

## **ARCHITECT AGREEMENT – BUILDING CONDITION SURVEY**

AGREEMENT made as of this 2<sup>nd</sup> day of November, 2022:

BETWEEN the Owner: Malverne Union Free School District  
301 Wicks Lane  
Malverne, New York 11565

And the Architect: H2M Architects + Engineers  
538 Broad Hollow Road, 4th Floor East  
Melville, New York 11747

For the following Services:

Building Condition Survey; Five Year Capital Facilities Plan; School Facility Report Card ("BCS Services"). The Owner and Architect agree as set forth below.

### **ARTICLE 1 – ARCHITECT'S RESPONSIBILITIES**

#### **1.1 ARCHITECT'S SERVICES**

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Article 2 of this Agreement and any other services requested by the Owner or in any proposals or documents annexed hereto, provided that if any provision of this Agreement conflicts with a provision of such proposal or document, the provision as set forth in this Agreement shall supersede and prevail over said other provision.

1.1.2 The Architect shall exercise care and diligence in the rendition of all services under this Agreement in accordance with the highest professional standards prevailing in Nassau County, and all of the Architect's services under this Agreement shall be performed as expeditiously as is consistent with said standards. Architect shall provide manpower sufficient to perform its responsibilities without delay. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as necessary during the course of any project covered by this Agreement, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over such project(s). The Architect shall not, except for reasonable cause, exceed the time limits established under such approved schedules. Any adjustments to the schedule shall be void and of no force and effect until such adjustments are agreed to in writing by Owner and Architect.

1.1.3 The Architect represents that it will follow the standards of its profession in performing all services under this Agreement. The Architect shall review all laws, codes and regulations applicable to the Architect's services hereunder. The Architect's design of all projects covered by this Agreement shall comply in all respects to the requirements imposed by the governmental authorities having jurisdiction over the project. Any failure by the Architect to fully comply with

this section will obligate the Architect to compensate the Owner for any damages or additional costs resulting therefrom, and at Owner's option, will obligate the Architect to prepare without charge any additional documents, drawings and/or other submissions in order to fully comply with those requirements.

## **ARTICLE 2 – SCOPE OF ARCHITECT'S BUILDING CONDITION SURVEY SERVICES**

### **2.1 DEFINITION**

2.1.1. The Architect's services consist of those described in this Article 2, and include without limitation normal structural, mechanical and electrical and any other engineering services necessary to render such services as well as any other design services which are normally or customarily furnished and reasonably necessary for the services covered by this Agreement.

2.1.2 Building Condition Survey; Five Year Capital Facilities Plan; School Facility Report Card. As more fully described in H2M's proposal letter dated September 20, 2022, attached hereto as Exhibit A and incorporated herein by reference, the Architect shall provide the Owner with services necessary to conduct and prepare District-wide Building Condition Survey Reports ("BCSR") in connection with the State Education Department's comprehensive public school safety program, a Five Year Capital Facilities Plan and School Facility Report Card ("BCS Services"). Surveys of all district buildings will be completed and all required reports shall be submitted to the State Education Department in accordance with applicable State Education Department requirements and deadlines, and in accordance with applicable Commissioner's Regulations and Education Law provisions with respect to such surveys, plans and reports. The Architect's BCS Services with respect to the foregoing include, but are not limited to, all necessary field work; limited visual review of each building or facility for joist/structure type and condition; preliminary meetings with District administration and staff; meetings with administration and the Board of Education to review the findings and reports; and the timely preparation, filing and delivery of all required surveys, reports and/or plans. Additional services related to the Five Year Capital Facilities Plan shall be set forth in writing, which shall be attached hereto.

2.1.3 This Agreement shall be in effect for the duration of the BCS Services assigned by the Owner, subject to any applicable termination provisions contained in this Agreement.

### **2.2 MISCELLANEOUS**

2.2.1 All drawings, specifications and other documents prepared by the Architect shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations.

2.2.2 Any defective 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 defective drawings, specifications or any other of the contract documents furnished by the Architect. 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.

2.2.3 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 as a part of its BCS Services: acoustics, audio-visual, civil engineering, computer networking, electrical engineering, fire protection/life safety, kitchen/food service, landscape architecture, lighting, mechanical engineering, equipment, roofing, specifications, structural engineering, vertical transportation, athletic/stadium/arena, theater/performing arts, educational facilities, library and cost estimating. No such consultants shall be retained without the Owner's prior written authorization. The Architect shall execute a written agreement with each of its Consultants. Each Consultant shall agree to maintain a professional liability (negligent errors and omissions) policy of insurance and workman's compensation insurance as required by statute. The Consultants shall perform the services as indicated, and no other or additional consultants shall be used to perform any of said services unless the Owner specifically authorizes the use of such other or additional consultants. Copies of Architects agreements with the Consultants and proof of each Consultant's insurance will be provided to Owner prior to the Consultant beginning services on the Project. Architect shall indemnify and hold Owner harmless from all liens and other encumbrances against the Owner's property or facilities on account of debts or claims alleged to be due from Architect or its subcontractors, shall manage and obtain required lien waivers and related documentation, and shall defend at its own expense any claim or litigation in connection therewith.

### **ARTICLE 3 – ADDITIONAL SERVICES**

[Intentionally deleted.]

### **ARTICLE 4 – OWNER'S RESPONSIBILITIES**

4.1 The Owner shall consult with the Architect regarding requirements for the BCS Services, including the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall furnish, as necessary and applicable, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; 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. The foregoing shall not be required of the Owner except to the extent reasonably requested by the Architect.

4.3 Notwithstanding anything to the contrary in Article 4, the Owner shall only be required to furnish information or services described in this Article 4 to the extent that any such information

or service is reasonably required and actually requested by the Architect to perform its services under this Agreement.

#### **ARTICLE 5 – CONSTRUCTION COST**

[Intentionally deleted.]

#### **ARTICLE 6 – USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

6.1 Drawings, surveys and reports rendered by Architect in connection with BCS Services, as instruments of service, are and shall be the property of the Owner. The Owner shall be furnished with such reproductions and permitted to retain copies, including reproducible copies and discs of drawings, surveys and reports for any purpose relating to the BCS Services. Upon completion of the work or any earlier termination of this Agreement under Article 7, Architect will promptly furnish Owner one (1) complete set of reproducible prints and two (2) additional sets of prints. Additional prints shall be furnished, as an additional service, at any other time requested by the Owner. All such reproductions shall be the property of the Owner who may use them without Architect's permission for any purpose.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

#### **ARTICLE 7 – TERMINATION, SUSPENSION OR ABANDONMENT**

7.1 The Owner may terminate this Agreement for any reason upon not less than seven days' written notice.

7.2 This Agreement may be terminated by either party upon not less than ten days' written notice should the other party fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination provided same is not cured within such notice period. The written notice shall specify the failure to perform.

7.3 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

7.4 If this agreement is terminated by the Owner for cause attributable to the Architect, the Architect shall not receive any fees or reimbursable expenses alleged to be then due and owing for any such services which are the cause of said termination. The Architect may be held liable for those damages suffered by the Owner due to the Architect's negligent failure to perform as provided in this agreement.

#### **ARTICLE 8 – MISCELLANEOUS PROVISIONS**

8.1 This Agreement shall be governed by the laws of the State of New York.

8.2 The Architect agrees and acknowledges that, to the fullest extent permitted by law, the Architect shall indemnify and hold harmless Owner, Owner's agents and employees from and against any and all claims, costs, losses and damages (including but not limited to fees and charges of attorneys and other professionals and all court or other dispute resolution costs) to the extent arising out of or resulting from any negligent acts or omissions of Architect or its officers, directors, partners, employees, agents and/or Architect's consultants, except to the extent that such claims, damages, losses or expenses are attributable to the Owner's negligence.

8.3 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other parties with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

8.4 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.

8.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

#### **ARTICLE 9 – PAYMENTS TO THE ARCHITECT**

9.1 Subject to the provisions of Subparagraph 10.2 hereof, the Owner shall make payments of undisputed amounts for BCS Services in proportion to services performed directly to the Architect within forty-five (45) days after the Owner's receipt and approval of the Architect's detailed monthly statement, liens, waivers or releases and sworn statements covering services rendered to the date of said statement, duly executed by the Architect covering that portion of the BCS Services completed prior to the date of said certificate.

#### **9.2 ARCHITECT'S ACCOUNTING RECORDS**

9.2.1 Records of Architect's expenses and hours pertaining to this Project shall be kept in accordance with generally accepted accounting principles, which principles shall be consistently applied. Said reports shall be available in Nassau County to the Owner or its authorized representative for inspection and copying during regular business hours for the later of one (1) year or as required by applicable law after the date of the final Certificate of Payment.

#### **ARTICLE 10 – BASIS OF COMPENSATION**

The Owner shall compensate the Architect as follows:

10.1 Total Compensation for all services in connection with the Building Condition Survey, Five Year Capital Facilities Plan and School Facility Report Card, as described in Article 2.1.2 and Exhibit A, shall be fixed at \$40,112.76, plus reasonable and necessary reimbursable

expenses not to exceed \$1,500.00, subject to additional services as may be requested by the Owner.

10.2 In the event of a material change in the scope of the Project or the Architect's services, the Architect shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the Architect's compensation hereunder.

## **ARTICLE 11 – OTHER CONDITIONS OR SERVICES**

### **11.1 INSURANCE REQUIREMENTS**

11.1.1 The Architect shall include the Owner as an unrestricted additional insured by causing amendatory riders or endorsements to be attached to the Architect's insurance policies described below in Subparagraph 11.1.2. (b) and (c). The insurance coverage afforded under these policies shall be primary to any insurance carried independently by the Owner. Said amendatory riders or endorsements shall indicate that as respects the Owner, there shall be severability of interests under said insurance policies for all coverages provided under said insurance policies. If the policies are written on a claims-made basis, the retroactive date must precede the date of the contract.

11.1.2 The policy naming the Owner as an additional insured shall:

- .1 Purchase an insurance policy from an A.M. Best rated "secured" insurer, authorized to conduct business in New York State.
- .2 Contain a 30-day notice of cancellation.
- .3 State that the organization's coverage shall be primary coverage for the District, its Board, employees and volunteers.
- .4 The Owner shall be listed as an additional insured by using endorsement CG 2026 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.
- .5 The certificate of insurance must describe the specific services provided by the contractor (e.g., physical therapy, psychological services) that are covered by the commercial general liability policy and the umbrella policy.
- .6 At the Owner's request, the contractor shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, the contractor will provide a copy of the policy endorsements and forms.

11.1.3 The Architect agrees to indemnify the Owner for any applicable deductibles.

11.1.4 Required Policy Limits:

**Commercial General Liability Insurance:**

\$1,000,000 per occurrence/\$2,000,000 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.

**Professional Errors and Omissions Insurance:**

\$3,000,000 per occurrence/\$3,000,000 aggregate for the professional acts of the Architect performed under the contract for the Owner. If written on a "claims-made" 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.

**Excess Insurance:**

On a "Follow-Form" basis, with limits of \$3,000,000/\$5,000,000 each occurrence and aggregate.

11.1.5 Architect acknowledges that failure to obtain such insurance on behalf of the Owner constitutes a material breach of contract. The Architect is to provide the Owner 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 Owner 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 Owner.

11.1.6 The Owner 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 Owner but also NYSIR, as the Owner's insurer.

11.1.7 The Architect shall submit valid certificates in form and substance satisfactory to Owner evidencing the effectiveness of the foregoing insurance policies along with original copies of the amendatory riders to any such policies to Owner for Owner's approval before Architect commences the rendition of any services hereunder.

11.1.8 The Architect hereby agrees to maintain the insurance described in Article 11 during the term hereof. If the Architect fails to furnish and maintain the required insurance, the Owner may purchase such insurance on behalf of the Architect, and the Architect shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

11.2 To the fullest extent permitted by law, the Architect agrees to indemnify and hold harmless the Owner from all losses, claims, liabilities, injuries, damages, costs and expenses, including attorneys' fees, that the Owner may incur by reason of any injury or damage sustained to any person or property, including but not limited to the Owner's agents or employees, arising out of or occurring in connection with, in whole or in part, any negligent errors, negligent omissions or negligent acts of Architect or its officers, directors, and/or employees in the performance and furnishing of Architect's services under this Agreement. Architect shall require its Consultant's contracts to contain similar provisions indemnifying and holding harmless the Owner against the Consultant's negligence.

11.3 The parties acknowledge, that the following services are included within BCS Services and are compensated as part of said services:

- .1 Meet with the client to discuss in detail the client's needs and to help determine items of work that are required and to determine their eligibility for building construction aid.
- .2 Review all existing building documents and inspect existing facilities.
- .3 Prepare all preliminary planning evaluations, building capacity studies, and preliminary estimates of construction.
- .4 Prepare and submit all documentation required for the approval by government authorities having jurisdiction over the building condition survey including the State Education Department.

11.4 All notices or other communications hereunder to either party shall be (i) in writing and if mailed, shall be deemed to have been given on the earlier of actual receipt by the intended recipient or on the second business day after the date when deposited in the United States mail by registered or certified mail, postage prepaid, addressed:

If to owner: Malverne Union Free School District  
Christopher Caputo  
Assistant Superintendent for Business  
301 Wicks Lane  
Malverne, New York 11565

If to Architect: H2M architects + engineers  
538 Broad Hollow Road, 4th Floor East  
Melville, New York 11747  
Attn: Jason S. Smith, Assistant Vice President | Studio Director

or to either party at such other address as such party may designate in a notice to the other party, at its address for receipt of notices hereunder.

11.5 All Contract Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules and regulations.

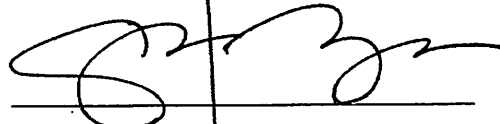
This Agreement entered into as of the day and year first written above.

**OWNER:**

\_\_\_\_\_  
By: \_\_\_\_\_, President

BOARD OF EDUCATION  
MALVERNE UNION FREE  
SCHOOL DISTRICT

**ARCHITECT:**

  
By: Vice president 11.2.22

H2M ARCHITECTS & ENGINEERS