construction to be completed July 1, 20\_\_ to September 1, 20\_\_.

\_\_\_\_\_  
[List major elements of work]

§1.1.4.1 Within one month of receiving approval from the New York State Education Department, the Construction Manager shall create a detailed Construction Schedule using critical path and predecessor logic (and phasing plan, if necessary) in the Construction Manager's professional skill and judgment, to be included in the Bid Documents.

This schedule will take into account the Owner's school building use and programmatic needs.

§ 1.1.5 The Owner intends the following procurement method for the Project:  
*(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)*

Competitively Bid Multiple Prime Contracts

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:  
*(List number and type of bid/procurement packages.)*

The Owner is obligated by New York State Law to have Multiple Prime Contracts. The Owner defers to the professional skill and judgment of the Construction Manager to create the Construction Schedule.

§ 1.1.7 Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

The Owner has completed its AHERA Report which is on file at the School District Offices and available for interested parties use and consideration during design.



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

Mr. Matthew Frahm  
Naples Central School District  
136 North Main Street  
Naples, NY 14512  
Telephone Number: 585-374-7900

(Paragraphs deleted)

§ 1.1.9 Intentionally Omitted

§ 1.1.10 Intentionally Omitted.

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:  
(List name, address and other information.)

Todd LaBarr Watchdog Building Partners  
3445 Winton Place, Suite 235  
Rochester, New York 14623

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:  
(List any specific requirements and personnel to be included in the staffing plan, if known.)

Construction Manager to list all personnel for duration of Project.

[Identify the Construction Management Team, role on the Project and number of weeks dedicated to Project when such information is known]

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

.1 Cost Estimator:  
(List name, legal status, address and other information.)

.2 Other consultants:

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

None

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

None

(Paragraph deleted)

§1.2 Intentionally Omitted

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

Init.

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

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition as the same may be amended by the Owner and the Architect, and a copy of which shall be provided to the Construction Manager upon request..

§ 2.3.1 The Construction Manager shall supply and commit sufficient personnel (both management and otherwise) to the Project to monitor the Work, record the conditions(s) of the Project and the progress of the Work. The Construction Manager shall be provided office space by the School District convenient to the Project in which progress meetings can be held. This office space shall be fully equipped by the Construction Manager at its expense, with computers, printers, copying equipment, internet access, telephone and facsimile services, as well as a filing system necessary to house and conveniently access/retrieve any or all of the Construction Manager's records documenting the progress of the Work.

§ 2.3.2 The Construction Manager shall have adequate clerical staff skilled in the construction field to maintain the Project Documents in an orderly manner and to provide timely and accurate correspondence, written meeting minutes, inspection records, daily logs, as well as organized photographic documentation of the progress of the Work.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. If at any time during the Project any such representative becomes unacceptable to the Owner (on any lawful basis), the Construction Manager will replace him/her with another representative who is mutually acceptable to the Owner and Construction Manager within five (5) business days of Owner's request.

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

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than one million (\$ 1,000,000 ) combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Construction Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than statutory.

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than one million (\$ 1,000,000) per claim and in the aggregate.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

§ 2.6.7 Within thirty (30) days of the bid awards, the Construction Manager shall collect each Prime



Contractor's Construction Schedule of its Work." In the event a contractor fails to supply the Construction Manager with a schedule which meets the criteria set forth in the Contract Documents, then the Construction Manager shall notify the Owner and the Architect in writing.

**§ 2.6.8** The Construction Manager, in accordance with its professional skill and judgment, shall create the detailed Construction Schedule (using predecessor logic software) which integrates and coordinates the Prime Contractor's schedules to meet the overall Construction Milestone Schedule included in the Bid Documents in such a manner as to allow for the orderly and timely completion of the Project.

**§ 2.6.9** In the event that the Construction Manager, based on its professional skill and judgment, determines that any Prime Contractor is more than ten (10) percent behind meeting the deadlines set forth in the Construction Schedule, then the Construction Manager shall notify the Owner and Architect in writing and make a recommendation on the manner in which the Contractor should recover the time on the Construction Schedule. Should this necessitate an update of the Construction Schedule, the Construction Manager shall provide a copy of the updated Schedule to the Prime Contractors, the Architect and the Owner. The Construction Manager will also retain copies of each such updated Schedule and turn over copies of all versions to the Owner at the end of the Project. Absent an approved change order, no updated Construction Schedule will delay the milestone or completion dates set forth in the Construction Schedule.

**§ 2.6.10** The Construction Manager's Basic Services shall be extended throughout the following phases of the Project and durations:

- .1 **Pre-Bidding Phase Services:** The Construction Manager shall:
  - (a) coordinate with the Owner and the Architect by providing cost estimates of Work, as needed, throughout the duration of the Pre-Bidding Phase of the Project as a Basic Service; and
  - (b) coordinate with the Owner and the Architect by providing cost estimates of Work, and proposed schedules of the Work, as needed, throughout the duration of the Pre-Bidding Phase of the Project as a Basic Service.
- .2 **Construction Phase Services:** The Construction Manager shall mobilize and establish its full-time construction management one month prior to the commencement of construction and continue throughout the Construction phase as determined by the Project Schedule and the Construction phase Basic Services shall end ninety (90) days after the Certificate of Substantial Completion is filed with the State Education Department for the Project. The Construction Manager shall hold weekly coordination meetings throughout the Construction phase of the Project and, using its professional skill and judgment, shall coordinate the work of the Prime Contractors on the Project.
- .3 **Post-Construction Phase Services:** The Construction Manager shall organize its files during the sixty (60) day time period following the Construction Phase. The Construction Manager shall meet with the Owner and turn over its indexed project files, warranties, operation manuals and as-built records. The Construction Manager shall participate in the eleven (11) month inspection of the Work with the Architect to find all warranty and non-conforming work.
- .4 The Construction Manager shall not be entitled to additional compensation from the Owner unless agreed to in advance in writing by the Owner on the scope of the additional services and amount of the additional fee. The Construction Manager shall not be entitled to any additional service due to the fault of the Construction Manager.

## **ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES**

### **§ 3.1 Definition**

The Construction Manager's Basic Services consist of those described in Articles 2 and 3.



## § 3.2 Preconstruction Phase

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

§ 3.2.2 The Construction Manager shall become fully familiar with the program developed by the Architect and Owner.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedules, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.

§ 3.2.4 The Construction Manager shall meet with the Architect to review the Schematic Design Documents. The Architect and the Construction Manager shall work together on and agree to an estimate of the Cost of the Work prior to the Design Development Phase and shall report same in writing to the Owner. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

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

§ 3.2.6 The Construction Manager shall create and maintain the Construction Milestone Schedule developed and agreed to by the Architect and approved by the Owner. The Construction Milestone Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion. The Construction Manager shall also prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) a Construction Milestone Schedule, (2) cost estimates, (3) recommendations for Project delivery method, and (4) Contractors' scopes of Work.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and deliver to the Owner written detailed cost estimates, at the following intervals, unless otherwise specified in writing by the Owner (for which the Construction Manager will be compensated as an additional service): 1) the Architect's completed Schematic Design Phase; 2) the Architect's completed Design Development Phase; 3) the Architect's completed Construction Documents Phase; and 4) post-State Education Department submission and approval, prior to the completion of the Bid Documents. The Construction Manager shall include appropriate contingencies for design, bidding, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make written recommendations for corrective action.

§ 3.2.8 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 written recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

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



§ 3.2.10 The Construction Manager shall provide written recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors. The Construction Manager shall review and become familiar with the New York State Department of Education Safety Regulations for the project.

§ 3.2.11 The Construction Manager shall provide written recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make written recommendations to the Owner that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Construction Milestone Schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction. The Construction Manager shall notify Contractors in writing (with copies to the Architect and Owner) of those items which Construction Manager knows require a long lead time to prompt contractors to complete Project on schedule.

§ 3.2.14 Intentionally Omitted.

§ 3.2.15 The Construction Manager shall meet with each Prime Contractor to ensure that each Prime Contractor's schedule of values contains a detailed breakdown of the Prime Contractor's work, showing the value of the materials and labor for each aspect thereof. The Construction Manager shall assist the Architect with the preparation of the form of the payment application the Prime Contractor shall use based on the approved schedule of values.

§ 3.2.16 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 for quasi governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest written estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval. If after review of Owner's incidentals and soft costs, the latest estimate of the Project Cost exceeds the Owner's budget for the Cost of the Work, the Construction Manager shall make written recommendations and provide its services as necessary to bring the estimate within that budget.

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

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall assist the Architect with the issuance of bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 With the assistance of the Architect, the Construction Manager shall receive bids and prepare bid analyses. The Construction Manager shall assist the Owner and Architect with the evaluation of the apparent lowest responsible bidders and together with the Architect shall make written recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 With the assistance of the Architect, the Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.



§ 3.2.22 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

### § 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 The Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction by the Owner and terminates ninety (90) days after the Final Completion and Final Certificate of 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 to the extended period shall be compensated as an Additional Service as described in this Agreement..

§ 3.3.2 The Construction Manager shall provide a written staffing plan to the Owner and Architect which identifies the Project Team, role and anticipated duration of involvement on the Project.

§ 3.3.3 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™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition as modified by the Owner, Architect and Construction Manager.

§ 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 Multiple Prime Contractors in accordance with the Project schedule and the Contract Documents. The Construction Manager shall hold weekly construction meetings with all Prime Contractors. The Construction Manager shall publish the fully-integrated Construction Schedule to all Contractors.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall 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 well 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 Construction Schedule at each meeting. If an update indicates that the previously approved Construction schedule may not be met, the Construction Manager shall recommend in writing corrective action, if any, to the Owner and Architect. The Construction Manager shall then hold a meeting with all prime contractors impacted by the Construction Schedule milestone(s) not met and shall coordinate the various primes work activities to have the prime contractors back on track to meet the milestones set forth in the construction schedule

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors within three (3) business days of every meeting.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the Construction Schedule.

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

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall, in writing, recommend courses of action to the Owner when requirements of a Contract are not being fulfilled. The Construction Manager shall advise Owner in writing regarding the performance by each of the Contractors. Disputes with a Contractor 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 may make such written recommendations to the Owner as Construction Manager may deem necessary for the proper execution and timely progress of the Project. Owner, at its discretion, shall take whatever action it deems necessary.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report, in writing, the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project and deliver them to the Owner on a monthly basis.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. Additionally, the Construction Manager shall establish accounting procedures which coincide with the procedures utilized by the Owner. The Construction Manager shall also assist the Owner, upon request, with the development and completion of any and all reports required by the State Education Department with respect to the Project.

§ 3.3.12.1 The Construction Manager shall in conjunction with the Architect develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.12.2 The Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors 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 and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

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



payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime 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 Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall obtain a copy of the Contractors' safety programs, shall review such programs periodically during construction meetings and shall bring any observed deficiencies to attention of Contractors and Owner by written communication.

§ 3.3.14 The Construction Manager shall utilize its professional skill and judgment to determine whether the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents understanding that it is, in significant part, the Construction Manager's responsibility to guard the Owner against deficiencies and defects in the Work. Upon written authorization from the Owner and in consultation with the Architect, the Construction Manager shall advise the Owner that additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Architect and Owner, may reject Work which does not conform to the requirements of the Contract Documents.

§ 3.3.14.1 The Construction Manager shall monitor and advise the Owner and Architect of any deviation from the sequence of construction in accordance with the Contract Documents and Construction Schedule.

§ 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 Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work. If, however, the Construction Manager observes any safety program or action at the site which it believes is improper (including any deviation from the Project or construction schedules) or in violation of applicable law or rules, it shall immediately advise the Owner, in writing.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and 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 they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. Construction Manager shall review and provide written 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 Construction Manager shall submit same to the Architect and Owner for approval and execution.

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

§ 3.3.19 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. If the



Construction Manager becomes aware of any delay in the construction schedule resulting in the review of Shop Drawings, Product Data, Samples and other submittals, the Construction Manager shall promptly advise the Owner, with a copy to the Architect, in writing.

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

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

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding Submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and
- .11 Any other items the Owner may require;

The Construction Manager shall take photographs and videotape of the progress of the Work, which in its professional skill and judgment, are properly sufficient to document same and protect the Owner's interests. With respect to said photographs and video, the Construction Manager shall document the date, time and description of what is depicted in the photograph and/or video.

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

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require;

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site, one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer retained by the Owner. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

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

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

§ 3.3.24 When the Construction Manager and Architect consider each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, together with the Owner and Architect, prepare 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.

§ 3.3.25 When the Work 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 Contractor. The Construction Manager shall monitor the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager together with the Architect shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors to determine when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

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

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.28 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 amendment to this Agreement signed by the Owner and Construction Manager and Contractors.

§ 3.3.29 Eleven (11) months after the substantial completion of the Work, and prior to the expiration of Contractor's warranty, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance to determine if there are any deficiencies or non-conforming work. In the event any deficiencies or non-conforming work is uncovered, then the Construction Manager shall contact the appropriate Contractor to have the deficiencies or non-conforming work repaired prior to the expiration of the warranty.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 The services described in this Article 4 are Additional Services and are not included in Basic Services unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. Both Contingent and Optional Additional Services shall be compensated only with the prior written approval of the Owner, which shall include the amount of or the method of determining the compensation for such Additional Services. If the Construction Manager notifies the Owner in writing that particular Contingent Additional Services are required, and the Owner gives prompt written notice that all or part of such services are not required, the Construction Manager shall have no obligation to provide those services. *(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings of existing conditions/facilities	Construction Manager	Additional
§ 4.1.2 Architectural interior design (B252™-2007)	Not Provided	Not Provided
§ 4.1.3 Tenant-related services	Construction Manager	Additional
§ 4.1.4 Commissioning (B211™-2007)	Construction Manager	Additional
§ 4.1.5 LEED® certification (B214™-2007)	Construction Manager	Additional



§ 4.1.6 Furniture, furnishings, and equipment design (B253™–2007)	Not Provided	Not Provided

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

*(Paragraph deleted)*

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;

*(Paragraphs deleted)*

- .3 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;

or

- .4 Service as the Initial Decision Maker.

*(Paragraphs deleted)*

## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

*(Paragraph deleted)*

§ 5.4 The Owner shall retain an Architect, and shall provide to the Construction Manager a copy of the Agreement between the Owner and Architect. The Construction Manager shall not be responsible for actions taken by the Architect..

§ 5.5 The Owner's representative authorized to act on the Owner's behalf with respect to the Project is Mr. Matthew Frahm, Telephone Number: 585-374-7900. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services. It is understood that there will be some decisions that will be beyond the authority of the designated representative and that require review and/or action by the Owner's Board of



Education; in such circumstances it is understood that making the required decision may take a longer period of time.

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

§ 5.7 Owner shall compensate the Architect to perform geotechnical services, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

*(Paragraph deleted)*

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

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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

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

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

*(Paragraph deleted)*

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

## ARTICLE 6 COST OF THE WORK AND PROJECT COST

§ 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 does not include the compensation of the Architect and Architect's consultants, compensation of the Construction Manager and Construction Manager's consultants, the costs of the land, rights-of-way, financing, contingencies for changes in the Work (identified as such) or other costs that are the responsibility of the Owner.



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

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's professional judgment.

§ 6.3 If the Architect is providing detailed cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the 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 written recommendations to the Owner to adjust the Project's size, quality or budget (including, but not limited to, design alternatives, material choices, building systems, equipment, etc.) for the Owner's consideration and approval.

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

- .1 give written approval of an increase in the budget for the Cost of the Work, so long as the overall Project Cost does not exceed the Referendum Amount;
- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

## ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service or any other information, used on the Project. Ownership of and rights to the Drawings, Specifications and other documents prepared by the Architect is governed by the agreement between the Owner and the Architect and not by this Agreement. The Construction Manager may retain one record set thereof.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

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

§ 8.1.2 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 A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. This paragraph shall be null and void to the extent it invalidates any insurance coverage.

§ 8.1.3 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 duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

Similarly, the Owner shall indemnify and hold the Construction Manager and the Construction Manager's officers and employees harmless from and against damages, losses and judgment 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 **grossly** negligent acts or omissions of the Owner, its employees and its consultants in the performance of this Agreement. The Owner's duty to indemnify the Construction Manager under this provision shall be limited to the available proceeds of insurance coverage.

*(Paragraph deleted)*

§8.1.4 Intentionally Omitted.

## § 8.2 Mediation

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

§ 8.2.2 The Owner and 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 in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of the litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. 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

*(Paragraphs deleted)*

parties shall proceed to litigation in New York State Supreme Court for the County where the project is located.

The School District shall be entitled to recover its reasonable attorney's fees if it prevails in the litigation. § 8.3

Intentionally Omitted

*(Paragraphs deleted)*

§ 8.3.1 Intentionally Omitted

§ 8.3.1.1 Intentionally Omitted

§ 8.3.2 Intentionally Omitted

§ 8.3.3 Intentionally Omitted

§ 8.3.4 Intentionally Omitted

§ 8.3.4.1 Intentionally Omitted

§ 8.3.4.2 Intentionally Omitted

§ 8.3.4.3 Intentionally Omitted

## ARTICLE 9 TERMINATION OR SUSPENSION

*(Paragraphs deleted)*

§ 9.1 Intentionally Omitted

§ 9.2 Intentionally Omitted

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



§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination (equitably pro-rated), together with Reimbursable Expenses then due, provided that the Construction Manager delivers all existing Project records held in its files or otherwise to the Owner in a useful and organized manner.

*(Paragraphs deleted)*

§ 9.7 Intentionally Omitted

§ 9.7.1 Intentionally Omitted

§ 9.7.2 Intentionally Omitted

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2009, General Conditions of the Contract for Construction as revised by the parties and contained in the Contract Documents, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

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

*(Paragraph deleted)*

§ 10.4 Intentionally Omitted

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

§ 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. Notwithstanding the above limitations, it is understood that the Construction Manager shall provide the same services for the Owner with respect to any asbestos removal activities or other environmental activities as are provided by the Construction Manager with respect to all other activities of the Project.

*(Paragraph deleted)*

§ 10.7 Intentionally Omitted

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

§ 10.9 Construction Manager agrees to maintain sufficient electronic records and information to document all aspects of the Project within the scope of the Construction Manager's services, and to permit and assist in any on-site inspection or audit of such records and information by Owner or its designee. Construction Manager agrees to

Init.



maintain all records, reports and other documentation arising from performance of this Agreement for a period of three years after termination of the Project or for such longer period as shall be necessary or appropriate in the event of unresolved claims or litigation relating to the Project.

At the conclusion of the Project, Construction Manager agrees to turn over all electronic records to the Owner on a schedule to be mutually agreed upon by the Owner and Construction Manager.

**§ 10.10** In the event that any term or provision, or part thereof, of this 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 provisions(s) shall remain unaffected thereby.

## **ARTICLE 11 COMPENSATION**

**§ 11.1** For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows: by mutual written agreement of the parties.

*(Paragraphs deleted)*

**§ 11.1.1** Intentionally Omitted

**§ 11.1.2** Intentionally Omitted

**§ 11.2** Intentionally Omitted

**§ 11.3** Intentionally Omitted

**§ 11.4** Intentionally Omitted

**§ 11.5** Intentionally Omitted

*(Table deleted)*

**§ 11.6 Compensation for Reimbursable Expenses**

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

*(Paragraphs deleted)*

- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;

**§ 11.6.2** The Owner shall pay the actual cost of Construction Manager's reimbursable expenses which are properly documented in its invoices as provided in this Agreement.

**§ 11.7** Payments to the Construction Manager

*(Paragraphs deleted)*

**§ 11.7.1** The Owner shall pay the Construction Manager a total lump sum fee of \_\_\_\_\_ dollars or 3% percent of Construction Cost as determined upon award of Construction Contracts. Upon successful referendum, the Construction Manager shall invoice for services using the latest Construction Cost estimates. The parties agree to reconcile the actual Construction Costs upon award of Construction Contracts.

**§11.7.2** The compensation for Construction Manager's Basic Services shall be allocated and capped for each phase of the Project as follows:

Pre-Bidding Phase	14%
Bidding Phase	6%
Construction Phase	70%
Close-Out	10%

**§ 11.7.3** The Construction Manager shall invoice the Owner on a monthly basis. The dollar amount of each invoice will vary depending upon which phase the Project is in (as set forth in Section 11.7.2) and whether the phase has been completed on or before its anticipated completion date as set forth in the Project Schedule. For example,

during the Bidding Phase, the Construction Manager may only invoice the Owner (in equal monthly installments) up to 6% of its total fee for the Project (assuming that the percentage set forth for that phase in Section 11.7.2 is 6%). In other words, if the Project Schedule states that the Bidding Phase will be completed in three (3) months, the Construction Manager will be permitted to invoice the Owner three (3) times, in equal amounts, totaling 6% of its total Project fee. However, in the event that any phase of the Project (as outlined in Section 11.7.2) is extended beyond its corresponding anticipated completion date (as set forth in the Project Schedule), the Construction Manager shall not be permitted to invoice the Owner further until that phase is completed.

§ 11.7.4 The parties agree that in the event that the Voter referendum is defeated, then this Agreement shall be null and void. The only fee to which the Construction Manager shall be entitled is the fee designated for Pre-Referendum Services and no other fees shall be due or owing.

§ 11.7.5 In the event the Owner files a demand for mediation or commences litigation arising out of or in connection with this Agreement, the Owner shall be entitled to withhold up to one-and-one-half times the amount of the demand or claim.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§12.1 It is understood that the use of an Architect by the Owner shall not diminish the responsibilities and obligations of the Construction Manager in any way.

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C132™-2009, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 AIA Document A232™-2009, General Conditions of the Contract for Construction, as modified.
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

The Request for Proposals and the Construction Manager's response to the Request for Proposals are incorporated by reference into the Contract. If the Construction Manager's response to the RFP conflicts with this Agreement, then this Agreement shall control and be binding.



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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

*(Printed name and title)*

*(Printed name and title)*

Init.

# **Additions and Deletions Report for**

## **AIA<sup>®</sup> Document C132<sup>™</sup> – 2009**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:55:04 on 01/04/2017.

### **PAGE 1**

Naples Central School District  
136 North Main Street  
Naples, New York 14512  
585-374-7900

...

Watchdog Building Partners  
3445 Winton Place, Suite 235  
Rochester, New York 14623  
585-760-7855

...

Naples Central School District  
Capital Improvement Project 2017

...

SEI Design Group Architects, DPC  
224 Mill Street  
Rochester, New York 14614  
585-442-7010

### **PAGE 2**

**§ 1.1** This Agreement is based on the Initial Information set forth in this Section 1.1. Exhibit "A". [Need to attach a document that describes the project scope that has been completed by Owner & Architect]

...

The District wishes to undertake a new Capital Improvement Project to repair, upgrade or improve several areas at the Naples Elementary School and at the Naples Bus Garage. The following is our understanding of the project scope, including but not limited to:

- 1) Naples Elementary School: Replacement/Reconfiguration of the Bus Loop and associated parking areas. Replacement/Reconfiguration of the main entry/main office to create a secure entry/main office.
- 2) Naples Bus Garage: Provide a new Bus Garage on District land recently acquired and remove the existing Bus Garage.

...



The documentation for the program must be prepared by the School District and the Architect and incorporated by reference as Exhibit "A."

PAGE 3

Has been completed by Owner/Architect. The Construction Manager shall prepare the Construction Budget.

Project Cost: \$ \_\_\_\_\_

Referendum Amount: \$ \_\_\_\_\_

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 — Design phase milestone dates, if any:

.2 — Commencement of construction:

.3 — Substantial Completion date or milestone dates:

.4 — Other:

§ 1.1.4. The Construction Manager, in accordance with its professional skill and judgment, shall review the Architect's Project Schedule set forth in Architect's contract and prior to the submission of design to the State Education Department, shall prepare its own Project Schedule which shall be a detailed milestone schedule showing dates for the following:

:

Completion of Design Documents: November 2017

Submission to SED: End November, 2017

SED Review and Approval: May 2018 (6 Months)

Bidding: July 2018 Construction to be completed on or before September 1, 20\_\_:

\_\_\_\_\_  
[List major elements of work]

Construction to be completed September 2, 20\_\_ - June 30, 20\_\_.

\_\_\_\_\_  
[List major elements of work]

Construction to be completed July 1, 20\_\_ to September 1, 20\_\_.

\_\_\_\_\_  
[List major elements of work]

§1.1.4.1 Within one month of receiving approval from the New York State Education Department, the Construction Manager shall create a detailed Construction Schedule using critical path and predecessor logic (and phasing plan, if necessary) in the Construction Manager's professional skill and judgment, to be included in the Bid Documents.

This schedule will take into account the Owner's school building use and programmatic needs.

...

Competitively Bid Multiple Prime Contracts

...

The Owner is obligated by New York State Law to have Multiple Prime Contracts. The Owner defers to the professional skill and judgment of the Construction Manager to create the Construction Schedule.

...

The Owner has completed its AHERA Report which is on file at the School District Offices and available for interested parties use and consideration during design.

**PAGE 4**

Mr. Matthew Frahm  
Naples Central School District  
136 North Main Street  
Naples, NY 14512  
Telephone Number: 585-374-7900

~~§ 1.1.9~~ The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
*(List name, address and other information.)*

~~§ 1.1.10~~ Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:

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

.1 — Land Surveyor:

.2 — Geotechnical Engineer:

.3 — Civil Engineer:



4—Other:

*(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)*

§ 1.1.9 Intentionally Omitted

§ 1.1.10 Intentionally Omitted.

...

Todd LaBarr Watchdog Building Partners  
3445 Winton Place, Suite 235  
Rochester, New York 14623

...

Construction Manager to list all personnel for duration of Project.

[Identify the Construction Management Team, role on the Project and number of weeks dedicated to Project when such information is known]

...

None

...

None

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the schedules, the Construction Manager's services and the Construction Manager's compensation.

§1.2 Intentionally Omitted

**PAGE 5**

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, 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. Edition as the same may be amended by the Owner and the Architect, and a copy of which shall be provided to the Construction Manager upon request..

§ 2.3.1 The Construction Manager shall supply and commit sufficient personnel (both management and otherwise) to the Project to monitor the Work, record the conditions(s) of the Project and the progress of the Work. The Construction Manager shall be provided office space by the School District convenient to the Project in which progress meetings can be held. This office space shall be fully equipped by the Construction Manager at its expense, with computers, printers, copying equipment, internet access, telephone and facsimile services, as well as a filing system necessary to house and conveniently access/retrieve any or all of the Construction Manager's records documenting the progress of the Work.

§ 2.3.2 The Construction Manager shall have adequate clerical staff skilled in the construction field to maintain the Project Documents in an orderly manner and to provide timely and accurate correspondence, written meeting



minutes, inspection records, daily logs, as well as organized photographic documentation of the progress of the Work.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. If at any time during the Project any such representative becomes unacceptable to the Owner (on any lawful basis), the Construction Manager will replace him/her with another representative who is mutually acceptable to the Owner and Construction Manager within five (5) business days of Owner's request.

...

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than one million (\$ 1,000,000 ) combined single limit and aggregate for bodily injury and property damage.

...

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than (\$ )-statutory.

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than (\$ )-one million (\$ 1,000,000) per claim and in the aggregate.

...

§ 2.6.7 Within thirty (30) days of the bid awards, the Construction Manager shall collect each Prime Contractor's Construction Schedule of its Work." In the event a contractor fails to supply the Construction Manager with a schedule which meets the criteria set forth in the Contract Documents, then the Construction Manager shall notify the Owner and the Architect in writing.

§ 2.6.8 The Construction Manager, in accordance with its professional skill and judgment, shall create the detailed Construction Schedule (using predecessor logic software) which integrates and coordinates the Prime Contractor's schedules to meet the overall Construction Milestone Schedule included in the Bid Documents in such a manner as to allow for the orderly and timely completion of the Project.

§ 2.6.9 In the event that the Construction Manager, based on its professional skill and judgment, determines that any Prime Contractor is more than ten (10) percent behind meeting the deadlines set forth in the Construction Schedule, then the Construction Manager shall notify the Owner and Architect in writing and make a recommendation on the manner in which the Contractor should recover the time on the Construction Schedule. Should this necessitate an update of the Construction Schedule, the Construction Manager shall provide a copy of the updated Schedule to the Prime Contractors, the Architect and the Owner. The Construction Manager will also retain copies of each such updated Schedule and turn over copies of all versions to the Owner at the end of the Project. Absent an approved change order, no updated Construction Schedule will delay the milestone or completion dates set forth in the Construction Schedule.

§ 2.6.10 The Construction Manager's Basic Services shall be extended throughout the following phases of the Project and durations:

.1 Pre-Bidding Phase Services: The Construction Manager shall:



(a) coordinate with the Owner and the Architect by providing cost estimates of Work, as needed, throughout the duration of the Pre-Bidding Phase of the Project as a Basic Service; and

(b) coordinate with the Owner and the Architect by providing cost estimates of Work, and proposed schedules of the Work, as needed, throughout the duration of the Pre-Bidding Phase of the Project as a Basic Service.

.2 **Construction Phase Services:** The Construction Manager shall mobilize and establish its full-time construction management one month prior to the commencement of construction and continue throughout the Construction phase as determined by the Project Schedule and the Construction phase Basic Services shall end ninety (90) days after the Certificate of Substantial Completion is filed with the State Education Department for the Project. The Construction Manager shall hold weekly coordination meetings throughout the Construction phase of the Project and, using its professional skill and judgment, shall coordinate the work of the Prime Contractors on the Project.

.3 **Post-Construction Phase Services:** The Construction Manager shall organize its files during the sixty (60) day time period following the Construction Phase. The Construction Manager shall meet with the Owner and turn over its indexed project files, warranties, operation manuals and as-built records. The Construction Manager shall participate in the eleven (11) month inspection of the Work with the Architect to find all warranty and non-conforming work.

.4 The Construction Manager shall not be entitled to additional compensation from the Owner unless agreed to in advance in writing by the Owner on the scope of the additional services and amount of the additional fee. The Construction Manager shall not be entitled to any additional service due to the fault of the Construction Manager.

## PAGE 6

~~The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors. Articles 2 and 3.~~

## PAGE 7

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

~~§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, become fully familiar with the program developed by the Architect and Owner.~~

~~§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, schedules, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.~~

~~§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates. The Construction Manager shall meet with the Architect to review the Schematic Design Documents. The Architect and the Construction Manager shall work together on and agree to an estimate of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating~~



techniques for the Architect's review and Owner's approval prior to the Design Development Phase and shall report same in writing to the Owner. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

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

§ 3.2.6 The Construction Manager shall ~~prepare and periodically update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall create and maintain the Construction Milestone Schedule developed and agreed to by the Architect and approved by the Owner. The Construction Milestone Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion. The Construction Manager shall also prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) a Construction Milestone Schedule, (2) cost estimates, (3) recommendations for Project delivery method, and (4) Contractors' scopes of Work.~~

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and ~~update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement.~~ deliver to the Owner written detailed cost estimates, at the following intervals, unless otherwise specified in writing by the Owner (for which the Construction Manager will be compensated as an additional service): 1) the Architect's completed Schematic Design Phase; 2) the Architect's completed Design Development Phase; 3) the Architect's completed Construction Documents Phase; and 4) post-State Education Department submission and approval, prior to the completion of the Bid Documents. The Construction Manager shall include appropriate contingencies for design, ~~bidding or negotiating, bidding,~~ price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make written recommendations for corrective action.

§ 3.2.8 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 written recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

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

§ 3.2.10 The Construction Manager shall provide written recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors. The Construction Manager shall review and become familiar with the New York State Department of Education Safety Regulations for the project.

§ 3.2.11 The Construction Manager shall provide written recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make ~~recommendations as required to provide written~~ recommendations to the Owner that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.



§ 3.2.12 The Construction Manager shall update the ~~Project schedule~~ Construction Milestone Schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction. The Construction Manager shall notify Contractors in writing (with copies to the Architect and Owner) of those items which Construction Manager knows require a long lead time to prompt contractors to complete Project on schedule.

§ 3.2.14 ~~The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.~~ Intentionally Omitted.

§ 3.2.15 The Construction Manager shall ~~provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.~~ meet with each Prime Contractor to ensure that each Prime Contractor's schedule of values contains a detailed breakdown of the Prime Contractor's work, showing the value of the materials and labor for each aspect thereof. The Construction Manager shall assist the Architect with the preparation of the form of the payment application the Prime Contractor shall use based on the approved schedule of values.

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§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest written estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval. If after review of Owner's incidentals and soft costs, the latest estimate of the Project Cost exceeds the Owner's budget for the Cost of the Work, the Construction Manger shall make written recommendations and provide its services as necessary to bring the estimate within that budget.

...

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. ~~The Construction Manager, with the assistance of the Architect, shall issue.~~ Manager shall assist the Architect with the issuance of bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 ~~The Construction Manager shall receive bids, prepare bid analyses and make.~~ With the assistance of the Architect, the Construction Manager shall receive bids and prepare bid analyses. The Construction Manager shall assist the Owner and Architect with the evaluation of the apparent lowest responsible bidders and together with the Architect shall make written recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 ~~The~~ With the assistance of the Architect, the Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

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

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§ 3.3.1 ~~Subject to Section 4.3, the~~ The Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction ~~and terminates on the date the Architect~~



issues the final Certificate for Payment by the Owner and terminates ninety (90) days after the Final Completion and Final Certificate of 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 to the extended period shall be compensated as an Additional Service as described in this Agreement..

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. written staffing plan to the Owner and Architect which identifies the Project Team, role and anticipated duration of involvement on the Project.

§ 3.3.3 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™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement. Edition as modified by the Owner, Architect and Construction Manager.

§ 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 Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents. The Construction Manager shall hold weekly construction meetings with all Prime Contractors. The Construction Manager shall publish the fully-integrated Construction Schedule to all Contractors.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall 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 well 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. Construction Schedule at each meeting. If an update indicates that the previously approved Project Construction schedule may not be met, the Construction Manager shall recommend in writing corrective action, if any, to the Owner and Architect. The Construction Manager shall then hold a meeting with all prime contractors impacted by the Construction Schedule milestone(s) not met and shall coordinate the various primes work activities to have the prime contractors back on track to meet the milestones set forth in the construction schedule

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors. Contractors within three (3) business days of every meeting.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule. Construction Schedule.

...

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall shall, in writing, recommend courses of action to the Owner when requirements of a Contract are not being fulfilled. The Construction Manager shall advise Owner in writing regarding the performance by each of the Contractors. Disputes with a Contractor 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 may make such written recommendations to the Owner as Construction Manager may deem necessary for the proper execution and timely progress of the Project. Owner, at its discretion, shall take whatever action it deems necessary.



§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. ~~If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate costs.~~ The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also ~~report~~ report, in writing, the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the ~~Project~~ Project and deliver them to the Owner on a monthly basis.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. Additionally, the Construction Manager shall establish accounting procedures which coincide with the procedures utilized by the Owner. The Construction Manager shall also assist the Owner, upon request, with the development and completion of any and all reports required by the State Education Department with respect to the Project.

§ 3.3.12.1 The Construction Manager shall in conjunction with the Architect develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

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

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§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime 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 Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager. The Construction Manager shall obtain a copy of the Contractors' safety programs, shall review such programs periodically during construction meetings and shall bring any observed deficiencies to attention of Contractors and Owner by written communication.

§ 3.3.14 The Construction Manager shall ~~determine in general that~~ utilize its professional skill and judgment to determine whether the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and ~~notify the Owner, Contractor and Architect of defects and deficiencies in the Work.~~ The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the 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 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for understanding that it is, in significant part, the Construction Manager's responsibility to guard the Owner against deficiencies and defects in the Work. Upon written authorization from the Owner and in consultation with the Architect, the Construction Manager shall advise the Owner that additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such 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 completed. The Construction Manager, in consultation with the Architect and Owner, may reject Work which does not conform to the requirements of the Contract Documents.

§ 3.3.14.1 The Construction Manager shall monitor and advise the Owner and Architect of any deviation from the sequence of construction in accordance with the Contract Documents and Construction Schedule.



§ 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 Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work. If, however, the Construction Manager observes any safety program or action at the site which it believes is improper (including any deviation from the Project or construction schedules) or in violation of applicable law or rules, it shall immediately advise the Owner, in writing.

...

Construction Manager shall review and provide written 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 Construction Manager shall submit same to the Architect and Owner for approval and execution.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7. Claims.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. If the Construction Manager becomes aware of any delay in the construction schedule resulting in the review of Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime 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 Contractor, other Multiple Prime Contractors, the Owner, or the Architect. submittals, the Construction Manager shall promptly advise the Owner, with a copy to the Architect, in writing.

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- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals; Submittals;

...

The Construction Manager shall take photographs and videotape of the progress of the Work, which in its professional skill and judgment, are properly sufficient to document same and protect the Owner's interests. With respect to said photographs and video, the Construction Manager shall document the date, time and description of what is depicted in the photograph and/or video.

...

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site site, one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved



Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional ~~engineer-engineer retained by the Owner~~. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

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

...

§ 3.3.24 When the Construction Manager ~~considers and Architect consider~~ each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, ~~jointly with the Contractor, prepare for the Architect together with the Owner and Architect, prepare~~ 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.

§ 3.3.25 When the Work 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 Contractor. 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 together with the Architect shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors ~~and make recommendations to the Architect to determine~~ when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

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§ 3.3.28 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, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld.~~ amendment to this Agreement signed by the Owner and Construction Manager and Contractors.

§ 3.3.29 ~~Upon request of the Owner, Eleven (11) months after the substantial completion of the Work, and prior to the expiration of one year from the date of Substantial Completion, Contractor's warranty,~~ the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and ~~performance-performance~~ to determine if there are any deficiencies or non-conforming work. In the event any deficiencies or non-conforming work is uncovered, then the Construction Manager shall contact the appropriate Contractor to have the deficiencies or non-conforming work repaired prior to the expiration of the warranty.

...

§ 4.1 ~~Additional Services listed below~~ The services described in this Article 4 are Additional Services and are not included in Basic Services but ~~may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2, unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. Both Contingent and Optional Additional Services shall be compensated only with the prior written approval of the Owner, which shall include the amount of or the method of determining the compensation for such Additional Services. If the Construction Manager notifies the Owner in writing that particular Contingent Additional Services are required, and the Owner gives prompt written notice that all or part of such services are not required, the Construction Manager shall have no obligation to provide those services.~~

...

§ 4.1.1 Measured drawings of existing	Construction Manager	Additional
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conditions/facilities		
§ 4.1.2 Architectural interior design (B252™-2007)	<u>Not Provided</u>	<u>Not Provided</u>
§ 4.1.3 Tenant-related services	<u>Construction Manager</u>	<u>Additional</u>
§ 4.1.4 Commissioning (B211™-2007)	<u>Construction Manager</u>	<u>Additional</u>
§ 4.1.5 LEED® certification (B214™-2012)(B214™-2007)	<u>Construction Manager</u>	<u>Additional</u>
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)	<u>Not Provided</u>	<u>Not Provided</u>

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§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

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

...

- ~~.3~~ Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- ~~.4~~ Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~.5~~ Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- ~~.6~~ .
- ~~.3~~ Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- ~~.7~~ Assistance to the Initial Decision Maker, if other than the Architect; or
- ~~.8~~ .4 Service as the Initial Decision Maker.

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- ~~.1~~ Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- ~~.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 Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed within ~~( )~~ months of the date of this Agreement, 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 with the assistance of the Architect and the Construction Manager provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. 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 any lien rights, if any.Project.

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

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

~~§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132 – 2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Owner shall provide Architect, and shall provide to the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement. Agreement between the Owner and Architect. The Construction Manager shall not be responsible for actions taken by the Architect..~~

~~§ 5.5 The Owner shall identify a Owner's representative authorized to act on the Owner's behalf with respect to the Project. Project is Mr. Matthew Frahm, Telephone Number: 585-374-7900. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services. It is understood that there will be some decisions that will be beyond the authority of the designated representative and that require review and/or action by the Owner's Board of Education; in such circumstances it is understood that making the required decision may take a longer period of time.~~

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

~~§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, Owner shall compensate the Architect to perform geotechnical services, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~

~~§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.~~

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



~~§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract 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.~~

## ARTICLE 6 COST OF THE WORK AND PROJECT COST

~~§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the does not include the compensation of the Architect and Architect's consultants, 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 consultants, the costs of the land, rights-of-way, financing, contingencies for changes in the Work (identified as such) or other costs that are the responsibility of the Owner.~~

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

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

~~§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed 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, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager professional judgment.~~

~~§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.~~

~~§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments budget (including, but not limited to, design alternatives, material choices, building systems, equipment, etc.) for the Owner's consideration and approval.~~

- .1 give written approval of an increase in the budget for the Cost of the Work; Work, so long as the overall Project Cost does not exceed the Referendum Amount;



...

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. Service or any other information, used on the Project. Ownership of and rights to the Drawings, Specifications and other documents prepared by the Architect is governed by the agreement between the Owner and the Architect and not by this Agreement. The Construction Manager may retain one record set thereof.

...

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement 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. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than as provided by law.

§ 8.1.2 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 A232–2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. This paragraph shall be null and void to the extent it invalidates any insurance coverage.

#### PAGE 17

Similarly, the Owner shall indemnify and hold the Construction Manager and the Construction Manager's officers and employees harmless from and against damages, losses and judgment 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 grossly negligent acts or omissions of the Owner, its employees and its consultants in the performance of this Agreement. The Owner's duty to indemnify the Construction Manager under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

#### §8.1.4 Intentionally Omitted.

§ 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 commencing litigation. If either party will be prejudiced by waiting until the mediation has concluded, then either party may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution mediation.

§ 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the



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, ~~the litigation~~, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. 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.

...

**§ 8.2.4** 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. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)*

☐ — Arbitration pursuant to Section 8.3 of this Agreement

☐ — Litigation in a court of competent jurisdiction

☐ — Other: *(Specify)*

parties shall proceed to litigation in New York State Supreme Court for the County where the project is located.

The School District shall be entitled to recover its reasonable attorney's fees if it prevails in the litigation. **§ 8.3**

Intentionally Omitted

### **§ 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 the 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.

~~§ 8.3.1 Intentionally Omitted~~

~~§ 8.3.1.1 Intentionally Omitted~~

~~§ 8.3.2 Intentionally Omitted~~

~~§ 8.3.3 Intentionally Omitted~~

~~§ 8.3.4 Intentionally Omitted~~

~~§ 8.3.4.1 Intentionally Omitted~~

~~§ 8.3.4.2 Intentionally Omitted~~

~~§ 8.3.4.3 Intentionally Omitted~~

~~§ 9.1~~ If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

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

~~§ 9.1 Intentionally Omitted~~

~~§ 9.2 Intentionally Omitted~~

## PAGE 18

~~§ 9.6~~ In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7, termination (equitably pro-rated), together with Reimbursable Expenses then due, provided that the Construction Manager delivers all existing Project records held in its files or otherwise to the Owner in a useful and organized manner.

~~§ 9.7~~ Termination Expenses are in addition to compensation for the Construction Manager's services and include expenses directly attributable to termination for which the Construction Manager is not otherwise compensated, plus an amount for the Construction Manager's anticipated profit on the value of the services not performed by the Construction Manager, as set forth below.

~~§ 9.7.1~~ In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services performed, costs incurred by reason of such termination and reasonable overhead and profit on Preconstruction services not completed during the Preconstruction Phase.



~~§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such termination, along with reasonable overhead and profit on services not completed during the Construction Phase.~~

§ 9.7 Intentionally Omitted

§ 9.7.1 Intentionally Omitted

§ 9.7.2 Intentionally Omitted

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, Construction as revised by the parties and contained in the Contract Documents, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

...

~~§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.~~

§ 10.4 Intentionally Omitted

§ 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. Notwithstanding the above limitations, it is understood that the Construction Manager shall provide the same services for the Owner with respect to any asbestos removal activities or other environmental activities as are provided by the Construction Manager with respect to all other activities of the Project.

§ 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 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.

§ 10.7 Intentionally Omitted

§ 10.9 Construction Manager agrees to maintain sufficient electronic records and information to document all aspects of the Project within the scope of the Construction Manager's services, and to permit and assist in any on-site inspection or audit of such records and information by Owner or its designee. Construction Manager agrees to maintain all records, reports and other documentation arising from performance of this Agreement for a period of three years after termination of the Project or for such longer period as shall be necessary or appropriate in the event of unresolved claims or litigation relating to the Project.

At the conclusion of the Project, Construction Manager agrees to turn over all electronic records to the Owner on a



schedule to be mutually agreed upon by the Owner and Construction Manager.

§ 10.10 In the event that any term or provision, or part thereof, of this 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 provisions(s) shall remain unaffected thereby.

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows: by mutual written agreement of the parties.

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

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

§ 11.1.2 For Construction Phase Services in Section 3.3:

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

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:

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

§ 11.4 Compensation for 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 otherwise stated below:

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager's and Construction Manager's consultants' normal review practices:

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

§ 11.1.1 Intentionally Omitted

§ 11.1.2 Intentionally Omitted

§ 11.2 Intentionally Omitted

§ 11.3 Intentionally Omitted

§ 11.4 Intentionally Omitted

§ 11.5 Intentionally Omitted

**Employee or Category**

**Rate (\$0.00)**



- ~~.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;~~

...

- ~~.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;~~
- ~~.8 — Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants;~~
- ~~.9 — All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 — Site office expenses; and~~
- ~~.11 — Other similar Project-related expenditures.~~

**§ 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. The Owner shall pay the actual cost of Construction Manager's reimbursable expenses which are properly documented in its invoices as provided in this Agreement.

...

**§ 11.7.1** 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.

**§ 11.7.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid        (      ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

       %

**§ 11.7.3** ~~The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty or liquidated damages on the Construction Manager, or to offset sums requested by or paid to Contractors for the cost of changes in the Work unless the Construction Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

**§ 11.7.4** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**§ 11.7.1** The Owner shall pay the Construction Manager a total lump sum fee of        dollars or 3% percent of Construction Cost as determined upon award of Construction Contracts. Upon successful referendum, the Construction Manager shall invoice for services using the latest Construction Cost estimates. The parties agree to reconcile the actual Construction Costs upon award of Construction Contracts.

**§ 11.7.2** The compensation for Construction Manager's Basic Services shall be allocated and capped for each phase of the Project as follows:

<u>      </u>	Pre-Bidding Phase	14%
<u>      </u>	Bidding Phase	6%
<u>      </u>	Construction Phase	70%
<u>      </u>	Close-Out	10%

§ 11.7.3 The Construction Manager shall invoice the Owner on a monthly basis. The dollar amount of each invoice will vary depending upon which phase the Project is in (as set forth in Section 11.7.2) and whether the phase has been completed on or before its anticipated completion date as set forth in the Project Schedule. For example, during the Bidding Phase, the Construction Manager may only invoice the Owner (in equal monthly installments) up to 6% of its total fee for the Project (assuming that the percentage set forth for that phase in Section 11.7.2 is 6%). In other words, if the Project Schedule states that the Bidding Phase will be completed in three (3) months, the Construction Manager will be permitted to invoice the Owner three (3) times, in equal amounts, totaling 6% of its total Project fee. However, in the event that any phase of the Project (as outlined in Section 11.7.2) is extended beyond its corresponding anticipated completion date (as set forth in the Project Schedule), the Construction Manager shall not be permitted to invoice the Owner further until that phase is completed.

§ 11.7.4 The parties agree that in the event that the Voter referendum is defeated, then this Agreement shall be null and void. The only fee to which the Construction Manager shall be entitled is the fee designated for Pre-Referendum Services and no other fees shall be due or owing.

§ 11.7.5 In the event the Owner files a demand for mediation or commences litigation arising out of or in connection with this Agreement, the Owner shall be entitled to withhold up to one-and-one-half times the amount of the demand or claim.

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§12.1 It is understood that the use of an Architect by the Owner shall not diminish the responsibilities and obligations of the Construction Manager in any way.

...

.2 AIA Document A232™-2009, General Conditions of the Contract for Construction, as modified.

.3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

...

.3 — .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

...

.4 — .5 Other documents:

...

The Request for Proposals and the Construction Manager's response to the Request for Proposals are incorporated by reference into the Contract. If the Construction Manager's response to the RFP conflicts with this Agreement, then this Agreement shall control and be binding.



## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Brian J. Smith, 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 11:55:04 on 01/04/2017 under Order No. 3018659155\_1 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™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*

**AGREEMENT**

**between the**

**SUPERINTENDENT OF SCHOOLS**

**of the**

**NAPLES CENTRAL SCHOOL DISTRICT**

**and the**

**NAPLES SCHOOL DISTRICT**

**ASSISTANT SUPERINTENDENT FOR BUSINESS**

**January 18, 2017 - June 30, 2022**



## Naples Central School District

### **Assistant Superintendent for Business Contract**

It is hereby agreed by and between the Board of Education of the Naples Central School District located in Ontario County in the State of New York (hereinafter called the "Board") and Mitchell J. Ball (hereinafter called the "Assistant Superintendent for Business"), collectively referred to herein as the "parties," in accordance with the action of the Board of Education:

#### **Employment as Assistant Superintendent for Business**

Both parties agree that Mitchell J. Ball shall be employed as and perform the duties of the Assistant Superintendent for Business in and for the public schools in said District as prescribed by the laws of the State of New York and by the rules and regulations made thereunder by the Board of said District.

The Assistant Superintendent for Business shall be an administrative officer of the District and shall perform all the duties and accept all the responsibilities usually required of a Assistant Superintendent for Business in this District or a similar district pursuant to the provisions of the Education Law of the State of New York and shall be responsible to the Board of Education of said District.

#### **Compensation**

Compensation shall be paid to the Assistant Superintendent for Business on the days established for the payment of employees' salaries and shall be subject to the provisions and requirements of Article /I of the Education Law of the State of New York, relative to the State Teachers' Retirement System. Compensation beginning January 18, 2017 will be (annualized) \$107,500. Compensation for Year 1 – Effective 2017-2018, 2.90% increase on \$107,500; Year 2 - Effective 2018-2019 school year, 2.90% increase on 2017-2018; Year 3 - Effective 2019-2020 school year, 2.90% increase on 2018-2019; Year 4 - Effective 2020-2021 school year, 2.90% increase on 2019-2020; Year 5 - Effective 2021-2022 school year, 2.90% increase on 2020-2021.

#### **Terms of Employment**

This contract will be in effect until such time as it is either terminated by the Board or modified by mutual agreement between the District and the employee covered under it. On an annual basis, either party may ask that items from or the entire contract be opened for discussion.

#### **Certification**

The Assistant Superintendent for Business shall furnish throughout the life of this contract, a valid and appropriate certificate as defined in the Regulations of the

Commissioner of Education to act as a Assistant Superintendent for Business in the State of New York. The Assistant Superintendent for Business hereby agrees to devote his/her time, skill, labor and attention to said employment during the term of his/her contract. The Assistant Superintendent for Business, by agreement with the Board, may undertake consultative work, speaking engagements, writing, lecturing or other professional duties and obligations.

### **Duties and Responsibilities**

The Assistant Superintendent for Business agrees to perform such duties as Assistant Superintendent for Business of the Naples Central School District as are now or may hereafter, during the course of this contract, be prescribed by the Education Law of New York, the rules and regulations of the Commissioner of Education, Acts of the United States of America, Statutes of the State of New York and the District's job description for a Assistant Superintendent for Business. In addition, the Assistant Superintendent for Business shall exercise such other rights and powers and shall perform such other duties as are or hereafter shall be enjoined upon the Assistant Superintendent for Business by the Board of Education of the Naples Central School District, and/or the Superintendent, including, but not limited to the following:

- A. Administer those items which are stated in the Board of Education Policy CGBAC (Duties of School Business Manager).
- B. Administer and supervise all financial affairs of the Naples Central School District, within the framework of the policies of the Board of Education.
- C. Keep the Superintendent and Board of Education advised on all matters concerning the administration of the Naples Central School financial management programs.
- D. Make recommendations to the Superintendent and Board of Education as to organization and/or reorganization of the administration of non-teaching programs, business affairs and other assigned areas which seems to best meet the needs of the District.
- E. Be responsible for assisting with recruiting of non-teaching personnel for vacancies and conduct interviews and make investigations of applicants for such positions.
- F. Recommend non-teaching candidates for positions under his/her jurisdiction, to be considered by the Superintendent and Board of Education for appointment, permanent appointment, dismissal and placement and transferring of personnel.



## **District Clerk**

When the Assistant Superintendent for Business functions in the capacity of District Clerk in addition to his/her supervision of Maintenance & Operations, Transportation, and Food Service, the Assistant Superintendent for Business will be paid a stipend of \$8,000 annually.

## **Vacations**

The Board agrees to provide the Assistant Superintendent for Business with twenty-five (25) days of vacation in each year of employment. Up to five (5) days unused at the end of the year may be carried over for one (1) year for a maximum of thirty (30) days in anyone year. Any unused vacation days may be converted to sick leave days at the end of each school year and/or may be cashed in to a maximum of five (5) unused vacation days at his/her per diem rate. The scheduling of vacations shall be made, by the Assistant Superintendent for Business with the Superintendent's consent so as not to interfere with the operation of the Naples Central School District.

Thirteen paid holidays shall be designated as follows: New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, July 4, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, day after Thanksgiving, and two days at Christmas (one of which will be Christmas Day).

The Assistant Superintendent for Business may use vacation days when school is closed due to emergency conditions with the Superintendent's approval. The Assistant Superintendent for Business will not be charged vacation days when roads which must be traveled to work are officially closed due to emergency conditions as approved by the Superintendent.

## **Health Insurance**

A. **Health Insurance:** Effective January 18, 2017, the District will provide to the Assistant Superintendent for Business the Blue Point2 Select \$15 office co-pay plan with the 10-25-40 drug co-pay or a mutually agreeable alternative health plan. If in the Blue Point2 Select \$15 office co-pay plan with the 10-25-40 drug co-pay the Assistant Superintendent for Business shall pay 10% of the annual premium.

The district will offer a yearly enrollment window in its health plans and any covered staff member may switch plans at that time without any penalty.

If the Assistant Superintendent for Business is otherwise covered by health insurance, in lieu of this payment towards premiums the Assistant Superintendent for Business may receive a payment of \$1,500 if eligible for single coverage or \$3,000 if eligible for two persons or family coverage.

- B. **Dental Insurance:** Effective January 18, 2017, Dental coverage will be provided through a mutually agreeable plan to the Assistant Superintendent for Business and any dependents, upon filing a written request for the same, using yearly updated allowances based on usual, customary and reasonable charges.
- C. **Flexible Benefits Plan:** Effective January 18, 2017, the District will provide a flexible benefits plan for the voluntary contribution by the Assistant Superintendent for Business, to be used for those areas allowable by law - - (payment of health insurance premium, non-reimbursed medical, dental, eye care costs and dependent care payments).
- D. **Medical Reimbursement Plan:** The District will make a contribution for the Assistant Superintendent for Business each school year to a Medical Reimbursement Plan (Section 105) in the amount of \$700.00 if the Assistant Superintendent for Business is enrolled in the District provided health insurance coverage. This provision is subject to all State and Federal Income Tax Laws and Regulations.
- E. **Health Insurance After Retirement:** After 10 years of employment at the time of retirement, the District will provide the retiring Assistant Superintendent for Business with a statement indicating the number of unused and accumulated sick leave days in the Assistant Superintendent for Business account at the time of retirement. Such days shall have a value equal to  $1/240^{th}$  of the then current salary at the time of retirement. The District will thereafter pay the full cost of the health insurance program in effect for active administrators in the District, except for the cost of dental insurance, family or individual coverage, as the retiree chooses, until exhaustion of the dollar amount of the unused accumulated sick leave at the time of retirement, after which time the District will provide fifty percent (50%) of the premium for individual coverage, except for dental coverage, for the retired Assistant Superintendent for Business for life. The retired Assistant Superintendent for Business has the option of applying the dollar amount equivalent to 50% of individual coverage to offset family coverage at his/her option. If the retired Assistant Superintendent for Business predeceases his/her spouse, the surviving spouse will be entitled to continue under the District health plan by paying 100% of the premium for individual coverage. The retired Assistant Superintendent for Business and spouse will be eligible for the least costly of either the 5-15-30 co-pay prescription drug rider or the drug rider in effect for active administrators in the District.

If the Assistant Superintendent for Business becomes permanently and completely disabled (subject to verification by the District's appointed medical personnel) she may participate, in the then-existing health insurance plan to the extent allowed by law and then current carrier policy and contract upon payment by the Assistant Superintendent for Business of any and all costs of such participation.



## **Leaves of Absence**

### **A. Sick Leave:**

1. Up to fifteen (15) days per year of fully paid leave shall be available for the following reasons: personal illness, physical or mental disability of the Assistant Superintendent for Business or illness or death in the family, defined for this purpose as the Assistant Superintendent for Business spouse, child, stepchild if the Assistant Superintendent for Business has been or is the responsible caregiver, mother, father, sister, brother, grandparents, or mother-, father-, sister-, brother-in-law. Grandchildren, stepparents, aunt or uncle shall be included in this definition in the case of death in the family. All leaves under this Agreement run concurrently with leave provided by the Family and Medical Leave Act which is hereby adopted, and no reinstatement rights of that Act are waived or modified by this Agreement except as provided expressly by this Agreement.
2. Sick leave days unused at the end of each school year will be accumulated into the Assistant Superintendent for Business accumulated sick leave total for the following school year, to a maximum of 220 days. Any accumulated sick time beyond the 220 days will be reimbursed at \$40 per day.
3. On the first day of each school year, the Assistant Superintendent for Business shall be credited with an additional fifteen (15) sick leave days and in the case that accumulated sick leave days have reached the maximum, the additional fifteen (15) days shall also be credited to permit a maximum during that year of 235 days available.

### **B. Personal Leave:**

1. Personal leave is for the transaction of personal business which cannot be conducted outside of the normal work day. Such leave is not available for recreational purposes. If a request is made for the use of a personal day either immediately prior to or after a vacation period, a reason must be stated on the request for personal day use. Acceptable reasons for the use of such leave are funerals, college activities, and weddings in the immediate family, as well as educational conferences and retirement conferences/meetings.
2. The Assistant Superintendent for Business will be allowed up to five (5) days personal leave per year, deductible from sick leave, upon the following conditions:
  - a. Written application for such leave must be made to the Superintendent at least 48 hours in advance of the date requested, except in emergency situations.

b. Approval of the Superintendent is a prerequisite to taking of such leave.

**C. Bereavement:**

Up to 3 days (4 if the funeral is over 150 miles one way) are available per year for bereavement. This leave may be used for deaths of those people as listed under Section 1 of Sick Leave, above. This leave is non-accumulative and non-reimbursable. If additional days are needed they will be deducted from sick leave.

**D. Jury Duty and Legal Leave:**

If subpoenaed as a witness or juror, the Assistant Superintendent for Business will be paid the difference between the fee received as such witness or juror and the per diem rate of salary. Such absences are not deductible from sick or personal leave.

**E. Extensions:**

Any extension of leave concerning personal illness or death in the family will be determined by the Board of Education, in its discretion.

If the Assistant Superintendent for Business accompanies Naples Central School students on a non-school sponsored but curricular or enrichment related trip, she shall not be subject to loss of paid personal time if unavoidably detained or circumstance requires an earlier than anticipated departure time. Under normal circumstances, trips of this sort are to be scheduled during vacation periods.

**F. Conferences and Visitations:**

The Assistant Superintendent for Business is encouraged to attend conferences and visit other schools. Requests for such conference days should be made to the Superintendent and must have his/her approval.

**G. Unpaid Leave:**

A one-year leave of absence without pay may be granted by the Board of Education in its discretion. Under some circumstances fringe benefits may be allowed during such leave.

**H. Emergency Leave:**

In the event of absence due to emergencies, the Superintendent may consider such absence as part of the sick leave program.



## **I. Childrearing Leave:**

### **1. Childrearing leave shall be available upon the following terms:**

- a. Written notice of request for childrearing leave is to be delivered to the Superintendent as soon as practicable.
- b. Such request shall include the estimated or intended date of commencement of such leave, and the intended date for return to work. Generally, such return is to be at the beginning of a semester.
- c. Child rearing leaves must be approved by action of the Board of Education upon recommendation of the Superintendent.
- d. While on child rearing leave, the Assistant Superintendent for Business shall be entitled to such benefits, if any, as District policy and/or law, requires.

### **2. Adoptive leave is available, upon the same terms:**

- a. Written notice of request for adoptive leave is to be delivered as soon as possible after the notification of adoption is made by the adoption agency.
- b. At such time, the Assistant Superintendent for Business shall notify the Superintendent of the date she wishes to commence and terminate such adoptive leave. Generally, such return date is to be at the beginning of the semester.

## **Professional Development**

With the Superintendent's approval, the Assistant Superintendent for Business may attend professional meetings on all levels (National, State, and Local) for the purpose of keeping apprised of developments in the educational field and school administration, at the expense of the District and at the reimbursement rate allowed by the Board of Education.

## **Technology Reimbursement**

The District shall pay and/or reimburse up to \$1,000 per year for the technology purchases/ expenses of the Assistant Superintendent for Business, including but not limited to cellular phone usage and computers.

## **Tuition**

The District shall pay the cost of graduate coursework, upon its successful completion, for courses related to furthering the School Assistant Superintendent for Business's development in the educational field and school administration. If the Assistant Superintendent for Business leaves employment of the district through volition of his/her own before June 30, 2018, 100% of tuition reimbursement will be due back to the district; if before June 30, 2019, 85% of tuition reimbursement will be due back to the district; if before June 30, 2020, 50% of tuition reimbursement will be due back to the district; if before June 30, 2021, 25% of tuition reimbursement will be due back to the district. Tuition must be reimbursed within three months of departure.

## **403(b) Contribution**

The District shall contribute up to \$2,000.00 per year per school year to the 403(b) account designated for this purpose by each administrator.

## **Moving Expense**

The District shall reimburse the Assistant Superintendent for Business for actual and necessary expenses for moving his/her household into the District within the terms of this Agreement, up to a maximum of ten thousand dollars (\$10,000) upon his/her submission of the receipt(s) for such expenditure(s).

## **Evaluation**

The Superintendent will evaluate yearly the performance of the Assistant Superintendent for Business. The Assistant Superintendent for Business will have the opportunity to confer with the Superintendent and receive the written evaluation which shall become part of the personnel record.

## **Voluntary Resignation**

In the event the Assistant Superintendent for Business wishes to terminate this contract with the Naples Central School District, notification will be made to the Board of Education at least six (6) months, but in no event less than two (2) months, prior to the anticipated resignation date, unless waived by the Superintendent and the Board of Education.

In the event the Assistant Superintendent for Business resigns prior to the expiration of this contract, the District's compensatory obligation to the Assistant Superintendent for Business is terminated on the effective date of the resignation.



**Ethics**

Both the Board and the Assistant Superintendent for Business agree to abide by the Code of Ethics of the New York State School Boards Association and the New York State Council of School District Administrators, attached hereto.

**Dated this 18th day of January, effective January 18, 2017.**

**Assistant Superintendent for Business** \_\_\_\_\_

**Superintendent of Schools** \_\_\_\_\_

**Attest: Deputy School District Clerk** \_\_\_\_\_

Approved by Board Resolution on January 18, 2017

## **Code of Ethics**

### **AASA's Statement of Ethics for Educational Leaders**

An educational leader's professional conduct must conform to an ethical code of behavior, and the code must set high standards for all educational leaders. The educational leader provides professional leadership across the district and also across the community. This responsibility requires the leader to maintain standards of exemplary professional conduct while recognizing that his or her actions will be viewed and appraised by the community, professional associates and students.

The educational leader acknowledges that he or she serves the schools and community by providing equal educational opportunities to each and every child. The work of the leader must emphasize accountability and results, Increased student achievement, and high expectations for each and every student. .

To these ends, the educational leader subscribes to the following statements of standards.

The educational leader:

1. Makes the education and well-being of students the fundamental value of *all* decision making.
2. Fulfills all professional duties with honesty and Integrity and always acts In a trustworthy and responsible manner.
3. Supports the principle of due process and protects the civil and human rights of all Individuals.
4. Implements local, state and national laws.
5. Advises the school board and Implements the board's policies and administrative rules and regulations.
6. Pursues appropriate measures to correct those laws, policies, and regulations that are not consistent with sound educational goals or that are not In the best interest of children. .
7. Avoids using his/her position for personal gain through political, social, religious, economic or other Influences. .
8. Accepts academic degrees or professional certification only from accredited institutions.
9. Maintains the standards and seeks to Improve the effectiveness of the profession through research and continuing professional development.
10. Honors all contracts until fulfillment, release or dissolution mutually agreed upon by all parties.
11. Accepts responsibility and accountability for one's own actions and behaviors
12. Commits to serving others above self.

-- Adopted by the AASA Governing Board, March 1, 2007

## **Code of Conduct of the New York State School Boards Association**

Consistent with our dedication to children, learning and community, members of the New York State School Boards Association. As representatives of the citizens of our state's school districts and Boards of Cooperative Educational Services (BOCES), hereby adopt this Code of Conduct. In so doing, we state our belief that a code of conduct promotes public confidence in the schools and advances the attainment of district goals and thus we recognize:

- that we have been selected by our fellow citizens and entrusted with the authority and obligation to strive to provide all students of our communities and state with equal opportunity for educational excellence.
- that the future welfare of our communities, local school districts and BOCES, state and nation depend in large measure upon the quality of education we provide in the public schools to fit the needs of every learner.
- that legally the authority of the boards of education is derived from the state which ultimately sets the parameters in which school board service is conducted.
- that we must never neglect our personal obligations to our communities and our legal obligations to the state, nor surrender these responsibilities to any other person, group or organization; but that, beyond these, we have a moral and civic obligation to the nation which can remain strong and free only so long as public schools in the United States of America are kept free and strong.

In view of the foregoing considerations, it shall be our endeavor as school board members and as members of the New York State School Boards Association to:

- devote time, thought, and study to the duties and responsibilities of being school board members as well as participate in training activities so that we may render effective, informed and creditable service.
- regularly attend board meetings and take action after careful study of the issues facing the board and after full discussion at such meetings.
- work with fellow school board members in a spirit of harmony and cooperation in spite of differences of opinion that arise during vigorous debate of points at issue.
- base decisions upon available facts in each situation; to base each vote upon honest conviction, unswayed by partisan bias: thereafter, to abide by and uphold the final majority decision of the board.
- communicate concerns and public reaction to board policies and school programs to the superintendent and other board members in a professional manner.
- remember that as individuals, school board members have no legal authority outside the meetings of the board, and that this must be reflected in all expressions with staff, the local citizenry, and the media.
- resist temptation and outside pressure to use our positions as school board members to benefit either ourselves or any other individual or agency apart from the total interest of our school districts.
- agree to honor our positions and the people who elected us by maintaining high ethical standards and by not engaging in any activity which presents a conflict of interest, or an appearance of impropriety.
- publicly disclose the nature and extent of any interest we as school board members have in any proposed contract or agreement which comes before the board.
- keep confidential matters pertaining to the schools, which are either legally required to be kept confidential and/or, if disclosed, would needlessly injure individuals or the schools.
- follow the dictates of the state's Open Meetings Law.
- recognize that the primary function of a school board is to establish policies (which are in conformity with applicable law and regulations) by which the schools are to be administered, but that the administration of the educational program and the conduct of school business shall be left to the superintendent of schools and his/her staff.
- strive to procure, when the vacancy exists, the employment of a superintendent who is best qualified for the job and who represents the interests of our communities.
- strive to build and exercise a relationship with the superintendent that is constructive and positive and which enables district staff to function as effectively as possible.
- make decisions having received the recommendations of the superintendent in matters of employment or dismissal of school personnel.
- welcome and encourage active involvement by citizens, including parents and organizations in board activities regarding establishing school policy and developing future plans.



**NAPLES CENTRAL SCHOOL**  
136 NORTH MAIN STREET  
NAPLES, NEW YORK 14512



January 9, 2017

Dear Mr. Frahm (Matt),

It is with mixed emotions that I submit my letter of retirement resignation, effective October 14, 2017. I am fortunate to have been a part of the Naples community for over twenty-three years. I am proud to be a member of the NCS faculty and have countless wonderful memories of my experiences with students, parents and colleagues.

It is my hope that a new French teacher will continue to foster the program which is so close to my heart. I sincerely appreciate the support I have received during my tenure. Thank you to everyone who has been part of the journey. I know that NCS will continue to provide an excellent education for all students.

Respectfully submitted,

Cynthia P. Bero