

THIS AGREEMENT made as of the 1st day of July, 2021 between the Owner, Malverne Union Free School District, with offices for the transaction of business located at 301 Wicks Lane, Malverne, NY 11565, and the Architect, H2M Architects & Engineers, with offices for the transaction of business located at 538 Broad Hollow Road, 4th Floor East, Melville, NY 11747.

ARTICLE 1

SCOPE OF ARCHITECT'S SERVICES

- A. The Architect shall provide all architectural and engineering services, including but not limited to, structural, mechanical and electrical engineering services, required to complete the following services on behalf of the Owner. To the extent that the following consultants are, in the Architect's professional judgment, required for proper performance of the Architect's services, such consultants shall be retained by the Architect: acoustics, audio-visual, on-site civil engineering, computer networking, electrical engineering, fire protection/life safety, landscape architecture, surveyor, lighting, mechanical engineering, equipment, roofing, specifications, structural engineering, sanitary engineering, vertical transportation, athletic/stadium/arena, theater/performing arts, library, and exterior wall systems. Any consultants to be used shall be subject to the approval of the Owner. The Architect will furnish the Owner with a list of consultants it intends to retain in connection with the Project. In the event the Owner does not approve a consultant, the Owner will notify the Architect within ten (10) days of said disapproval.
- B. The Architect shall designate an individual as the Project Architect in charge of any and all Projects.

ARTICLE 2

PRE-DESIGN SERVICES

- A. The Architect shall provide the following services, prior to the commencement of design work:
 - 1. The Architect shall meet with the Superintendent of Schools and/or his/her designee to discuss the Owner's needs and to review in general the types of the projects contemplated to be performed by the Owner in connection with the work to be performed.
 - 2. The Architect shall visit the School District facility for the purpose of reviewing:
 - a. Information on building services and equipment, including an analysis of the electrical and mechanical systems of the buildings to determine if they will require upgrading or duplication to support any proposed additions and/or alterations;

- b. Review of existing planning documents for each of said facilities;
 - c. Investigation of existing conditions and to accurately and adequately assess the need for proposed projects; and
 - d. Review proposed site use and improvements, selection of materials, building systems and equipment.
- 3. Upon its review of the information set forth in paragraphs (A)(1) through (A)(2), the Architect shall meet with district administrators and, as directed, the administrators at the school for the purpose of discussing their respective concerns relative to the school facility.
- 4. The Architect shall consult with the New York State Education Department, Office of Facilities Planning to ascertain its requirements concerning proposed projects and to ascertain whether any new rules/regulations have been implemented concerning same.
- 5. The Architect shall research critical applicable federal and state statutes, rules and regulations, including but not limited to, the regulations of the New York State Commissioner of Education, as they relate to the design of projects contemplated by the Owner in its program and designed by the Architect.
- 6. The Architect, in conjunction with the Board of Education and Superintendent of Schools, shall review the manner in which the proposed projects will be designed so as to address the Owner's needs. The Architect's analysis hereunder shall include:
 - a. Developing preliminary design responses, in floor plan only, schematic design, and site plans as necessary for each alternate course of action;
 - b. Analyzing the electrical and mechanical systems of the buildings to determine the effect any proposed additions and/or alterations may have on these systems;
 - c. Developing in conjunction with Construction Manager preliminary estimates, including construction costs, professional fees and costs for land acquisition (if applicable) for each alternate course of action proposed by the Architect in accordance with this paragraph. Said estimates shall also include an analysis of the estimated state aid reimbursement for each alternate selected;

- d. Developing in conjunction with Construction Manager preliminary time lines for the design, construction and completion of all work necessary for use and occupancy by the Owner for each of the alternate approaches proposed hereunder; and
 - e. An analysis of the effect proposed projects will have on energy costs currently incurred by the Owner. The Owner shall provide the Architect with current, up-to-date owning and operating costs for the Architect's use.
7. The Architect shall meet with the Owner's District Administration for the purpose of prioritizing the projects to be performed pursuant hereto, taking into account both the educational needs of the Owner, as well as the protection and safety of the facilities and the occupants thereof, as expressed to the Architect by the Owner.
8. The Architect shall assist the Owner in meetings with its staff, students, parents, and community members to apprise them of the projects to be performed in connection with the Project.

ARTICLE 3

SCHEMATIC DESIGN AND DESIGN DEVELOPMENT SERVICES

A. Upon approval by the Owner of the Architect's pre-design approach to design, the Architect shall prepare Schematic Design Documents based on mutually agreed upon program schedule and budgetary requirements for the Project for approval by the Owner. Said documents shall include the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, and outline specifications which identify materials and/or systems to be used. At intervals agreeable to the Architect and the Owner, the Architect shall provide design studies and updates/refinements thereto.

B. Upon written approval of the Schematic Design Documents by the Owner, the Architect shall prepare Design Development Documents for the Owner's approval. Said documents shall include floor plans, elevations, details, section, equipment layout, and draft specifications which identify materials and/or systems to be used. At intervals agreeable to the Architect and the Owner, the Architect shall provide design studies and updates/refinements thereto. The Architect shall review the Design Development Documents with the Owner and shall report, in writing, to the Owner the nature and magnitude of any deviations between the Design Development Documents and the Owner approved Schematic Design Documents. If the Owner does not approve such deviations, the Architect shall promptly revise its Design Development Documents to comply with the Owner's requirements, unless the Owner's requirements violate federal, state and/or local laws governing the project, and/or the standard of professional care used in the industry governing the project. In the event the Owner's requested changes cannot be designed so as to keep the Project within the fixed limit of construction for the Project, the Architect will advise the Owner.

- C. The Architect shall coordinate the information contained on the Drawings and the technical specifications to insure that they are in conformity with one another.
- D. The Owner shall approve, in writing, the Design Development Documents prior to the Architect proceeding to the Construction Documents Phase.
- E. The fixed limit of Construction Cost is the amount set forth in Capital Construction Work. The fixed limit of Construction Cost includes: contingencies for design, contingencies for construction and allowances for bidding, price escalation and for the Owner's indirect costs, including soft costs and professional fees. The Architect will determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and shall make reasonable adjustments in the scope of the project to include in the Contract Documents, if necessary, alternate bids so that the Construction Cost complies with the fixed limit of Construction Cost.
- F. The Architect shall prepare in conjunction with the Construction Manager an estimate of the anticipated cost of construction at specific stages of the design of the project. The Architect in conjunction with the Construction Manager will perform an estimate upon the conclusion of each the Schematic Design Phase, at the conclusion of the Design Development Phase, and at the conclusion of the Construction Documents Phase. The estimates prepared by the Architect and the Construction Manager shall be compared to the fixed limit of Construction Cost to determine the necessity and extent of adjustments to Project scope and quality, and alternates. The Owner shall cooperate with the Architect in revising the Project quality and authorizing the use of alternates.

ARTICLE 4

CONSTRUCTION DOCUMENTS SERVICES

- A. Based on the approved Design Development Documents, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. At intervals agreeable to all parties, the Architect shall provide drawings and specifications to the Owner with updates and refinements thereto.
- B. The Architect shall assist the Owner in preparing and submitting all documents, applications, and other submittals as the same may be required by the New York State Education Department and any other governmental agency, State or Federal, having jurisdiction over the projects(s).
- C. The Architect shall compile and bind the Project Manual for the Project, which shall include technical specifications for the project, bidding documents, Owner-prepared Contract and General Conditions, prevailing wage rate schedules, form of bonds and such other material necessary to provide a complete manual for bidding and construction purposes.

D. The Architect shall include in the bidding documents, information, plans and/or specifications, a requirement that all contractors provide five (5) copies of operation manuals and adequate training for the Owner in the operation of mechanical, electrical, heating, ventilating and other systems, and the site logistic documents prepared by the Owner.

E. Upon completion of a preliminary project manual, and at least three weeks' prior to letting competitive bids, the Architect shall forward to the Owner's attorney said project manual for review and revisions as to legal issues. The Architect shall incorporate into the project manual any and all revisions made by the Owner's attorney, prior to letting bids for the proposed work, provided such provisions do not violate any statute, law, code, regulation, the project budget or the standard of care required of the Architect. Upon completion of the final project manual, with the attorneys' revisions, the Architect shall provide the Owner's attorney with a copy of said manual for his/her use.

ARTICLE 5

BIDDING SERVICES

A. The Architect, in cooperation and consultation with the Owner, following the Owner's approval of the Construction Documents and of the estimate of Construction Cost completed at the construction document phase, shall assist the Owner in obtaining bids for the work contemplated by the project, including the following services:

1. Provide written answers, to all bidders, questions that are raised by any bidder, during the bid process.
2. Attend pre-bid walk through.
3. Prepare any addenda required for clarification purposes.
4. Investigate into the bidder's qualifications to perform the Work of this Project. Said investigation shall include, but not be limited to, a documented check of the bidder's listed references and inquiry to the bidder as to references not listed. Further, when the responsibility of a bidder is in question, the Architect shall assist in the investigation of the existence of other references not listed by the bidder. In the event the Architect has concerns about a bidder's ability to perform the Work of the Project based upon its investigation, it shall immediately document such concerns to the Owner.
5. Conduct pre-award conferences with successful bidders.
6. Recommend the bidder(s) who are the lowest responsible and responsive bidders for award of contracts.

7. Assist the Owner in completing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.
 8. Evaluate substitutions proposed by the Contractor and recommend acceptance/rejection of proposed substitutions to the Owner. In the event the Owner accepts a contractor's proposed substitution, the Architect shall make subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.
- B. In the event that the bids exceed the fixed limit of Construction Cost, the Architect, at the direction of the Owner, shall (a) rebid the Project within a reasonable time, or (b) provide such modifications in the contract documents as is necessary to bring the cost of the project within the fixed limit of Construction Cost. The Architect shall not be entitled to additional compensation for rebid of the project and/or modification of the contract documents.

ARTICLE 6

ARCHITECT'S CONSTRUCTION ADMINISTRATION SERVICES

- A. The Architect shall provide administration of the Contract for Construction as set forth below and in the General Conditions of the Contract for Construction as may be modified by the Owner. Architect shall comply with and be responsible for those responsibilities assigned to it in the General Conditions of the contract for construction between the Owner and the Contractor(s). Said services are incorporated herein by reference.
- B. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and the General Conditions of the Contract for Construction, unless the Owner consents to such authority, and/or unless otherwise modified by written instrument.
- C. The Architect shall visit the site once every week while work is in progress, and as often as required to resolve critical design issues in the field, to observe the site and work, to familiarize itself with the general progress and quality of the work, and to determine for the Owner's benefit and protection if the work is proceeding, in accordance with the intent of the contract documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality of the work.
- D. On the basis of its on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the work and it shall use reasonable care in guarding the Owner against defects and deficiencies in the work and against the Contractor's failure to carry out the work, in accordance with the intent of the construction documents.

E. The Architect shall be present at weekly project meetings with the Contractors and the Owner's representatives to discuss issues relative to design, progress of the work, quality of the work and timely completion of the work. Agenda for said meetings shall be developed by the Construction Manager, in conjunction with the Architect, and shall include design issues raised by the Architect.

F. The Architect, in conjunction with the Construction Manager, shall review and approve, reject or take other appropriate action upon the Contractor's submittals (including Shop Drawings, Product Data and Samples, etc.) as necessary to ascertain their conformance with the design's requirements as indicated in the Contract Documents. The Architect's review shall not be conducted for the purposes of confirming dimensions or quantities except to the extent that the Contractor has requested, in writing, the assistance of the Architect to determine certain dimensions because those indicated in the Contract Documents conflict with existing field conditions, or because the dimensions in the Contract Documents contain erroneous, inconsistent, or incomplete dimensions for which clarification is needed and can best be supplied by the Architect.

G. The Architect shall maintain a record of each submittal received from the Contractor. The record shall include, at a minimum, the subject matter of the submittal, the related specification section number, the provider or supplier of the subject item, material or system, the date received, the action taken, and the date returned to the Contractor.

H. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

I. The Architect shall prepare drawings, specifications and other documentation and supporting data in connection with Change Orders and Construction Change Directives for the Owner's approval and execution, in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in the Contract Sum and/or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

J. The Architect shall not have control over, or charge of, and shall not be responsible for construction means, methods, techniques, sequences, procedures, scheduling or for safety precautions and programs in connection with the Work unless the Architect has included specifications, designs, or requirements governing the construction means, methods, techniques, sequences, or safety precautions in the Contract Documents. The Architect shall not have control over, charge of, or responsibility for the Contractor's schedule or acts or omissions of the Owner, the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. However, as set forth in subparagraph K hereof, the Architect shall report to the Owner known material deviations from the Contract Documents as to quality and scope of work, as well as timeliness of the Contractor's performance as ascertained from the most recent construction schedule submitted by the Contractor.

K. The Architect shall advise the Owner of work which does not conform to the Contract Documents as to quality of the work, scope of the work, or progress of the work. If the Architect observes or is aware of work which does not conform to the contract documents, it shall immediately advise the Owner. The Architect shall review those items of delay which the Owner has advised it of and shall recommend to the Owner appropriate remedial steps to be taken to minimize the duration of said delay.

L. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require 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. Additionally, when the Architect receives a recommendation from the Construction Manager or the Owner that such additional testing or inspection is required, the Architect shall require such additional inspection or testing. However, neither this authority of the Architect, nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

M. Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluations of the work and on the data comprising the Contractor's Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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 minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation, to the best knowledge of the Architect, that the Contractor is entitled to payment in the amount certified.

N. The Architect, in conjunction with the Construction Manager, shall maintain a record of each Contractor's application for payment, copies of which Applications shall be sent to the Owner with certification of each such application by the Architect. Further, the Architect shall certify said application for payment only if it is accompanied by the following documentation, which shall be supplied by the Construction Manager, and certified by the Construction Manager as to its completeness:

1. A current Sworn Statement from the Contractor setting forth all subcontractors and material supplier with whom the Contractor has subcontracted, the amount of such subcontract, the amount requested for any subcontractor or material supplier in the application for payment and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed waiver of mechanics' and material supplier's liens from the Contractor establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment;

2. Commencing with the second (2nd) Application for Payment submitted by the Contractor, duly executed "after the fact" waivers of mechanics' and material supplier's liens from all subcontractors, material suppliers and, when appropriate, from lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current application for payment, plus sworn statements from all subcontractors, material suppliers and, where appropriate, from lower tier subcontractors, covering all amounts;
3. Certified payroll for employees and employees of subcontractors performing work on the Project; and
4. Copies of invoices submitted to the Contractor by its subcontractors and/or material suppliers.

The Architect shall be responsible only for ascertaining that the documentation listed in subparagraphs 1 through 4 hereof which are annexed to the Contractor's application for payment. The Architect shall not be required to review said documentation for completeness or accuracy.

ARTICLE 7

ARCHITECT'S POST CONSTRUCTION SERVICES

The Architect shall provide the following services upon completion of the work:

1. Preparation of punch lists for completion of the Work by Contractors.
2. Review of final close out paperwork submitted by the Contractors, reviewed and collected, and execute such documents which require the Architect's signature.
3. The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and review, approve or disapprove as appropriate, and forward to the Owner, and the Owner's attorneys at the Owner's request, for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
4. Participation in observations of the project or parts thereof near the end of the one year or other warranty period applicable thereto under the Contract for Construction. The Architect shall follow-up as appropriate with respect to the inadequate performance of materials, systems, and equipment under warranty.

ARTICLE 8

ADDITIONAL SERVICES

- A. The services described in this Article 8 are not included in the services set forth in Articles 2 through 7 of this Agreement. The services described hereunder shall only be provided if authorized or confirmed, in writing, by the Owner and following the Architect's recommendation and advice as to the need for these additional services. If services described in this Article are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner, prior to commencing such services. If the Owner deems that such additional services are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates, in writing, that all or part of such Additional Services are not required, the Architect shall have no obligation to provide those services.
- B. The Architect's compensation for the services listed in this Article 8, if provided by the Architect, shall be invoiced by the Architect pursuant to the hourly rate schedule annexed hereto as Appendix A, together with services performed by its consultants in connection with the services listed in this Article 8.
- C. The following services shall be compensated to the Architect as additional services:
1. Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the completion by the Architect of the construction documents.
 2. Providing services required because of significant changes in the Project which are at variance with the project as designed and approved by the Owner, in accordance with Article 2 of this agreement, including, but not limited to, size, quality, and complexity. However, the Architect shall not be entitled to additional fees for services related to the modification of documents as set forth in Article 5, paragraph B.
 3. Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work as long as this damage was not the fault of the Architect.
 4. Providing services made necessary by the default of the Contractor.
 5. Providing services in connection with an arbitration proceeding, or legal proceeding commenced by or against the Owner by an entity/individual other than the Architect, or as a witness thereto unless: (1) subpoenaed by a party other than the Owner; or (2) the Architect is party to said proceedings.
 6. Providing surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

7. Providing services relative to future facilities, systems and equipment.
8. Preparing a set of reproducible record drawings or drafting analysis showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect in the event the Contractor fails to furnish such drawings to the Owner as required by the Contract Documents.
9. Provide "as built drawings" (electronic) based on the actual construction as provided by the contractors as part of their contract requirements.

ARTICLE 9

STANDARD OF ARCHITECT'S SERVICES

- A. The Architect agrees to provide professional services that reflect the standard of professional care that is customary for architects. The Architect shall not deviate to a lesser standard of care.
- B. All drawings, specifications and other documents prepared by the Architect shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations in effect at the time said drawings, specifications and other documents are prepared. The Architect, however, shall not be responsible for additional construction costs incurred due to a change in such laws, statutes, ordinances, codes, orders, rule and/or regulations after the completion by the Architect of the construction documents.
- C. Any errors or omissions on drawings, specifications or other documents furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. Nothing contained herein shall preclude a claim against the Architect by the Owner for damages arising from errors or omissions in the drawings, specifications or any other of the contract documents furnished by the Architect. Change orders and/or construction change directives resulting from the Architect's errors or omissions shall not be subject to any additional Architect's fees. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services or of the project shall not in any way alter the Architect's obligations or the Owner's rights hereunder.
- D. Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, represent the Architect's best judgment as a design professional familiar with the construction industry.
- E. The Architect shall design the Projects to be undertaken by the Owner so as to meet the educational specifications and to maximize the Owner's receipt of State aid from New York State, but the Architect does not warrant or guarantee the receipt of State Aid.

ARTICLE 10

OWNER'S RESPONSIBILITIES

A. The Owner shall furnish the following documentation, if it possesses same, to the Architect to assist it in the performance of its obligations under this agreement:

1. Surveys describing physical characteristics, legal limitations and utility locations for the site or 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; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining 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.
2. Long Range Planning Studies prepared on behalf of the School District, including facilities report cards.
3. AHERA Reports on file with the School District.
4. Existing building plans.

The Architect shall be entitled to rely on the accuracy of the information provided to it by the Owner.

B. With the Architect's assistance and upon the Architect's advice that such services are necessary, the Owner shall engage and pay for appropriate entities for structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents. The Architect shall request of the Owner such soil, foundation, hazardous material, and other tests, inspections, surveys and reports (collectively "tests" in this subparagraph) as may, in the Architect's professional judgment, be appropriate in the circumstances. As necessary, the Architect shall cooperate in the formulation of such tests. The Architect shall take into account the results of such tests in performing the Architect's services. The Architect, in conjunction with the Construction Manager, shall include the estimated cost of testing in the proposed project cost.

C. The Owner shall furnish all legal and insurance services as may be necessary at any time for the Project, except where such services are necessitated due to a claim or suit brought against the Architect. The Architect shall include the Owner estimated cost of project insurance and legal fees in the proposed project cost.

D. When the Architect determines such services are necessary as a result of existing site conditions, the Owner shall engage the services of a geotechnical engineer. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistancy tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

E. Upon payment of all sums due the Architect under this Agreement, and upon performance of all of the Owner's obligations under this Agreement, the Owner shall have the right to use the latest original drawings and specifications and the latest electronic data prepared by the Architect for the Project, in accordance with its regular course of business in maintaining and using its facilities. All drawings, specifications, and all electronic data and electronic versions of such documents, are the property of the Architect and its consultants, and they shall retain all rights thereto, including copyrights. The Architect shall not be deprived of the right to retain electronic data or other reproducible copies of the drawings and specifications, or the right to reuse information contained in them in the normal course of the Architect's professional activities. The Architect shall be deemed the author of such electronic data or documents, shall retain all rights not specifically conveyed, and shall be given appropriate credit in any public display of such drawings and specifications. There shall be no use by the Owner of the Architect's drawings, specifications and electronic data retained by the Owner in connection with future projects, unless such use either: (a) is required by law; (b) required by Court Order; or (c) authorized by the Architect. As used in this Agreement, the word "documents" includes computer disks or other methods of storing electronic data.

ARTICLE 11

PAYMENTS TO THE ARCHITECT

The Owner shall compensate the Architect as follows:

- A. The Architect's compensation for its services shall be computed by multiplying the Construction Cost, as defined in Appendix C, RFP #2429, of the actual "Construction Cost" of the Project. The term "Construction Cost" is defined as follows:
1. Construction Cost shall include the cost at current market rates of labor and materials as evidenced by the actual bids submitted to the Owner and awarded in connection with the Project. In the event bids are not awarded, "Construction Cost" shall be defined as the cost at current market rates of labor and materials to be furnished to the Owner and all elements designed by the Architect, plus a reasonable allowance for the Contractor's overhead and profit.

2. Construction Cost does not include the compensation of the Architect and Architect's consultants, construction management fees, clerk of the works fees, the costs of the land, rights-of-way, financing, or other costs which are the responsibility of the Owner.
- B. Progress payments for the work of the Architect, as set forth in Article 2 through Article 7, shall be based upon work performed as approved by the Owner during each phase of the Architect's basic services, as follows:
- Pre-Design: 10%
 - Schematic Design Services: 10%
 - Design Development Services: 10%
 - Construction Documents Services: 30%
 - Bidding Services: 10%
 - Construction Administration Services: 30%
 - Post Construction Phase: 0%
- C. Services performed by consultants, other than those listed in Article 1 of this Agreement, or for the additional services of such consultants as set forth in Article 8 of this Agreement, on behalf of the Architect shall be compensated to the Architect based upon the actual fee charged to the Architect by the Consultant. The Architect shall not be entitled to any fees in excess of the percentage fee set forth in this Article 11 associated with the consultants listed in Article 1, except for such consultant's services performed as part of the Architect's additional services outlined in Article 8.
- D. The Architect shall be entitled to be reimbursed for the following expenses:
1. Expense of reproductions including reproduction of bid packages and plots.
 2. Fees paid for securing the approval of authorities having jurisdiction over the project.
 3. Costs for third party testing services and exploratory work.
 4. Overnight mail or messenger costs.

Reimbursement for such expenses shall be made for the actual expense incurred by the Architect. The Architect shall not be entitled to any differential for overhead and/or profit associated with an expense reimbursed pursuant hereto. Together with its invoices for payment, the Architect shall annex all invoices associated with reimbursable expenses. Records of Reimbursable Expenses and expenses pertaining to services performed by the Architect, pursuant to this agreement, shall be available for inspection and copying to the Owner or the Owner's authorized representative at mutually convenient times.

- E. Payments to the Architect shall be made on a monthly basis. The Architect shall present to the Owner its statement of services rendered or expenses incurred. Upon receipt of the Architect's invoice, the Owner shall make payment to the Architect within thirty (30) days.
- F. When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Article 11, paragraph C, based on: (1) the lowest bona fide bid or negotiated proposal; or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

ARTICLE 12

TERMINATION, SUSPENSION OR ABANDONMENT

- A. The Owner may terminate this agreement for any reason upon fourteen (14) days' notice to the Architect.
- B. This Agreement may be terminated by either party 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. The breaching party shall have fourteen (14) days from notice of its breach to cure said breach.
- C. In the event this Agreement is terminated, pursuant to any of the provisions of Article 12, the Architect shall be compensated for work performed to the date of such termination, in accordance with this Agreement. If such termination occurs during any such phase of work listed, the percentage to be paid to the Architect shall be paid on a pro-rated basis to the extent of work performed pursuant to such phase.

ARTICLE 13

MISCELLANEOUS PROVISIONS

- A. Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Owner.
- B. The Architect shall not assign this Agreement without the written consent of the Owner, which consent shall not be unreasonably withheld.
- C. This Agreement represents the entire and integrated agreement between the Owner and Architect 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 Architect.

- D. 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 Architect.
- E. The Architect will work cooperatively and in conjunction with the Owner's Construction Manager in performing the work described in this Agreement.
- F. The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect, in writing, of the specific information considered by the Owner to be confidential or proprietary. The Owner shall Provide Professional credit for the Architect on the construction sign and in the promotional materials for the Project.
- G. Required Insurance:
1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Architect hereby agrees to effectuate the naming of the district as an unrestricted additional insured on the consultant's insurance policies, with the exception of workers' compensation and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
 2. The policy naming the district as an additional insured shall:
 - Purchase an insurance policy from an A.M. Best rated "secured" New York State licensed insurer.
 - Contain a 30-day notice of cancellation.
 - State that the organization's coverage shall be primary coverage for the District, its Board, employees and volunteers.
 - The district shall be listed as an additional insured by using endorsement CG 2010 11 85 or equivalent. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance.
 3. The Architect agrees to indemnify the district for any applicable deductibles.
 4. Required Policy Limits:
 - **Commercial General Liability Insurance** \$2,000,000 per occurrence/ \$4,000,000 aggregate.
 - **Automobile Liability**
\$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.

- **Workers' Compensation and N.Y.S. Disability**
Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees.
 - **Architects & Engineers' Professional Errors and Omissions Insurance**
\$5,000,000 per occurrence/ \$5,000,000 aggregate for the professional acts of the architect performed under the contract for the district. If written on a "claimsmade" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work. If the architect or engineer is providing environmental services, the errors & omissions policy must be endorsed to include coverage for these services.
 - **Excess Insurance**
On a "Follow-Form" basis, with limits of \$3,000,000/\$5,000,000 each occurrence and aggregate.
5. The Architect acknowledges that failure to obtain such insurance on behalf of the district constitutes a material breach of contract. The Architect is to provide the districts with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the district to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the district.
 6. The district is a member/owner of the NY Schools Insurance Reciprocal (NYSIR). The Architect further acknowledges that the procurement of such insurance as required herein is intended to benefit not only the district but also the NYSIR, as the district's insurer.
- H. To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner, its consultants and agents and employees of any of them from and against all claims, damages, losses and expenses resulting in bodily injury and/or property damage, including, but not limited to, attorneys' fees to the extent arising out of or resulting from any negligent act or omission of Architect, or any subcontractor of Architect, excluding any claims, damages, losses and expenses arising from and limited to the extent of the Owner's own negligence.
- I. The Owner shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Owner, its property and the Project site from all risks, hazards and liabilities in the minimum amount of the initial Construction Cost plus the value of subsequent modifications and the cost of furniture, fixtures, equipment supplied or installed, whether as part of the Work or pursuant to any other agreement, comprising total value for the entire Project at the site, on a replacement cost basis. The insurance shall cover portions of the Work stored off the site and all portions of the Work in transit. The insurance shall include as named insured the Owner, the Architect and its consultants, and shall insure against loss from fire, including extended coverage,

malicious mischief, collapse, flood, earthquake, testing and damage resulting from defective design or materials.

- J. The Owner agrees to deliver Certificate(s) of Insurance evidencing the insurance coverages required in this Agreement to the Architect prior to the commencement of construction activities. The insurance coverages shall contain a provision that they shall not be cancelled or not renewed, except upon thirty (30) days' prior written notice.
- K. The Architect shall not discriminate against any individual on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status.

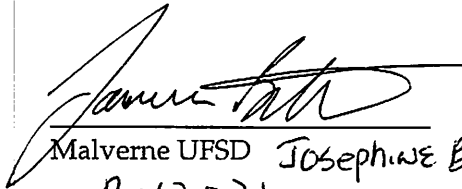
ARTICLE 14

TERM OF AGREEMENT

The term of the within agreement shall be for the period commencing July 1 2021 through June 30, 2023 and shall continue until completion of the work by the Contractors engaged by the Owner and completion of the services outlined in Article 7.

OWNER:

By:


Malverne UFSD Josephine Botha
7-13-21

ARCHITECT:

By:


H2M Architects & Engineers