


SCOTIA-GLENVILLE CENTRAL SCHOOL DISTRICT

TO: Susan Swartz, Superintendent  
FROM: Andrew Giaquinto, School Business Manager   
DATE: June 17, 2024  
RE: Agreement for Construction Management Services – Tateo CM

Attached please find the Agreement for Construction Management Services between Scotia-Glenville CSD And Tateo CM Consulting LLC for the 24-25 Capital Improvement Project. The agreement is consistent with the previous construction management agreement with B.A. Construction for the 21-22 Capital Improvement Project. Jack Tateo was formerly with B.A. Construction Services and through them has served as our construction manager on the four previous capital projects, in addition to smaller annual \$100K projects and our Building Condition Survey. Jack is now on his own and brings a level of expertise, history of past projects and familiarity with the District's buildings and grounds that could not be found elsewhere.

Regarding the fee, the benefit to the District is that the compensation is capped at 4% of the project construction cost. There will be no change in scope and no change orders. The 4% is reasonable. The going rate for construction management is anywhere from 5-15% (on the lower side for large-scale projects, which this falls into at the \$11,000,000 construction price).

I suggest that this agreement be submitted for Board approval at the June 24, 2024 meeting. Thank you.

Attachment

AG/cc

**AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES**

**Between**

**SCOTIA-GLENNVILLE CENTRAL SCHOOL DISTRICT**

**And**

**TATEO CM CONSULTING LLC**

**For the Project:**

**24 – 25 CAPITAL IMPROVEMENT PROJECT**

**FACILITIES RENOVATIONS, ALTERATIONS, AND  
IMPROVEMENTS TO SCHOOL DISTRICT BUILDINGS**

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**AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES**

THIS AGREEMENT (this "Agreement") made and effective the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between **SCOTIA-GLENVILLE CENTRAL SCHOOL DISTRICT**, a New York education corporation with its principal offices at 900 Preddice Parkway, Scotia, NY 12302 ("Owner"), and **TATEO CM CONSULTING LLC**, a New York limited liability company with its principal offices at 21 Old Ox Road, Delmar, New York 12054 ("Construction Manager"),

For the services set forth in this Agreement in connection with the following described construction project (hereinafter the "Project"):

**24 - 25 Capital Improvement Project**

Owner and Construction Manager are sometimes referred to herein, individually, as a "Party", and, collectively, as the "Parties".

Design Professional: SEI Design Group Architects, D.P.C.  
2 Winners Circle  
Albany, NY 12205

**NOW, THEREFORE**, Owner and Construction Manager agree as follows:

**ARTICLE I  
RELATIONSHIP BETWEEN THE PARTIES AND PRELIMINARY MATTERS**

**1.1 Relationship Between the Parties.** Construction Manager and Owner accept the relationship with trust, good faith, and fair dealing established by this Agreement, and shall cooperate with each other and with Design Professional in connection with the Project. Construction Manager shall perform the Services (as hereinafter defined) in an expeditious and economical manner. Construction Manager is an independent contractor, and shall serve as Owner's agent, but shall not be in privity with Design Professional, any other design professionals, or Prime Contractors.

**1.2 The Construction Team.** Construction Manager, Owner, and Design Professional, called the "Construction Team", shall work together during all aspects of the Work. Construction Manager shall provide leadership to the Construction Team on all matters relating to construction and shall provide construction administrative and management services. Except as set forth in this Agreement and only as permitted under applicable law and regulations, Construction Manager shall not be authorized or required to perform any act that would constitute design services, laboratory testing, inspection services, or investigations, or any other acts that would constitute the practice of architecture, engineering, or public accounting, or otherwise require professional licensure.

**1.3 Extent of Agreement.** This Agreement represents the entire agreement between Owner and Construction Manager, and except as otherwise expressly provided herein, supersedes all prior negotiations, representations, or agreements. When drawings and specifications are complete, they will be identified under Section 12.1 of this Agreement. This Agreement shall not be superseded by any provisions of the Construction Documents, and may be amended only by

written instrument signed by both Owner and Construction Manager.

**1.4 Definitions.**

- 1.4.1** "Change Order" shall have the meaning set forth in Section 7.2 of this Agreement.
- 1.4.2** "Construction Documents" shall mean the plans, drawings, specifications, and other documents provided by Owner through Design Professional and other design professionals that delineate the design and specify all other necessary requirements relating to the construction of the Project.
- 1.4.3** "Design Professional" is the entity identified that is responsible for all the design and engineering necessary for the construction of the Project, including the preparation of the Construction Documents.
- 1.4.4** "Final Completion" shall mean the point when all of the Work is fully and finally complete in accordance with the requirements of the Construction Documents.
- 1.4.5** "Prime Contracts" and "Prime Contractors" shall have the meanings as set forth in Article IV of this Agreement.
- 1.4.6** "Project" shall mean the construction project referenced above and the total improvement for which Construction Manager is to provide the Services pursuant to this Agreement.
- 1.4.7** "Project Construction Cost" shall mean the full cost of all of the Work on the Project for which Construction Manager, with the written approval of Owner, renders Services.
- 1.4.8** "Reimbursable Costs" shall have the meaning set forth in Section 6.4 of this Agreement including the language which except from reimbursable costs those things provided by the Owner.
- 1.4.9** "Services" shall mean the construction management services to be provided by Construction Manager pursuant to this Agreement.
- 1.4.10** "Substantial Completion" shall mean that point in the Work when the Project or a designated portion thereof is sufficiently complete in accordance with the Construction Documents so that Owner can occupy or utilize the Project or designated portion thereof for its intended use.
- 1.4.11** "Work" shall mean the construction, work, labor, services, materials, equipment, tools, and other items to be performed by the Prime Contractors on or in connection with the Project as required by the Construction Documents.

**ARTICLE II  
CONSTRUCTION MANAGER'S SERVICES**

Construction Manager will perform the Services in each of the two phases (the Preconstruction Phase, and the Construction Phase) as set forth in Sections 2.1 and 2.2 below.

**2.1 Preconstruction Phase.**

**2.1.1 Scheduling.** Develop a Master Construction Schedule working in conjunction with the General Contractor (Prime Contractor) that coordinates and integrates Design Professional's milestone dates. Update the Master Construction Schedule incorporating a detailed schedule for the construction operations of the Project, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, and delivery of products requiring long lead time procurement. Include Owner's occupancy requirements showing portions of the Project having occupancy priority.

**2.1.2 Construction Planning.** Review the procurement of long lead time items to assist their delivery by the required dates.

- .1 Make recommendations to Owner and Design Professional regarding the division of the Work in the Construction Documents to facilitate the public bidding and awarding of Prime Contracts, allowing for phased construction and taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities.
- .2 Review the Construction Documents with Design Professional to eliminate areas of conflict and overlapping in the Work to be performed by the various Prime Contractors and prepare prequalification criteria for bidders.
- .3 Assist Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required from the Project.

**2.1.3 Bidding.** Assist Owner and Design Professional in all aspects of the process of soliciting, receiving and reviewing bids for Prime Contracts in accordance with all applicable laws.

- .1 Assist Design Professional in its preparation and issuance of bidding documents to bidders and conduct pre-bid conferences with bidders. Assist Design Professional with regard to responses to questions from bidders and the issuance of addenda.
- .2 Analyze bids and make recommendations to Owner for the award of contracts or the rejection of bids.
- .3 Assist Owner and Design Professional in their preparation of Prime Contracts and advise the Owner regarding the acceptability of subcontractors and material suppliers proposed by Prime Contractors.

## **2.2 Construction Phase**

- 2.2.1** Project Control. Monitor and coordinate the Work with the activities and responsibilities of Owner. Work with Design Professional to complete the Project in accordance with Owner's objectives of cost, time, and quality. Construction Manager shall determine in general that the Work of each Prime Contractor is being performed in accordance with the Contract Documents and shall notify Owner of defects and deficiencies in the Work. Construction Manager, as well as Design Professional, shall have the authority to reject Work that does not conform with the Construction Documents and shall notify Owner and Design Professional of any such rejection.
- .1** Maintain a full-time (40 hours per week) Construction Manager from June 27, 2025 – August 29, 2025 and June 26, 2026 – September 4, 2026 to provide general direction of the Work and to coordinate the progress of the Prime Contractors on the Project.
  - .2** Establish on-site organization and lines of authority in order to carry out the overall plans of the Construction Team.
  - .3** Establish procedures and clarify roles for coordination among Owner, Design Professional, Prime Contractors, and Construction Manager with respect to all aspects of the Project and implement such procedures.
  - .4** Schedule and conduct weekly progress meetings at which Prime Contractors, Owner, Design Professional, and Construction Manager can discuss jointly such matters as procedures, progress, problems, and scheduling; prepare and disseminate meeting minutes to all Parties.
  - .5** Provide regular monitoring of the Master Construction Schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review schedule for Work not started or incomplete and recommend to Owner and Prime Contractors adjustments in the Project Schedule to meet the probable completion date. Provide summary reports of each monitoring and document all changes in schedule.
  - .6** Determine the adequacy of the Prime Contractors' personnel and equipment and the availability of materials and supplies to meet the Project Schedule. Recommend courses of action to Owner if requirements of a Prime Contract are not being met.
  - .7** Except as required pursuant to a Prime Contract, arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are part of the Project until such items are incorporated into the Work.
  - .8** Monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise Owner as to variances between actual and

budgeted or estimated costs.

**2.2.2 Outside Entities.** Assist in the coordination of and oversee the activities of utility companies, regulatory agencies, governmental inspectors, and third party agencies, and any other outside entities.

**2.2.3 Change Orders.** Recommend necessary or desirable changes in the Work to Owner and Design Professional, review requests for changes, submit recommendations to Owner and Design Professional, and assist in negotiating change orders with Prime Contractors, and evaluating claims of Prime Contractors.

**2.2.4 Payments to Prime Contractors.** Develop and implement procedures for the review and processing of applications for payment by Prime Contractors for progress and final payments. Review and certify payment requisitions processed and also certified by Design Professional before payment is released. The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluation of the Work, 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 Construction Documents. The issuance of a certificate for payment shall further constitute a recommendation to the Owner and Design Professional that the Prime Contractor be paid the amount certified. The certification of a payment requisition by Construction Manager shall not be a representation by Construction Manager that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that that it has reviewed the construction means, methods, techniques, or sequences for the Prime Contractor's Work.

**2.2.5 Permits and Fees.** If required, assist Owner and Design Professional in obtaining all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained directly by the various Prime Contractors. Assist in obtaining approvals from all the authorities having jurisdiction.

**2.2.6 Owner's Consultants.** If required, assist Owner in selecting and retaining professional services of a surveyor, testing laboratories and special consultants, and coordinate these services, without assuming any responsibility or liability of or for these consultants.

**2.2.7 Inspection.** Inspect the Work of Prime Contractors for defects and deficiencies in the Work without assuming Design Professional's responsibilities for inspection, if any, and without assuming any of the Prime Contractors' responsibilities for their performance.

- 1 Review the safety programs of each of the Prime Contractors, make appropriate recommendations, and notify Owner and the Prime Contractor if it becomes aware of any unsafe work practice except to report those Prime Contractors with repeated unsafe work



practices to the Owner and Design Professional. In making such recommendations and carrying out such reviews, Construction Manager shall not be required to make exhaustive or continuous inspections to check safety precautions and programs in connection with the Project, and shall have no authority or responsibility to correct or rectify any unsafe work practice or condition. The performance of such services by Construction Manager shall not relieve the Prime Contractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state, and local statutes, rules, regulations, and orders applicable to the conduct of the Work.

- .2 Oversee the testing and inspection services, monitor testing and construction inspection activities, require Prime Contractors to comply with all testing and inspection requirements, arrange for the delivery of test and inspection reports to Owner and Design Professional, and coordinate Project walk-throughs with consultants, Owner and Design Professional.
- 3 Construction Manager shall have no authority, responsibility or control over the means and methods of the Prime Contractors, and none of the foregoing shall be deemed to impose any vicarious liability on Construction Manager for the conduct of such Prime Contractors.

**2.2.8 Document Interpretation.** Consult with Design Professional and refer all questions to Design Professional regarding interpretation of the Construction Documents.

**2.2.9 Shop Drawings and Samples.** In collaboration with Design Professional establish and implement procedures for expediting the processing and approval of shop drawings, samples, and other submittals.

**2.2.10 Reports and Project Sites Documents.** Record the progress of the Project. Maintain a daily log of on-site activities, weather conditions, events and progress that shall be available to Owner and Design Professional as requested.

- 1 Maintain at the Project site, on a current basis: records of all necessary Contracts, Construction Documents, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. Obtain data from Prime Contractors and maintain a current set of record Construction Documents and operating manuals. At the completion of the Project, deliver all such records to Owner.

**2.2.11 Project Close-Out.** The Construction Manager will assist Design Professional with all activities regarding close-out of the Project.

- .1 When the work or a designated portion thereof is substantially

complete, Construction Manager shall advise Owner, and shall assist Design Professional in the preparation of and submission to Owner, a Certificate of Substantial Completion, which shall contain a list of incomplete items of Work. Construction Manager shall coordinate the correction and completion of the Work. Following issuance of the Certificate of Substantial Completion of the Work or a designated portion thereof, Construction Manager shall evaluate the completion of the Work of the Prime Contractor(s) and make recommendations to Design Professional when Work is ready for final inspection. Construction Manager shall assist the Design Professional in conducting final inspections.

- .2 Construction Manager shall assist Design Professional in collection and forwarding to Owner the following information received from each Prime Contractor: (1) certificates of insurance; (2) consent of sureties to reduction in release of retainage and/or the making of final payment; (3) affidavits, receipts, releases and waiver of liens or bonds indemnifying Owner against liens; (4) any other documentation required of a Prime Contractor under the Contract Documents.
- .3 Construction Manager shall assist Design Professional in delivering and/or arranging for the delivery of all keys, manuals, and as-built record drawings that have been updated by the Prime Contractors as the Work on the Project has been performed to reflect the actual Work. Utilizing the documents provided by Prime Contractors, Construction Manager shall work with Design Professional to ensure that at the completion of the Project one copy of all Contract Documents, addenda, change orders, and other modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, all approved shop drawings, product data, samples and similar required submittals are maintained at the site and delivered to Owner. Upon the completion of the Work and Prime Contractors' compliance with the requirements of the Contract Documents, Construction Manager shall forward to the Design Professional its recommendation for final project applications for payment of Prime Contractors.
- .4 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, Construction Manager shall conduct a meeting with the Owner to review the facility operations and performance.

**2.2.12 Start-Up.** With Owner's maintenance personnel, Construction Manager shall assist Design Professional in the checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing by the Prime Contractors.

**2.2.13 Warranty.** Construction Manager shall assist Design Professional with the collection and delivery to Owner any specific written warranties, as-builts, and closeout documentation given by others and endeavor to ensure that all Prime

Contractors shall perform in accord with their warranties for the benefit of Owner. Construction Manager to assist with this process as required or needed.

### **2.3 Additional Services.**

Construction Manager will provide the following additional services upon written agreement between Owner and Construction Manager defining the extent of such additional services, and the amount and manner in which the Construction Manager will be compensated for such additional services:

- 2.3.1 Except as otherwise provided for in this Agreement, services related to investigation, appraisals, or valuations of existing conditions, facilities or equipment, or verifying the accuracy of existing drawings or other Owner-furnished information.
- 2.3.2 Services related to Owner-furnished equipment, furniture, and furnishings that are not a part of the Work.
- 2.3.3 Services for tenant or rental spaces.
- 2.3.4 Services related to construction performed by Owner using Owner's own means or contractors other than those performing work under Prime Contracts.
- 2.3.5 Consultation on replacement of Work damaged by fire or other cause during construction, and furnishing services for the replacement of such Work.
- 2.3.6 Services made necessary by the material default of a Prime Contractor.
- 2.3.7 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding, or legal proceeding.
- 2.3.8 Finding housing for construction labor, and defining requirements for establishment and maintenance of base camps.
- 2.3.9 Obtaining or training maintenance personnel or negotiating maintenance personnel or maintenance service contracts.
- 2.3.10 Inspections of and services related to the Project after completion of the services under this Agreement.
- 2.3.11 Providing any other service not otherwise included in this Agreement.

## **ARTICLE III OWNER'S RESPONSIBILITIES**

3.1 Owner shall review, approve, and/or take such actions as are required of it by this Agreement, the Construction Documents, and applicable law, in a reasonable and timely manner. Owner shall provide full information regarding its requirements for the Project, including a program that shall set forth Owner's objectives, schedule constraints, and criteria, including space

requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

**3.2** Owner shall retain Design Professional for design of the Project and preparation of the Construction Documents. Design Professional's obligations and services are set forth in the agreement between Owner and Design Professional AIA Document B101-2017 Standard Form of Agreement between Owner and Architect, as may be amended by the Owner and Design Professional, a copy of which will be furnished to Construction Manager.

**3.3** Owner shall designate a representative who shall be fully acquainted with the Project, has authority, subject to approval of Owner's Board of Education where required, to approve changes in the scope and budget for the Project, render decisions promptly, and furnish information expeditiously and in a timely manner.

**3.4** Owner shall furnish any and all inspection reports and surveys that it may possess describing the physical characteristics, soils reports and/or subsurface investigations, legal limitations, utility locations, a legal description of the Project site, and all other similar information in its possession that will assist Construction Manager in the performance of its duties.

**3.5** Owner shall secure and pay for all necessary approvals, easements, assessments, and charges required for the construction use or occupancy of permanent structures or for permanent changes in existing facilities.

**3.6** Owner shall furnish all legal, accounting, and insurance counseling services as may be necessary at any time for the Project including auditing services the Owner may require verifying application for payment or to ascertain how and for what purposes money paid by or on behalf of Owner has been used.

**3.7** Owner shall furnish Construction Manager without charge all copies of Drawings and Specifications, and all other Construction Documents, and such other documents as reasonably necessary for Construction Manager to perform its responsibilities.

**3.8** Owner shall give prompt written notice to Construction Manager of any fault or defect in the Project or nonconformance with the Drawings or Specifications of which it becomes aware.

**3.9** The services, information, surveys, and reports required by the above sections shall be furnished with reasonable promptness at Owner's expense, and Construction Manager shall be entitled to reasonably rely upon the accuracy and completeness thereof.

**3.10** Owner shall furnish Construction Manager with a monthly statement as to any Project Construction Cost incurred, other than Prime Contract Cost.

**3.11** Owner shall communicate with Prime Contractors only through Construction Manager.

**3.12** If at any time prior to the commencement of or during the progress of the Work, Owner becomes aware of the presence of any material at the Worksite that is "hazardous" within the meaning of any federal, state, or local law, it shall promptly notify Construction Manager in writing

of the presence, location, and composition thereof. If any known or suspected hazardous material is discovered at the Worksite, Construction Manager shall immediately direct Prime Contractors to stop Work in the immediate area of the condition and Construction Manager shall report the condition to Owner. Owner shall be responsible for corrective measures or remedial action. Should Owner elect to engage the services of Construction Manager, the time and costs associated with corrective measures or remedial action shall be an Additional Service. If so engaged, Construction Manager shall coordinate as necessary to retain survey consultants and Prime Contractors necessary to abate the hazardous condition. Work in the affected area shall not be resumed prior to receipt of certification by a mutually agreeable independent laboratory and approval by the appropriate government authority that the hazardous material has been removed or rendered harmless.

#### **ARTICLE IV PRIME CONTRACTS**

4.1 All portions of the Work shall be performed under Prime Contracts with several construction trades, including contracts for general construction work and those required under Section 101 of the New York General Municipal Law and other applicable statutes.

4.2 All Prime Contracts will be directly between Owner and the Prime Contractor, and Construction Manager shall not have any liability under any Prime Contract executed by Owner or by Construction Manager acting on behalf of Owner. Prime Contractors, and their subcontractors and suppliers, are not intended to be and shall not be deemed or considered a Party to or a third-party beneficiary of this Agreement.

#### **ARTICLE V PROJECT SCHEDULE**

5.1 The Services to be provided under this Agreement shall be in general accordance with the following time schedule:

June 27, 2025 – August 29, 2025, and June 26, 2026 – September 4, 2026

5.2 At the time of the commencement of the Construction Phase, the dates of Substantial Completion and final Completion of the Project shall also be established.

5.3 All warranties called for by this Agreement or under the Construction Documents shall commence on the date of Substantial Completion of the Project or designated portion thereof

5.4 If Construction Manager is delayed at any time in the progress of the Project or the performance of any of its Services by any act or neglect of Owner, or Design Professional, or by any employee or agent of either, or by any separate contractor employed by Owner, or by changes ordered in the Project, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions, unavoidable casualty, or any causes beyond Construction Manager's control, or by delay authorized by Owner pending arbitration, the dates of Substantial and Final Completion shall be extended by Change Order for a period of time commensurate with a period of such delay, unless, due to the nature of the delay, a longer period is required, and then for that longer period.

#### **ARTICLE VI CONSTRUCTION MANAGER'S COMPENSATION**

**6.1 Compensation.** Owner agrees to pay Construction Manager the following compensation for its services and responsibilities under this Agreement:

**6.1.1** For the performance of all Services under this Agreement, Construction Manager shall be paid a fee equal to (4%) of all the Project Construction Cost. This percentage is based on a Project construction cost of approximately \$11,000,000.00. Contract Amount will be adjusted via Change Order.

In the event that Owner discontinues the Project for any reason prior to the Construction Phase and the incurring of Project Construction Cost, Construction Manager will not be entitled to any compensation hereunder.

**6.2 Adjustments to Compensation.** Adjustments in compensation shall be made as follows:

**6.2.1** If the Project is suspended by Owner for more than 30 consecutive days the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed the Construction Manager compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager services. The Parties shall mutually agree on such compensation.

**6.2.1.1** In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, Reimbursable Costs then due, including compensation for any equipment retained by Owner either by purchase or rental as may be elected by the Owner.

**6.2.2** All other adjustments will be made by Change Orders in accordance with Article IX of this Agreement.

**6.3 Items included in Compensation.** The following are included in Construction Manager's compensation as set forth in Section 6.1.1:

**6.3.1** Salaries or other compensation for the Construction Manager for the duration of the project.

**6.3.2** General operating expenses of Construction Manager's home office other than the field office at the Project.

**6.3.3** Travel expenses to and from the Project site. Construction Manager offices are located at 21 Old Ox Road, Delmar, New York 12054.

**6.3.4** Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Project.

**6.4 Reimbursable Costs.** In addition to Construction Manager's compensation set forth in Section 6.1 above, Owner agrees to reimburse Construction Manager for all Reimbursable Costs as defined below it necessarily incurs in the performance of the Services except those set forth in Section 6.3 above unless these services are provided by the District, at the District's cost. The following

items will be provided by the District and, as such, will not be reimbursable: construction field office with air conditioning, electrical service and heat; temporary toilet, temporary water, cleaning (as required), computer and internet connection with appropriate office software and fax capability; scanner, printer and copier with appropriate software, if any; field office desk and chair; field office conference table and eight chairs; and office supplies. Any software, equipment purchased by the District for use by the Construction Manager on the Project shall be turned over to the District at Project completion.

## **6.5 Payment.**

**6.5.1** Commencing with the second month of the Construction Phase, on or about the first day of each month, Construction Manager shall submit to Owner a statement showing in detail all Prime Contract Cost and other Project Construction Cost that has been incurred during the previous month, and the amount of Construction Manager's compensation based upon the amount of such Project Construction Cost, plus all Reimbursable Costs incurred by Construction Manager during that previous month. Payment to Owner by Construction Manager of its statement amount shall be made within thirty (30) days after it is submitted.

**6.5.2** Final payment constituting the unpaid balance of compensation due Construction Manager based upon final Project Construction Cost plus any unpaid Reimbursable Costs, shall be due and payable upon Final Completion and acceptance as satisfactory by the Owner all items contained on any Project punch list.

**6.5.3** In the event of any extra Prime Contract Work performed or Reimbursable Costs incurred after Final Completion and agreed to in advance in writing by the Owner, Construction Manager shall submit to Owner a monthly bill therefor in the manner set forth in Section 6.5.1.

**6.5.4** If Owner should fail to pay Construction Manager within seven days after the time a payment of any undisputed amount becomes due, then, in addition to any other remedies, Construction Manager may, upon thirty (30) days' additional written notice to Owner and Design Professional, stop performing Services until payment of the amount owing has been received.

**6.5.5** Payments due but unpaid for more than thirty (30) days after submittal shall bear interest at the annual rate of the Prime Rate as published in the Wall Street Journal as of the date the payment is due.

## **ARTICLE VII PROJECT CHANGES**

**7.1** Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions, or other revisions, and Construction Manager's compensation and the dates of Substantial and Final Completion being adjusted accordingly. All such changes in the Project shall be authorized by Change Order.

**7.2** A Change Order is a written order to Construction Manager signed by Owner or

its authorized agent issued after the execution of this Agreement authorizing a change in the Project, the Services, and/or Construction Manager's compensation and/or the dates of Substantial and/or Final Completion. Construction Manager's compensation shall be adjusted as provided in Section 5.2.

**ARTICLE VIII  
INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION**

**8.1 Indemnity.**

**8.1.1 Construction Manager's Indemnity.** Construction Manager shall indemnify and hold Owner and its employees harmless from all claims for bodily injury and damage to property (excluding property damage to the Project itself, to the extent that such property damage is covered by insurance procured pursuant to Section 8.4.1 hereof) that may arise from the performance of the Services, to the extent caused by the negligent acts or omissions of Construction Manager, its agents, servants or employees, or anyone for whose acts Construction Manager is liable. Construction Manager shall not be required to indemnify or hold harmless Owner for any acts, omissions, or negligence of Owner.

**8.1.2 Owner's Indemnity.** Owner shall indemnify and hold Construction Manager and its employees harmless from all claims for bodily injury and damage to property (except to the extent that such claims are covered by insurance procured pursuant to Section 8.2.2 and 8.2.3 hereof)) that may arise in connection with the Project to the extent caused by the negligent acts or omissions of Owner or anyone for whose acts Owner is liable.

**8.1.3 Prime Contractor's Indemnity.** Owner shall request that all Prime Contractors agree to indemnify and hold harmless Owner and Construction Manager from all claims for bodily injury and damage to property (excluding damage to the Project itself, to the extent of applicable insurance coverage) that may arise from that Prime Contractor's work, to the extent that such claims result from the negligent acts or omissions of that Prime Contractor or anyone for whose acts it is liable. Construction Manager will work with Owner to include this language in the bid documents for the work of the Prime Contractors.

**8.2 Construction Manager's Liability Insurance.**

**8.2.1 Commercial General Liability.** Construction Manager shall obtain and maintain Commercial General Liability Insurance written on an occurrence basis, including contractual liability coverage, broad form property damage including coverage for explosion, collapse and underground hazards, personal injury and advertising insurance coverage, and products and completed operations coverage, with not less than the following limits of liability:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Umbrella Coverage	\$5,000,000



**8.2.3 Additional Insured.** Owner shall be named as an additional insured on coverage obtained by Construction Manager pursuant to Sections 8.2.2 and 8.2.3 with waivers of subrogation claim against Owner, and such policies shall be primary and non-contributory with respect to any liability coverage maintained by Owner.

**8.2.4 Professional Liability.** Construction Manager shall obtain and maintain Professional Liability Insurance for construction manager's errors and omissions in the amount of \$1,000,000.00.

**8.2.5 Cancellation.** The foregoing policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days' prior written notice has been given to Owner. Certificates of Insurance showing such coverage to be in force shall be filed with Owner prior to commencement of the Services.

**8.3 Owner's Liability Insurance.** Owner may, at its option, obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of Design Professional's errors and omissions.

**8.4 Insurance to Protect Project.**

**8.4.1 Builder's Risk.** Owner shall obtain and maintain property insurance in a form reasonably acceptable to Construction Manager upon the entire Project, including all existing structures in which any of the Work is to be performed, as well as all Project structures that are fully or partially owned or occupied by Owner, for the full cost of replacement at the time of any loss. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include special form coverage including at a minimum coverage for theft, vandalism, malicious mischief, inland transit, collapse, falsework, temporary buildings, debris removal, wind, testing, and damage resulting from defective design, workmanship, or material. Construction Manager shall increase limits of coverage, if necessary, to reflect estimated replacement cost. Owner shall be responsible for the payment of all premiums. Such insurance shall be primary and noncontributory with respect to any insurance of Construction Manager, Prime Contractors, and all subcontractors and suppliers.

**1 Owner Occupancy.** If Owner occupies or uses a portion of the Project prior to Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed upon by Owner and Construction Manager and to which the insurance company or companies providing the property insurance hereunder have consented by endorsing the policy or policies. This insurance shall not be cancelled or lapsed on account of partial occupancy. Consent of Construction Manager to such early occupancy or use shall not be unreasonably withheld.

**8.4.2 Loss of Use.** At its option Owner may purchase and maintain insurance to protect Owner, Design Professional, and Construction Manager against loss of use of Owner's property due to those perils insured against pursuant to this Section 8.4. Such policy will provide coverage for expediting expenses of materials, continuing overhead of

Owner and Construction Manager, and Design Professional, necessary labor expenses including overtime, loss of income by Owner and other determined exposures. Exposures of Owner, Construction Manager and Design Professional, shall be determined by mutual agreement with separate limits of coverage fixed for each item.

**8.4.3 Policies.** Upon request, each Party hereto shall provide the other with a copy of all policies procured by them, including all endorsements thereto. The non-procuring Party shall be given thirty (30) days' prior written notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

## **8.5 Property Insurance Loss Adjustment.**

**8.5.1 Loss Adjustment.** Any insured loss shall be adjusted with Owner and Construction Manager and made payable to Owner as trustee for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

**8.5.2 Distribution of Proceeds.** Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustee shall make distribution in accordance with the agreement of the Parties in interest.

## **8.6 Waiver of Claims and Rights of Subrogation.**

**8.6.1 Property Damage.** Owner and Construction Manager waive all claims and other rights they may have against each other for loss of and/or damage to (a) the Project, (b) all materials, machinery, equipment, and other items used in accomplishing the Work and/or to be incorporated into the Project, while the same are in transit, at the Project site, during erection, and otherwise, and (c) all property owned by or in the custody of Owner and its affiliates, however such loss or damage shall occur, except such rights as they may have to the proceeds of such insurance held by Owner as trustee. If Owner is not the sole Owner of the Project site and all property at and adjacent thereto, Owner shall obtain an undertaking from the other Owners thereof sufficient to provide to Construction Manager the same protection from liability for loss or damage as would be afforded to Construction Manager under this Agreement if Owner were the sole Owner.

**8.6.2 Waiver of Subrogation.** Construction Manager and Owner shall have their respective insurers waive all rights of subrogation they may have against each other on all policies carried on the Project and adjacent properties.

**8.6.3 Endorsement.** If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, Owner will cause them to be so endorsed.

## **ARTICLE IX TERMINATION**

### **9.1. Termination by Construction Manager.**

**9.1.1 Termination.** Following thirty (30) days' written notice to Owner during which period Owner fails to either perform such obligation or to commence and

continue reasonable remedial measures, Construction Manager may, in addition to any other rights or remedies it has, terminate this Agreement for any of the following reasons:

- .1 If the Work has been stopped for a thirty (30) day period
  - a. Under court order or order of other governmental authorities having jurisdiction.
  - b. As a result of the declaration of a national emergency or other governmental act during which, through no fault of Construction Manager, materials are not available; or
  - c. Because of Owner's failure to pay Construction Manager in accordance with this Agreement.
- .2 If the Work is suspended by Owner for sixty (60) days;
- .3 If Owner materially hinders or delays Construction Manager in the performance of the Work; or
- .4 If Owner otherwise materially breaches this Agreement

**9.1.2 Payment.** Upon termination by Construction Manager in accordance with Section 9.1.1, Construction Manager shall be entitled to recover from Owner payment for all Services performed up to the date of termination (including Reimbursable Costs incurred or for which Construction Manager is obligated).

## **9.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause.**

**9.2.1 Owner's Performance.** If Construction Manager persistently fails to perform any of its obligations under this Agreement, Owner may, after seven (7) day's written notice, during which period Construction Manager fails to either perform such obligation or to commence and continue reasonable remedial measures, undertake to perform such obligations. Construction Manager's compensation shall be reduced by the additional cost to the Owner, if any, of performing such obligation.

**9.2.2 Termination.** Upon seven (7) days' written notice to Construction Manager, Owner may terminate this Agreement for any of the following reasons if, during such seven (7) day period Construction Manager fails to either cure or commence and continue reasonable remedial measures:

- .1 If Construction Manager persistently utilizes improper materials and/or inadequately skilled workers.
- .2 If Construction Manager persistently fails to abide by the orders, regulations, rules, ordinances, or laws of governmental authorities having jurisdiction; or

.3 If Construction Manager otherwise materially breaches this Agreement.

Upon such termination, Owner may take possession of the site and complete Construction Manager's obligations utilizing any reasonable means. In this event, Owner shall pay the Construction Manager for all services properly performed through the date of termination and Construction Manager's compensation shall be reduced by the additional cost to the Owner, if any, of performing such obligation per Section 9.2.1.

**9.2.3 Bankruptcy.** If Construction Manager files a petition or is the subject of a petition for involuntary bankruptcy under the Bankruptcy Code, this Agreement shall terminate.

**9.2.4 Accounting.** In the event Owner exercises its rights under Sections 9.2.1 or 9.2.2, upon the request of Construction Manager, Owner shall provide a detailed accounting of the costs incurred by Owner.

**9.3 Termination for convenience.** Upon thirty (30) days' written notice to Construction Manager, Owner may terminate this Agreement for its convenience in its sole discretion. Upon such termination, Owner shall pay the Construction Manager for all services properly performed through the date of termination, together with Reimbursable Costs then due to the Construction Manager.

## **ARTICLE X DISPUTE RESOLUTION**

**10.1 Initial Dispute Resolution.** If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the Parties may, but are not required to, endeavor to settle the dispute by non-binding mediation. If the Parties agree to endeavor to settlement the dispute by non-binding mediation, they shall agree upon a single mediator, or, in the event they are unable to so agree, such mediator shall be selected under the auspices of the American Arbitration Association. The mediation proceedings shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association under its Rules of Practice and Procedures then in effect. The Parties agree to conclude such mediation within sixty (60) days of the selection of a mediator. A Party may terminate the mediation at any time after the first session by delivering written notice thereof to the other Party. All mediation proceedings shall be conducted in the County of Schenectady, State of New York.

## **ARTICLE XI MISCELLANEOUS PROVISIONS**

**11.1 Notice.** All notices to be given pursuant to this Agreement shall be in writing and shall be delivered by United States mail, certified or registered with return receipt requested. Such notices shall be sent to either Party to their respective addresses as set forth in the Preamble to this Agreement, unless a Party changes the address to which notice should be sent by giving notice thereof in accordance with this provision.

**11.2 Consequential Damages.** Except as otherwise expressly provided for in this

Agreement, neither Party shall be responsible or held liable for any indirect, incidental, special or consequential damages of any nature whatsoever, including, without limitation, liability for loss of use of property, loss of profits, or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

**11.3 No Assignment.** Neither Owner nor Construction Manager shall assign its interest in this Agreement without the express prior written consent of the other except as to the assignment of proceeds.

**11.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of choice of law.

**11.5 Non Waiver.** The failure of either Party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

**11.6 Binding Effect.** This Agreement and the provisions hereof shall inure to the benefit of and be forever binding upon Owner and Construction Manager, their respective successors, assigns, and legal representatives.

**ARTICLE XII  
CONTRACT DOCUMENTS**

**12.1 Documents.** The documents hereinafter enumerated (the "Contract Documents"), shall collectively comprise the entire agreement between Owner and Construction Manager, and are intended to be incorporated into this Agreement and made a part hereof, The Contract Documents are enumerated as follows:

- a. This Agreement, including any amendments hereto;
- b. The Construction Documents.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement and made the same effective as of the date first written above.

**OWNER:**  
SCOTIA-GLENVILLE SCHOOL DISTRICT

\_\_\_\_\_  
Name:  
Title:

**CONSTRUCTION MANAGER:**  
**TATEO CM CONSULTING LLC**

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Name: John J. 'Jack' Tateo  
Title: President