



**Rochester Joint Schools Construction Board**  
 70 Carlson Road, Suite 200, Rochester, New York 14610 Telephone: 585-417-6953

## REQUEST FOR PROPOSALS

**Date:** May 13, 2025

**To:** Construction Management Firms

**From:** Rochester Joint Schools Construction Board (RJSCB)

**Send Proposal to:** Rochester Joint Schools Construction Board  
 Attn: Mr. Pépin Accilien, P.E., RSMP Program Director  
 70 Carlson Road, Suite 200  
 Rochester, NY 14610  
 Tel. (585) 417-6954

**Designated Procurement Officer:**  
 Pépin Accilien, P.E.  
[PAccilien@savinengineers.com](mailto:PAccilien@savinengineers.com)  
 Phone: 585-417-6953

RFP SCHEDULE	DATE
RFP issued to Consultants / Potential responders	13 May 2025
Walk-Throughs of Facilities ( <i>anticipated</i> )	21 May 2025 (3:00 PM)
Deadline for submittal of questions, clarifications and modifications regarding the RFP by Consultants/potential responders	27 May 2025 (Noon)
Answers to questions and/or modifications issued by Addendum and posted on the RJSCB website: <a href="http://www.rcsdk12.org/rsmp">www.rcsdk12.org/rsmp</a>	03 June 2025
<b>Submittal Deadline for Request for Proposals</b>	<b>10 June 2025 (Noon)</b>
Invitations to interviews issued	12 June 2025
Interviews with Short-Listed Consultants ( <i>anticipated</i> )	17-18 June 2025 if needed
Award ( <i>anticipated</i> )	14 July 2025

# TABLE OF CONTENTS

## SECTION 1: RSMP OVERVIEW

PURPOSE OF REQUEST	4
ROCHESTER JOINT SCHOOLS CONSTRUCTION BOARD (RJSCB) INFORMATION	4
DISTRICT INFORMATION	4
THE CM'S ROLE	4
CM EVALUATION CRITERIA	5
CM COST CONTROL TRACK RECORD FORM	7
PROPOSAL SUBMITTAL PROTOCOLS	8
INSURANCE REQUIREMENTS	8
INTERVIEW PROTOCOLS	8
COMMITMENT	8
EQUAL OPPORTUNITY	8
PROCUREMENT PROTOCOL	9
RFP QUESTIONS	9

## SECTION 2: PROJECT INFORMATION

OVERVIEW, STRATEGIC PLAN SCOPE, AND PROPOSED SCHEDULE	10
---	----

## SECTION 3: CM FEE PROPOSAL

PROJECT FEE SUBMITTAL FORM	14
----------------------------	----

## SECTION 4: FORMS TO COMPLETE FOR PROPOSAL

APPENDIX A: CERTIFICATION OF NON-COLLUSION IN BIDDING	16
APPENDIX B: OFFERORS AFFIRMATION OF UNDERSTANDING OF AND AGREEMENT PURSUANT TO STATE FINANCE LAW §139-j(6)(b)	17
APPENDIX C: OFFEROR'S CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW 139-K (5)	18
APPENDIX D: FORM OF OFFEROR'S DISCLOSURE OF PRIOR NON-RESPONSIBILITY	19
APPENDIX E: PROPOSER'S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT	21
APPENDIX F: DIVERSITY PROGRAM FORMS	22

## SECTION 5: CONSTRUCTION MANAGEMENT AGREEMENT

SAMPLE FORM OF AGREEMENT	41
EXHIBIT A: PROVISIONS REQUIRED TO BE INSERTED BY LAW	49
EXHIBIT B: SCOPE OF SERVICES	52
EXHIBIT C: PAYMENT FOR SERVICES	71
EXHIBIT D: INSURANCE REQUIREMENTS	73

## SECTION 1 – PURPOSE AND RSMP OVERVIEW

### **Purpose of Request:**

The Rochester Joint Schools Construction Board (“RJSCB” or “Board”) is seeking proposals from qualified professional Construction Management firms to act as a Construction Manager (“CM”, or “CM Team”) on Phase 3C of the Rochester Schools Modernization Program (“RSMP” or “Program”). This Request for Proposals (RFP) is specifically related to the Phase 3C, East Campus project.

### **Rochester Joint Schools Construction Board (RJSCB) Information:**

The seven-member RJSCB oversees the RSMP, which is a multi-phase joint initiative of the Rochester City School District (“RCSD” or “District”) and the City of Rochester (“CoR” or “City”), to update and modernize school facilities. The comprehensive Program is estimated at \$1.3 billion spanning approximately 20 years.

Phase 3 of the RSMP is a \$475 million initiative which allows up to 12 Reconstruction Projects, primarily involving infrastructure upgrades. The Program is governed by the RJSCB, which is charged with implementing the comprehensive Strategic Plan of the RCSD. This RFP, however, only applies to the Construction Management Services for a single Phase 3C project.

### **District Information:**

The RCSD served approximately 22,800 students in P-K through grade 12 for the 2022-2023 school year. The District employs approximately 5,440 full-time employees and has a portfolio of 45 school buildings.

### **The CM’s Role – Scope of Work**

The purpose of the CM’s role is to provide a single point of contact for construction management service requirements of the proposed Phase 3C school project. The intent is to ensure that the construction contracts entered into by the RJSCB with independent contractors and vendors, for the specific purpose of executing the construction work as defined by the Architect of Record’s (“Architect” or “AoR”) construction documents for each school project, is professionally managed to achieve the defined scope, quality, schedule and budget. All contracts, including prime trade contractors, vendors, and purchase orders, will be held by the RJSCB.

The CM will administer all construction contracts for the assigned school project under the oversight of Savin Engineers, P.C., the Phase III Program Manager (“PM”). The pre-construction services to be provided will include, but not be limited to: various pre-construction services (estimating, budget development, update and management of the Project schedule, constructability review, value management assessments, preparation of front-end documents, bid package development, bid solicitation, bid tabulation and bid award recommendation etc.); followed by construction related services such as contract administration, cost reporting, contractor pay application review and recommendation, scheduling, construction administration, job safety program development and review. The CM will monitor all required policies and procedures for the proper and successful administration in the interest of the RJSCB, and the overall success of the Program.

The selected CM shall provide qualified professional personnel and resources to support the preconstruction effort, bid document development, solicitation and procurement of construction services, and administration and management of the construction of the Project. It will be the CM’s responsibility to ensure adherence to the resulting Project requirements, bid documents, budgets and schedules. A detailed Scope of Work can be found in the Form of Construction Management Agreement (Section 5, Exhibit B).

Under this RFP the respondent shall provide a monetary proposal (See Section 3) along with a proposed staffing plan (detailing staff level of effort – hours allocated) for the specified project, and the Program Diversity compliance. In addition, the respondent’s cost proposal shall be consistent with the provisions of the CM Agreement (sample attached) which should be considered non-negotiable in its terms and scope of services.



**CM Evaluation Criteria:**

The information provided in response to this RFP, along with the cost proposals, shall be used for developing a shortlist of CM Teams that may be invited for interviews prior to final selection by the RJSCB. Please organize proposals to clearly address the following criteria:

1. Relevant experience in prior phases of the RSMP or other PK-12 Upstate New York Urban School Districts over the past five (5) years
2. Relevant experience and prior working relationships with the proposed sub-consultants comprising the CM Team, along with their respective experience if based out-of-state.
  - a. Demonstrated performance in “active and aggressive actions” to meet the RSMP Diversity and Workforce Goals, whether in earlier phases of the RSMP or other urban school districts in New York State. See form OCSD-2 included in Attachment F;
  - b. The prospective CM shall provide, as an Appendix to its Proposal, a copy of that firm’s current EEO Plan;
  - c. The prospective CM shall provide a breakdown of its current technical staff diversity by job title, or classification based in the office location that will be the base of operation for this proposed Project.
3. Experience on previous New York State Education Department (“SED”) individual projects with comparable scope, budget, size and schedule.
4. Location of business operations for team members (greater Rochester and Finger Lakes areas preferred).
5. Specific team members (Prime and Subconsultants) to be assigned to the Project along with their professional background, experience and qualifications, as well as a designation of all key staff (at minimum Project Executive, Project Manager, Scheduler, Cost Estimator, and Superintendent) intended to be assigned for a majority of their time, and in which stage(s) of the work.
6. PK-12 client references received on behalf of the firm (Prime and Subconsultants) as well as for the individual project key staff (proposed Project Manager, minimum) team members. At least three (3) recommendations for each firm are required.
7. Team expertise in educational classroom technology.
8. Recent experience showing ability to deliver to a budget on PK-12 projects and optimizing the SED Maximum Cost Allowance (“MCA”). See next page for proposed format of response.
9. Demonstrated experience in historic preservation work in terms of buildings in excess of 50 years old and working with NY State Historic Preservation Office (“SHPO”).
10. Ability to work with formal and informal community groups including building committees, user groups, the public at large and other interested stakeholders.
11. If partnering with another firm or consultant, whether the Team members have worked together on previous PK-12 Projects in New York or other States over the past five (5) years.
12. Identify all key team members from proposed sub-consultants and their expected durations, particularly regarding achievement of the RJSCB’s Diversity and Workforce goals.
13. Quality of work performed previously by the firm in the greater Rochester area (if any), or NYS in general according to the criteria in the table that follows. Please specify projects and provide information, where applicable, including the name of a knowledgeable owner contact where your proposal’s qualifications,

personnel, experience, etc. can be validated if there are further questions.

14. Demonstrable Experience in meeting the following Service Performance Criteria:
  - a. Document Quality Control;
  - b. Adherence to the Owner's Construction Management Standards;
  - c. Flexibility to the Owner's Changes, Adherence to the Project Budget, Adherence to the Project Schedule;
  - d. Provide example from at least two (2) actual/successful *Constructability Reviews*, preferably from similar public PK-12 Projects (or other building types completed if necessary);
  - e. Coordination with Project Design and Management Teams, knowledge of SED and Local Approvals, and Processes (i.e. DOH, Fire Marshall, etc.);
  - f. Cost Control (complete attached matrix with your most recent Project Data).

**Note:** If, in the opinion of the RJSCB, it appears that any team will be over-extended, in terms of key staff to reasonably deliver quality CM services, that CM or CM Team may not be shortlisted for interview. The RJSCB's intent remains to match and select a strong overall CM Team (i.e. CM and Sub-Consultants) for each Phase 3C project. Each prospective CM Team should identify its "core group" of key staff to be augmented according to the needs of the Scope, Schedule and/or complexity of a Project.

CONSTRUCTION MANAGER’S COST CONTROL TRACK RECORD					
School Project/Business Official Name and Current Contact Telephone	Pre-Design Phase (or Pre-Referendum for non-Big 5 School Districts) MCA	Preliminary/Schematic or Design Development Phase Cost Estimate	Construction Document or Final Design Cost Estimate	Bid Award Contracts (including the Bid Alternates)	Project Close-Out (including all Change Orders) Final Cost
1.					
2.					
3.					
4.					
5.					
6.					

**Proposal Submittal Protocols:**Submission

All of the requested information and fee proposals must be submitted in seven (7) hard copies and one electronic copy and received in the RJSCB office, 70 Carlson Road, Suite 200, Rochester, NY 14610, attention Pépin Accilien, RSMP Director. Proposals are due by the date and time shown on Page 2 of this RFP. All proposals must be clearly marked as proposals on the outside of the package.

Preparation Costs

All costs incurred in the preparation and presentation of the proposal shall be wholly absorbed by the proposer.

**Insurance Requirements:**

All respondents to this RFP are presumed to be able to meet the requirements articulated in the Form of Construction Management Agreement, Section 5, Exhibit D.

**Interview Protocols:**

Proposals will be reviewed, and firms will be notified by the date shown on Page 2 of this RFP regarding interviews that are tentatively scheduled for the week shown on Page 2 of this RFP. Final selection of the firms is anticipated at the RJSCB meeting at the date shown on Page 2 of this RFP.

**Commitment:**

The RJSCB requires that team members brought forward as part of the proposal process will be assigned to the Program through completion unless that person is no longer with the company. Any proposed replacement shall be approved by the RJSCB. The RJSCB also expects that the duties will be performed by a sufficient local staff and that this staff will respond to the Program Manager in a timely manner.

**Equal Opportunity:**

The RJSCB recognizes the need to take action to ensure that Minority, Women-owned, Disadvantaged, and Small Business Enterprises (M/W/D/SBEs), as well as minority and women employees and principals, are given the opportunity to participate in the performance of contracts of the RJSCB. This opportunity for full participation in the free enterprise system by persons traditionally socially and economically disadvantaged is essential to obtain social and economic equality. Accordingly, the RJSCB fosters and promotes the participation of such individuals and business firms in contracts with the RJSCB.

Each firm for this undertaking should acknowledge its understanding and support of the social policy herein stated and will be expected to demonstrate its efforts to solicit the participation of such individuals as employees, and/or partners as firms teaming for this Project. In this regard, the RJSCB expects the selected firm to undertake or continue successful diverse teaming relationships to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

In order to achieve the Business Development goals of the Program, each professional service firm or other business providing goods or services with a Board contract of \$25,000 or more shall strive to and use best efforts to meet the above stated commitment of the RJSCB regarding the participation and use of Women, Minorities, Women and Minority Owned Enterprises, Disadvantaged, and Small Business Enterprises. Those supplying construction services of \$100,000 or more shall be required to do the same.

One of the principal goals of the RJSCB is to support workforce development and the creation of diversification opportunities. As such, all professional service firms and/or other business entities providing goods or services related to a RJSCB Project, and in the amount of \$25,000 or more (and \$100,000 or more for construction services), shall agree to comply with the following workforce diversity goals:

- Minority Workforce: 23% of project personnel, including supervisory staff, and professionals.
- Female Workforce: 7% of project personnel, including supervisory staff, and professionals.

The RJSCB is committed to the meaningful participation of qualified M/W/D/SBEs throughout the RSMP. In order to meet this commitment, suppliers, professional service firms and/or other business entities providing goods or services under a RJSCB contract of \$25,000 or more (and \$100,000 or more for construction services), shall agree to engage qualified Minority-owned, Women-owned, Disadvantaged Business entities, and Small Business entities to assist in the completion of all work under any such contract. "Small Business Enterprise" shall mean a business concern which, together with its affiliates, has no more than fifteen (15) employees and average annual receipts that do not exceed \$2 million (Two Million Dollars).

With each sub-contract of \$25,000 or more (and \$100,000 or more for construction services), the selected contractor, supplier, professional service firm and/or other business entity agrees to provide for the following:

- Minority-Owned Business Enterprises ("MBE") shall participate in a minimum of 18% of each Contract, or Purchase Order
- Women-Owned Business Enterprises ("WBE") shall participate in a minimum of 12% of each Contract, or Purchase Order
- Disadvantaged Business Enterprises ("DBE") shall participate in a minimum of 2% of each Contract, or Purchase Order
- Small Business Enterprises ("SBE") shall participate in a minimum of 2% of each Contract, or Purchase Order.  
Note: A business can be certified as an SBE through the Rochester Schools Modernization Program.

The process to substantiate unsuccessful pursuits to establish "teaming" relationships for this proposal in terms of Equal Opportunity outreach (e.g., three written letters confirming that prospects elected to decline for any Diversity Category for which the proposed team falls short of the goal) must be documented and submitted to the Independent Compliance Officer (Anchin, attention Brian Sanvidge at 518-330-7816) **at the latest** upon the CM Team's notification of being short-listed for an interview. The RJSCB reserves the right to revise, adjust and/or modify the above goals for future contracts awarded as new information/data, or circumstances arise.

#### **Procurement Protocol:**

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposals includes and imposes certain restrictions on communications between the Board and an Offeror during the procurement process. **An Offeror/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Board ("restricted period"), to other than the Board's Procurement Officer or its Designee (the Program Manager) unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a).** The Board's Procurement Officer(s) or Designee for this Governmental Procurement, as of the date hereof, is identified in this Request for Proposals. Board employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offeror/bidder pursuant to these two statutes.

#### **RFP Questions:**

In lieu of a pre-proposal conference, any questions regarding the RFP or selection process should be submitted via email to Mr. P  pin Accilien, P.E., the designated Procurement Officer, [PAccilien@savinengineers.com](mailto:PAccilien@savinengineers.com) by the date and time shown on Page 2 of this RFP. Submitted questions and answers will be provided to all solicited firms via email by the date and time shown on Page 2 of this RFP (barring any unforeseen circumstances). Verbal questions will not be considered.

## Section 2 – Project Information: Overview, Strategic Plan Scope, Proposed Schedule East Campus

-







Location of East Campus Relative to Neighboring Streets and Homes

RSMP Phase 3d - East Campus

Scope preferred based on budget available

		Estimated Budget
<b>Roof</b>		
<b>BCS</b>		
Roof replacement	70,560 sf	\$5,103,126
Roof restoration	11,726 sf	\$452,300
Collaboratorium roof replaced in Phase 2	4042 sf	(\$292,330)
<b>Elevator</b>		
Freight Elevator has not been working for a year. Obsolete and can't get parts	Allowance	\$586,317
<b>Mechanical</b>		
Condensate receiver/pump sets (replace and relocate) approx 10 ea		\$321,437
Condensate drain piping from receiver - 10 ea		\$108,324
Allowance to replace Steam traps	Allowance	\$128,575
Pipe Insulation - Condensate drain piping from receiver - 10 ea	1 1/2 w/ all service jacket	\$32,465
<b>Plumbing</b>		
sump pump croque, controls, piping to exist storm	Allowance	\$13,211
Allowance to replace deteriorated Sanitary piping	Allowance	\$321,437
<b>Electrical</b>		
Condensate receiver/pump sets ( replace and relocate) approx 10 ea		\$56,251
		\$6,831,112
RUSCB CO Contingency		\$334,690
Conceptual Estimated Construction Budget		\$7,165,802
Construction Budget available		\$7,165,802
under / (over)		\$0
<b>Add Alternate</b>		
<b>Added roof replacement request</b>		
Office area B2 on drawing	13,853 sf	\$1,001,893
Evaluate what is not LED now and replace if budget allows later	Allowance	TBD

Summary of Expected Rehabilitation Throughout East Campus



## Section 2 – Project Information

### PRELIMINARY SCHEDULE

#### PROJECT: East Campus

##### Anticipated Milestone:

##### Anticipated Date:

• Submit all “Key Staff for confirmation by RJSCB	10 working days after NTP
• Submit Program Verification incl. M/E/P scopes and estimates to PM	26 Aug 2025
Duration from previous NYS Approval	
• Submit Schematic Design (SD – incl. M/E/P Base Scope) to PM	8 Weeks
• Submit SD Detailed Cost Estimate to PM	2 Weeks
• Submit 25% Complete Construction Documents (CDs) to PM	6 Weeks
• Submit 25% Complete CDs Detailed Cost Estimate to PM	2 Weeks
• Submit 50% Complete CDs to PM, with proposed Preliminary Bid Add Alternates	6 Weeks
• Submit 50% Complete CDs Detailed Cost Estimate to PM	2 Weeks
• Submit 75% Complete CDs to PM, with proposed Preliminary Bid Add Alternates	6 Weeks
• Publish 75% Complete CDs Detailed Cost Estimate to PM	2 Weeks
• Submit 90% Complete CDs for estimating then continue to complete 100%	7 Weeks
• Submit 100% Complete CDs to PM, with proposed Preliminary Bid Add Alternates	3 Weeks
• Submit 100% Complete CDs Detailed Cost Estimate to PM	2 Weeks
• Incorporate IDC comments, if any, for SED review	1 Weeks
• Incorporate SED Final CD Review Comments as SED addenda	1 Weeks
• SED Final Commissioner Approval Date Milestone (on or before)	20 Aug 2027
• Finalize CDs and Add Alternates for public bidding	20 Aug 2027
• Participate in Bid Opening(s), Qualifications of Bidders, Award	11 Oct 2027
• Submit Conformed CD Set for construction, attend kick off meetings	11 Oct 2027 – 25 Oct 2027
• Start and Perform all Construction Phase Services	11 Oct 2027 – 02 Nov 2029
• Perform Punch List, Partial and Final Certificates of Substantial Completion, along with Final Punch List Inspection(s)	05 Nov 2029 – 31 Jan 2030
• Consolidate, Review As-Built Drawings, Prepare and Certify Final Record CDs, Operation Manuals, and all Warranties	05 Nov 2029 – 31 Jan 2030
• Perform and Document Project Warranty Inspections during the Eleventh and Twenty-Second Months after the Final Certificate of Substantial Completion. Submit Document Report to the RJSCB and RCSD Facilities Group for Final Acceptance	02 Oct 2030 and 02 Sep 2031

Note: All of the listed milestones are for A/E Proposal purposes and will be updated and/or superseded by the actual approved Master Schedule during the Design and then the Construction Phase of the Project. However, the overall duration in months is not expected to change significantly.

## Section 3 - CM Fee Proposal

### Project Fee Submittal Form

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TEL/E-MAIL: \_\_\_\_\_

This form is to be used as the CM Firm's Fee Proposal for the identified Phase 3C Project.

PLANNED CONSTRUCTION BUDGET                      \$ 7,165,802 + Site Improvements of \$449,899

#### **HOURLY RATES ELIGIBLE FOR ADDITIONAL SERVICES**

Principal	\$ _____	Project Executive	\$ _____
Associates	\$ _____	Project Manager	\$ _____
Project Scheduler	\$ _____	Assistant Project Manager	\$ _____
Project Cost Estimator	\$ _____	CAD Technician	\$ _____
Field Superintendent	\$ _____	Administrative Assistant	\$ _____

Annual hourly rates for the Fee Proposal, will in turn be utilized for Professional Additional. The wage rates may be escalated no more than 3% per year thereafter, and shall remain in effect through the Project warranty inspection. A similar breakdown for each Firm comprising the CM Team will be required upon Selection/Notice to Proceed.

## Section 3 - CM Fee Proposal – Submittal Form (cont'd)

### Proposed Breakdown of CM Fee by Phase:

Description:	Fee
I. Pre-Construction Phase	\$
II. Construction Phase	\$
III. Substantial/Final Completion Phase	\$
III. Closeout Phase	\$
IV. Warranty Phase	\$
VI. Document Printing Allowance (Bid Documents)	\$20,000
Total Lump Sum	\$

TOTAL WRITTEN VALUE NOT TO EXCEED FEE PROPOSAL FOR

\_\_\_\_\_ (DOLLARS)

**Note: Initial Award for CM Services may be for Preconstruction only with the Remaining Phases (Construction through Close Out & Warranty) awarded later after the Board determines single Prime vs. Multi-Prime Contracting Strategy for the Project.**

### **ADDITIONAL REIMBURSABLE ALLOWANCES** (If deemed necessary)

List all not-to-exceed Reimbursable Allowances not included in the attached CM agreement, for which reimbursement would be requested (e.g. out-of-town travel, etc.)

	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____
	\$ _____

PROPOSAL AUTHORIZED BY: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Section 4: Forms to Complete for the Proposal

### APPENDIX A

#### CERTIFICATION OF NON-COLLUSION IN BIDDING

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury that to the best knowledge and belief:

- 1 The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
- 2 Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- 3 No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

BY:

---

FULL LEGAL NAME OF FIRM OR CORPORATION

---

AUTHORIZED SIGNATURE

---

STREET ADDRESS

---

PRINTED NAME OF AUTHORIZED SIGNATURE/TITLE

---

CITY, STATE, ZIP CODE

---

TELEPHONE AND FACSIMILE NUMBERS

---

DATE

---

E-MAIL ADDRESS

**APPENDIX B****OFFEROR'S AFFIRMATION OF UNDERSTANDING OF AND  
AGREEMENT PURSUANT TO STATE FINANCE LAW §139-j(6)(b)****Background:**

State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity (including, voluntarily, the Rochester Joint Schools Construction Board, the "Board") shall seek written affirmations from all Offeror's as to the Offeror's understanding of, and agreement to comply with the Board's procedures relating to permissible contracts during a Governmental Procurement pursuant to State Finance Law §139-j(3).

**Instructions:**

In connection with all proposals, bids, RFP's, etc., the Board must obtain the following affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the Restricted Period for a Procurement Contract in accordance with State Finance Law §139-j and §139-k:

*Offeror affirms that it understands and agrees to comply with the Rochester Joint Schools Construction Board's Procurement Disclosure Policy, which Policy conforms to the requirements of State Finance Law §139-j (3) and §139-j(6)(b).*

BY

\_\_\_\_\_  
\*LEGAL NAME OF FIRM OR CORPORATION\_\_\_\_\_  
AUTHORIZED SIGNATURE\_\_\_\_\_  
ADDRESS\_\_\_\_\_  
TYPED NAME OF AUTHORIZED SIGNATURE/TITLE\_\_\_\_\_  
CITY, STATE, ZIP CODE\_\_\_\_\_  
TELEPHONE/DATE

\*Indicate the complete legal name of your firm or corporation. Do not abbreviate. If a corporation, use name as it appears on corporate seal.

**APPENDIX C****OFFEROR'S CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW §139-K(5)**

By signing below, I certify that all information provided to the Rochester Joint Schools Construction Board with respect to State Finance Law §139-k is complete, true and accurate.

BY

\_\_\_\_\_  
\*LEGAL NAME OF FIRM OR CORPORATION\_\_\_\_\_  
AUTHORIZED SIGNATURE\_\_\_\_\_  
ADDRESS\_\_\_\_\_  
TYPED NAME OF AUTHORIZED SIGNATURE/TITLE\_\_\_\_\_  
CITY, STATE, ZIP CODE\_\_\_\_\_  
TELEPHONE/DATE

\*Indicate the complete legal name of your firm or corporation. Do not abbreviate. If a corporation, use name as it appears on corporate seal.

**APPENDIX D****FORM OF OFFEROR'S DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATION**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

---

Address: 

---

Name and Title of Person Submitting this Form: 

---

Contract Procurement Number: 

---

Date: 

---

1. Has any Government Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?  
(Please circle):

No

Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Government Entity? (Please circle):

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: 

---

Date of Finding of Non-Responsibility: 

---

Basis of Finding of Non-Responsibility: 

---

---

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below:

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Offeror certifies that all information provided to the Rochester Joint Schools Construction Board with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_



**APPENDIX E****PROPOSER'S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City and the School District from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the proposer submits the following certification to Rochester Joint Schools Construction Board:

*[Please Check One]*

**PROPOSER'S CERTIFICATION**

- ☐ By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- ☐ I am unable to certify that my name and the name of the proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
FULL BUSINESS NAME

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

**APPENDIX F****DIVERSITY PROGRAM AND USE OF "OCSD"  
DIVERSITY PROGRAM FORMS**

<b><u>FORM NO.</u></b>	<b><u>DESCRIPTION</u></b>
OCSD – 1:	Equal Employment and Policy Statement
OCSD – 2:	Staffing Plan
OCSD – 3:	Workforce-Utilization-Report
OCSD – 4:	Utilization Report
OCSD – 5:	Request for Waiver
OCSD – 6:	MWBE, SBE, and DBE Compliance and Payment Report
---	Good Faith Efforts Checklist

**Forms OCSD – 1, 2, 4: Must be completed as accurately as possible and submitted with proposal.**

**The Good Faith Efforts Checklist is to be completed to document efforts made in attempting to meet the Diversity Goals.**

**For Microsoft versions of the following forms, please contact the Program Manager.**



**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

I, \_\_\_\_\_ (CONTRACTOR OR GRANT REPRESENTATIVE),

the \_\_\_\_\_ (GRANTEE/COMPANY NAME)

agree to adopt the following policies with respect to the project being developed or services rendered at

\_\_\_\_\_.

**NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (c) At the request of the ESD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) The organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

**MWBE PARTICIPATION (MWBE)**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.



**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

- (2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**SBE AND DBE PARTICIPATION (EBE)**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the SBE/DBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified DBEs and self-certified SBEs including solicitations to contractor associations.
- (2) Request a list of State-certified DBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective EBEs .
- (4) Where feasible, divide the work into smaller portions to enhance participation by SBEs and DBEs and encourage the formation of joint venture and other partnerships among EBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to SBEs and DBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting the EBE contract participation goals.
- (6) Ensure that progress payments to are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage DBE and SBE participation.

Agreed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

By: \_\_\_\_\_  
(SIGNATURE)

Print Name: \_\_\_\_\_

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



**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-1 M/WBE, SBE AND DBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**Minority & Women-owned Business Enterprise-Equal Employment Opportunity Liaison**

\_\_\_\_\_ (name of designated contractor/grantee liaison) is designated as the Minority and Women-owned Business Enterprise Liaison responsible for administering the Minority and Women-owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_ % Minority Business Enterprise Participation  
 \_\_\_\_\_ % Women's Business Enterprise Participation  
 \_\_\_\_\_ % **TOTAL/OVERALL M/WBE Participation Goal**

**EEO Contract Goals**

NOT APPLICABLE % Minority Labor Force Participation  
NOT APPLICABLE % Female Labor Force Participation

**S/DBE Contract Goals**

\_\_\_\_\_ % Small Business Enterprise Participation      \_\_\_\_\_ % Disadvantaged Business Enterprise Participation

\_\_\_\_\_  
 (Signature of Contractor's Authorized Representative)

\*Name: \_\_\_\_\_  
 \*Company: \_\_\_\_\_  
 \*Title: \_\_\_\_\_  
 \*Phone: \_\_\_\_\_  
 \*Fax: \_\_\_\_\_  
 \*Address: \_\_\_\_\_



**OCSD-2 - STAFFING PLAN**

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

Submit with Bid or Proposal – Instructions on page 2

<b>Contract/Project No.:</b>	<b>Contract/Project Title:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor
<b>Contractor/Grantee Name:</b>		
<b>Contractor/Grantee Address:</b>		
		<b>Subcontractor's name</b> _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender			Work force by Race/Ethnic Identification																							
		Total Male (M)	Total Female (F)	Total X (X)	White			Black			Hispanic			Asian			Native American			Disabled			Veteran					
					(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)			
Officials/Administrators																												
Professionals																												
Technicians																												
Sales Workers																												
Office/Clerical																												
Craft Workers																												
Laborers																												
Service Workers																												
Temporary /Apprentices																												
Totals																												

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>			

**OCSD-2 - STAFFING PLAN**

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**General Instructions:** All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form OCSD-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form for the contractor's and/or Subcontractor's total work force.

**Instructions:**

1. Enter the Contract or Solicitation number that this report applies to along with the name and address of your company or organization.
2. Check off the appropriate box to indicate if the Contractor completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Contractor's total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name and contact details of the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION:**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES:**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male, Female, or "X"



☐ By checking this box, I certify that I personally completed this document and I adopt the name typed above as my electronic signature under the NYS Electronic Signatures and Records Act, with like legal force and effect as if I had physically signed the document.

☐ Check this box to request that the material included herein be withheld from disclosure pursuant to Article 6 of the Public Officers Law (Freedom of Information Law)

Page 28 of 73





OCSD-4



**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE, SBE and DBE Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and/or Small Business Enterprise (SBE) Disadvantaged Business Enterprise (DBE) under the contract. Attach additional sheets if necessary.

\* indicates mandatory fields

\*Contractor Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 \*Representative Name: \_\_\_\_\_ Town, State & Zip: \_\_\_\_\_  
 \*Phone: \_\_\_\_\_ \*ESD Contract/Project Number: \_\_\_\_\_  
 \*Fax: \_\_\_\_\_ RFP/RFQ/Solicitation Number: \_\_\_\_\_  
 \*Email: \_\_\_\_\_ \*MWBE Goal: MBE \_\_\_\_\_% + WBE \_\_\_\_\_% = MWBE GOAL \_\_\_\_\_%  
 \*Total Dollar Value of Contract/Grant: \$\_\_\_\_\_ \*SBE Goal: \_\_\_\_\_% \*DBE Goal: \_\_\_\_\_%

1. * Certified MWBE, SBE or DBE Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. * Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. * Check Firm Type That Applies for Work Completed on this Project	6. * Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE (Self-Certified) <input type="checkbox"/> DBE			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	
B.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE (Self-Certified) <input type="checkbox"/> DBE			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	

7. If unable to fully meet the MWBE, SBE or DBE goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Independent Compliance Officer, Anchin.

<b>PREPARED BY (Signature):</b> _____ <b>DATE:</b> _____		<b>TELEPHONE NO.:</b> _____	<b>EMAIL ADDRESS:</b> _____
<b>Preparer's Name (Print or Type):</b> _____		<b>Policy Regarding Use of MWBE/SBE/DBE Suppliers and Brokers</b> Only sums paid to MWBE, SBE or DBE for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. <b>FOR CONSTRUCTION/CAPITAL PROJECTS</b> – The portion of a contract with an MWBE, SBE or DBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. Brokers will not receive credit for this project.	
<b>Preparer's Title:</b> _____			
<b>Date:</b> _____			
SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.			
The MWBE Certification status of the firms listed on this form <b>MUST</b> be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises. <b>This directory is available at <a href="https://ny.newnycontracts.com">https://ny.newnycontracts.com</a>.</b>		<b>** FOR ICO USE ONLY **</b>	
The SBE Certification requires the completion of a self-certification form issued by the RSMP.			
The DBE Certification status of the firms listed on this form <b>MUST</b> be verified using the Directory of New York State Certified Disadvantaged Business Enterprises. <b>This directory is available at <a href="https://nysucp.newnycontracts.com/">https://nysucp.newnycontracts.com/</a></b>		<b>REVIEWED BY:</b> _____	<b>DATE:</b> _____
		<b>UTILIZATION PLAN APPROVED?</b> YES    PARTIAL    NO    Date: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	



**Empire State  
Development**



# OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

**OCSD-5**

WAIVER REQUEST FORM

Request for Waiver		
Grantee / Contractor Name:		Fed ID No.:
Full Address:		Contract / Project Number:
Project Details (Project Name, Project Location):		Have you Previously submitted a Waiver Request? (YES/NO)
Current Contract Value:		MWBE Goal: MBE % + WBE % SBE Goal: % DBE Goal: %
<p>By submitting this form and the required information, the Contractor certifies that every "Good Faith Effort" has been taken to promote MWBE, SBE and DBE participation pursuant to the MWBE, SBE and DBE requirements set forth under the contract. Review <a href="#">5 NYCRR § 142.8</a> and <a href="#">9 NYCRR § 252</a>, Contractor's Good Faith Efforts, for the precise definition of "Good Faith Effort." Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor's responsibility to ensure that adequate, clear and complete information is presented to the Office of Contractor and Supplier Diversity ("OCSD").</p>		
<p><b>*UTILIZATION VALUE MET:</b></p> <p>MBE: \$_____   WBE: \$_____   SBE \$_____   DBE: \$_____</p>		
<p><b>*CONTRACTOR IS REQUESTING :</b></p> <p>1. <input type="checkbox"/> <b>MBE Waiver</b> – A waiver of the MBE Goal for this procurement is requested. REQUESTED MBE GOAL: _____%</p> <p>2. <input type="checkbox"/> <b>WBE Waiver</b> – A waiver of the WBE Goal for this procurement is requested. REQUESTED WBE GOAL: _____%</p> <p>3. <input type="checkbox"/> <b>SBE Waiver</b> – A waiver of the MWBE Goal for this procurement is requested. REQUESTED SBE GOAL: _____%</p> <p>4. <input type="checkbox"/> <b>DBE Waiver</b> – A waiver of DBE Participation Goal for this procurement is requested. REQUESTED DBE GOAL: _____%</p>		
<p>PREPARED BY (Signature): _____ Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.</p>		
<b>*Name and Title of Preparer:</b>	<b>*Telephone Number:</b>	<b>*Email:</b>



## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-5

WAIVER REQUEST FORM

### Contractor's Good Faith Efforts

- (a) Contractors must document their good faith efforts toward utilizing certified firms, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:
  - (1) Copies of its solicitations of certified firms enterprises and any responses thereto;
  - (2) If responses to the contractor's solicitations were received, but a certified firm was not selected, the specific reasons that such firm was not selected;
  - (3) Copies of any advertisements for participation by certified firms timely published in appropriate general circulation, trade, MWBE and SDVOB oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
  - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified firms enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
  - (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified firms.
- (b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
  - (1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;
  - (2) the number of certified firms in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
  - (3) the actions taken by the contractor to contact and assess the ability of certified firms located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
  - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified firms sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
  - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified firms and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
  - (6) whether the contractor offered to make up any inability to comply with the certified firms goals in the subject State contract in other State contracts being performed or awarded to the contractor;
  - (7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part, Articles 15-A or 17-B of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;
  - (8) whether the contractor knowingly utilized one or more certified firms, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.



**Empire State  
Development**



**OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**

**OCSD-5**

WAIVER REQUEST FORM

- (9) whether the contractor submitted compliance reports, which identified certified firms that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned. and
- (10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

<p>Submit with the bid or proposal or if submitting after award submit to:</p> <p><b>Empire State Development Office of Contractor and Supplier Diversity 633 Third Avenue, 35<sup>th</sup> Floor New York, New York 10017</b></p>	<p align="center"><b>***** FOR OCSD USE ONLY *****</b></p>	
	<p>REVIEWED BY:</p>	<p>DATE:</p>
	<p>Waiver Granted: <input type="checkbox"/> YES    MBE: <input type="checkbox"/>    WBE: <input type="checkbox"/>    SDVOB: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver                      <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> *Conditional                      <input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>* <u>Comments:</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	





**Empire State  
Development**



## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

### MWBE, SBE AND DBE COMPLIANCE AND PAYMENT REPORT

#### OCSD-6

CONTRACTOR/GRANTEE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 TOWN/COUNTY/ZIP: \_\_\_\_\_  
 CONTACT PERSON: \_\_\_\_\_  
 TELEPHONE: \_\_\_\_\_  
 EMAIL: \_\_\_\_\_

ESD OCSD REPRESENTATIVE: \_\_\_\_\_  
 CONTRACT/PROJECT NAME: \_\_\_\_\_  
 CONTRACT/PROJECT #: \_\_\_\_\_  
 PROJECT START DATE: \_\_\_\_\_  
 PERCENT COMPLETE: \_\_\_\_\_  
 ACTUAL COMPLETION DATE: \_\_\_\_\_

REPORTING PERIOD: ☐ Monthly for the Month of: (Month) (Year)

☐ Quarterly (Check Applicable): ☐ Quarter 1 (4/1-6/30) | ☐ Quarter 2 (7/1-9/30) | ☐ Quarter 3 (10/1-12/31) | ☐ Quarter 4 (1/1-3/31)

Attach MWBE, SBE and DBE executed contracts, wire transfer confirmations and cancelled checks as proof of payment to the identified EBEs.

This report should be completed and signed by an officer of the Reporting Company. Attach additional sheets if necessary.

PRIME CONTRACTOR, if different from above (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE, SBE or DBE SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	NYS CERTIFICATION (Check One)	DESCRIPTION OF SERVICES	CONTRACT AMOUNT	PAYMENTS PREVIOUSLY REPORTED	PAYMENTS ON CURRENT REPORT	TOTAL PAYMENTS TO DATE
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> DBE		\$	\$	\$	\$

CERTIFICATION: I, \_\_\_\_\_ (Print Name), the \_\_\_\_\_ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.



**Empire State  
Development**

## OCSD-6



## OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MWBE AND SDVOB COMPLIANCE AND PAYMENT REPORT

**SUBMIT REPORT TO:** Office of Contractor and Supplier Diversity  
Empire State Development  
633 Third Avenue, 35<sup>th</sup> Floor  
New York, NY 10017

Completed forms may be emailed directly to OCSD at [ocsd@esd.ny.gov](mailto:ocsd@esd.ny.gov). All email submissions must include ESD's project/contract number(s), and the name and contact information of the individual or firm submitting the information.

**QUESTIONS?** Please contact the OCSD's Compliance Managers or email the office at [ocsd@esd.ny.gov](mailto:ocsd@esd.ny.gov).

<b>Danielle Adams</b>	<b>Bertrand Dorcilien</b>	<b>Kelly Forsey</b>	<b>Jordan Kaplan</b>	<b>Denise Ross</b>	<b>Ami Shipley</b>
(518) 474-2569	(212) 803 - 3571	(716) 846-8238	(212) 803-3659	(212) 803-3226	(212) 803-3222
<a href="mailto:Danielle.Adams@esd.ny.gov">Danielle.Adams@esd.ny.gov</a>	<a href="mailto:Bertrand.dorcilien@esd.ny.gov">Bertrand.dorcilien@esd.ny.gov</a>	<a href="mailto:Kelly.forsey@esd.ny.gov">Kelly.forsey@esd.ny.gov</a>	<a href="mailto:Jordan.kaplan@esd.ny.gov">Jordan.kaplan@esd.ny.gov</a>	<a href="mailto:Denise.ross@esd.ny.gov">Denise.ross@esd.ny.gov</a>	<a href="mailto:Ami.shipley@esd.ny.gov">Ami.shipley@esd.ny.gov</a>
R E G I O N S :					
Capital District SUNY Poly Portfolio Mohawk Valley Dept. of Economic Development	Long Island North Country NYC – Bronx, Brooklyn, Queens	Finger Lakes Western New York ESD Subsidiaries – ECHDC, USA Niagara	Central NY Southern Tier ESD Subsidiary – AYCDC	Mid-Hudson NYC- Manhattan, Staten Island	ESD Procurement Contracts ESD Subsidiaries – CCDC, QWDC, LMDC, ESNMC, HCDC, MSDC

**Good Faith Efforts - Rochester Schools Modernization Program (RSMP): Phase III***\*The fields below will auto populate on all tabs*

Contractor Name	
Contractor Address	
Primary Contact	
Telephone Number	
Request for Proposal #	

**Please fill out these worksheets with as much detail as possible. Supporting documentation for Good Faith Efforts should include (at a minimum) the following:**

- 1) Copies of ads placed for solicitation (example: NYS Contract Reporter) <https://www.nyscr.ny.gov/advertise.cfm>
- 2) Copies of all directory searches performed including those searches that resulted in no certified firms for a specific scope of work. Please document the search terms used during your session.
- 3) Telephone or call /meeting logs with details including date, time, person(s) communicated with and outcome.
- 4) Copies of emails and/or faxes that show “direct” scope of what you solicited the subcontractor/supplier, fabricator, etc. to do or provide and their responses.
- 5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for purposes of subcontracting with or obtaining supplies from certified EBE firms.
- 6) Evidence that off-site firms and services were entertained (e.g., material suppliers, trucking, fabricator, manufacturer, etc.).
- 7) Copies of documentation showing negotiations took place between low bidder and prospective subcontractor or other firms (supplier, manufacturer, fabricator, etc.).
- 8) Copies of quotes from the selected firms and quotes received when a specific scope of work was given to a non-certified firm versus a certified firm (when certified firm’s quote was deemed unreasonable or excessive).
- 9) Detailed explanation for any scope of work deemed “self-performing” without intent to split the work (when there is EBE availability and goal has not been met).
- 10) Supporting documentation of any and all additional efforts performed prior to letting or pre-designation date.

**\*\*Insufficient documentation of Good Faith Efforts include:**

- “In-house” generated lists that do not include MBE/WBE/SDVOB targeted firms.
- “In-house” generated lists that do not identify firms for specific work items or description being
- Copies of redundant emails to MBE/WBE/SDVOB firms containing identical language.
- Unsubstantiated response of non-interest from MBE/WBE/SDVOB firms.
- Numerous copies of the entire contract sent to each firm to attempt to provide quantity in lieu of





Contractor Name	0
Contractor Address	0
Primary Contact	0
Telephone Number	0
Request for Proposal #	0

[illegible]



Contractor Name	0
Contractor Address	0
Primary Contact	0
Telephone Number	0
Request for Proposal #	0

[illegible]



Contractor Name	0
Contractor Address	0
Primary Contact	0
Telephone Number	0
Request for Proposal #	0

[illegible]



Good Faith Efforts - Rochester Schools Modernization Program (RSMP): Phase III

Contractor Name	0
Contractor Address	0
Primary Contact	0
Telephone Number	0
Request for Proposal #	0

[illegible]

## Section 5: Sample Form of Agreement

# CONSTRUCTION MANAGEMENT AGREEMENT

**THIS AGREEMENT**, also referred to as Contract, made as of XXXXXXXX by and between the **Rochester Joint Schools Construction Board ("RJSCB")**, having its principal office and place of business at 70 Carlson Road Suite 200, Rochester, New York 14610 (hereinafter the **"Board"** or **"Owner"**) and

XXXXXXX

Having its principal office and place of business at

XXXXXX St., XXXXXX, NY XXXXX

(hereinafter the **"CM"**).

WHEREAS, the Board is authorized to have constructed the following project(s) for the Rochester City School District (hereinafter the **"RCSD"**) at the

### East Campus

(hereinafter, the **"Project"**)

and

WHEREAS, the Board desires to have the Project constructed in as expeditious and efficient a manner as possible; and

WHEREAS, the Board has retained Savin Engineers, P.C. (hereinafter the **"Program Manager, or "PM"**) to act on its behalf to manage the Rochester Schools Modernization Program (**"RSMP"**); and

WHEREAS, the Board has determined that such results can be accomplished most effectively by retaining the services of a construction manager to work with the Program Manager, its Project Consultant(s), and the Contractor(s) for the Project(s), so that the Project(s) may be completed and ready for use at the earliest practicable date; and

WHEREAS, the CM is ready, willing, and able to perform such construction management services and represents that it is qualified in all respects to do so and that its officers and employees possess the knowledge, experience, and character necessary to qualify them individually for the particular duties they are to perform;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

### ARTICLE 1

#### Retention of Construction Manager

The Board hereby retains the CM and the CM hereby agrees to act as the Construction Manager for the Project and to  
Page 41 of 73

perform the services hereinafter described on the terms and conditions specified herein. In accepting this engagement, the CM assumes a position of trust and confidence with respect to the Board and agrees that at all times the CM and its consultants and agents, and their respective employees and representatives, will act with absolute honesty and integrity in furnishing construction administration and management services and carrying out the CM's obligations under this Agreement.

### ARTICLE 2

#### Services to be Performed

2.1 The services to be performed by the CM hereunder shall be subject to the general direction of the Program Manager, on behalf of the Board, and shall consist of consulting with, advising, and making recommendations to the Board, its Project Consultant, and the Contractors for the Project(s), as the case may be, in all aspects of the construction of Project(s) in order to accomplish the completion of the Work in accordance with the plans and specifications, and in the best interests of the Board. The services to be performed by the CM shall include the services described herein and in Exhibit B, which is attached hereto and made a part hereof (collectively, the **"Basic Services"**).

2.2 The Board reserves the right to direct the CM to provide additional services (the **"Additional Services"** and, together with Basic Services, the **"Services"**) and the CM agrees to provide such services.

2.3 If the CM believes that any services it has been directed to perform are beyond the scope of this Agreement and constitute Additional Services, it shall provide prompt written notification to the Program Manager, but not later than five business days after being directed to perform such services. Upon receipt of timely notice from the CM, the Program Manager shall then determine whether or not the services are additional and if the Board agrees, the maximum contract amount set forth in Article 4 hereof shall be amended to reflect the agreed upon cost of providing such Additional Services by a written amendment executed by both parties to this Agreement. Notwithstanding anything in this Agreement to the contrary, if the CM fails to provide timely written notice to the Program Manager as required by this Section 2.3, the CM agrees that its claim for additional compensation for such services shall be waived.

2.4 The use of Project Sight and Primavera OPC (P6) cloud-base solution for scheduling.

### ARTICLE 3

#### Additional Obligations and Responsibilities

3.1 In performing its Services hereunder, the CM shall place emphasis on considerations that will aid in completing the construction of the Project consistent with the construction standards and procedures of the Board, including the Board's requirement for scheduling, coordination, occupancy and completion. The CM acknowledges that time is of the essence for the Project and it agrees to use reasonable care and diligence and to exercise its best efforts to administer, coordinate, monitor and inspect the work of the Contractors so as to assist the Program Manager in having the Project completed on or before its contract completion date; provided, however, that the CM shall not be liable for any failure or inability of any of the Contractors to complete the Project(s) or any portion thereof within the time or times provided in their respective construction contracts, except to the extent such failure is due to the fault of the CM.

The parties recognize that the CM cannot and will not be in control of the Project Consultants' or Contractors' construction, means, methods, techniques or procedures in connection with the Project, and therefore, the CM does not warrant or represent that the actual duration of each phase of construction will be consistent with the overall Project construction schedule, unless the cause of the delay is attributable to action or inaction of the CM. However, the CM shall endeavor to obtain satisfactory performance from each of the Contractors, and the CM shall recommend courses of action to the Contractor(s) and Program Manager when requirements of a Contract are not being fulfilled. In addition, while the parties recognize that the CM is not a guarantor of the Contractors' "Work" the CM shall be responsible for making daily inspections of the work and advising Contractors and Program Manager where the Work is defective or non-conforming. In addition, the CM is responsible for overseeing the work performed by Contractors and advising them where there are questions on the means, coordination, sequencing and methods of construction employed by the individual Contractors or for the safety precautions and programs in connection with the Project. The CM shall advise the Program Manager regarding the performance of each of the Contractors. Resolution of disputes with a Contractor relating to the execution or progress of the Work or the interpretation of the requirements of the Contract Documents (except interpretations of the drawings and specifications, which shall be referred to the Consultant of Record [hereinafter, the "Architect" or "A/E"]) shall be the responsibility of the CM who shall keep the Program Manager informed of progress in these areas and make such recommendations to the Program Manager as the CM may deem necessary for the proper execution and timely progress of the Project. The Program Manager, at its discretion, shall take whatever action it deems necessary to assist the CM. The services of the CM are intended to complement and supplement, but not replace or duplicate, those of the Architect, other Project Consultants, Contractors or Testing

and Inspection agencies engaged by or through the Board.

3.2 All recommendations that will affect the cost of the Project shall be made by the CM to the Program Manager and the Project Consultants in writing. The Program Manager may also require other recommendations and communications by the CM to be made or confirmed by it in writing. All such recommendations shall be made in writing directly to the Program Manager and the Project Consultant. After approval by the Program Manager and/or the Project Consultant, the CM shall issue instructions directly to the Contractors.

3.3 The Services to be performed hereunder shall be performed by the CM's own staff, unless otherwise authorized in writing by the Board. The employment of, contract with, or use of the services of any other person or firm by the CM, as consultant or otherwise, shall be subject to the prior written approval of the Board. No provision of this Agreement, or such authorization, shall, however, be construed as constituting an agreement between the Board and any such person or firm.

3.4 The CM shall designate one person as a Project Executive who, on its behalf, shall be responsible for coordinating all of the Services to be rendered by it hereunder. The designation and continuance of said Project Executive shall be subject to the approval of the Board. All personnel assigned by the CM to its performance of this Agreement shall cooperate fully with personnel assigned to the Project by the Board and the Program Manager, and, in the event the Board determines that any personnel of the CM have failed to cooperate or are not fulfilling the services of this Agreement, the CM, at the request of the Board, shall replace such personnel.

3.5 For the Construction Phase, the field staff to be maintained at the site of the Project(s) shall have the following minimum qualifications in related type and size work:

- a. Project Manager: A minimum of eight (8) years' experience with the CM, including similar PK-12 projects, and a current OSHA 30-hour certification. The Project Manager shall be engaged per the approved work plan, at the latest by the submission of the Schematic Design detailed cost estimate prepared by the CM.
- b. Project Superintendent: A minimum of five (5) years' experience with the CM and be certified as a "competent" person, including similar PK-12 projects, and a current OSHA 30- hour certification.
- c. Assistant Project Superintendent: A minimum of three (3) years' experience with the CM and a minimum OSHA 10-hour certification.

- d. Project Engineers and Accountants: A minimum of three (3) years' experience in the construction industry with similar responsibilities to that assigned to such personnel for the Project(s).

The CM shall submit to the Program Manager for its review and approval a list identifying its staff to be assigned to provide the Services required under this Agreement prior to the commencement of those services and concurrent with submitting its executed contract. The Board, during the course of the Project, reserves the right to approve staffing levels.

3.6 The Board shall include in all Contract Documents a requirement that the Contractors name the CM as an Additional Insured on insurance coverage provided by the Contractors for the Project(s) that allows the naming of Additional Insureds.

3.7 The CM shall not be responsible for the consequences of: Acts of God (such as tornado, hurricane, etc.); the Board's, the Program Manager's, Consultants', Contractors', vendors or other Project participants' (and their respective agents', employees', consultants', vendors' and subcontractors') acts, omissions to act or failures to timely act; riots, insurrections, terrorist acts or civil commotions; embargoes; sabotage; vandalism; the requirements of laws, statutes, regulations, and other legal requirements of governmental authorities; casualties requiring reconstruction or repair to the Project or any parts(s) thereof except to the extent caused by the acts or omissions of the Manager; or any other matters beyond the reasonable control of the CM. If the CM's duties are suspended as a result of such occurrence(s), the CM's compensation shall be accordingly deferred.

#### **ARTICLE 4 Payment for Services**

4.1 Services provided under this Agreement are based on a lump-sum form of compensation payable according to the terms of Exhibit C. Additional services provided by CM at the request of the Board will be based on a Contract Amendment approved by the Board setting forth the scope and compensation for said services.

4.2 In addition to the costs included within the lump-sum contract amount specified in Section 4.1, the Board will reimburse the CM for the costs of the following, herein identified as Reimbursable Expenses, that it actually and necessarily incurs in performing the services hereunder as follows:

- a. Traveling expenses, including transportation, meals (excluding alcoholic beverages), lodging, and long-distance telephone calls, may be reimbursed as an additional contract cost, provided, however, that normal commuting and daily travel expenses for CM's field or home office support staff shall not be

reimbursable unless such travel is required for off-site visits to vendors or Contractors in support of Project activities or is approved in writing by the Board.

- b. Testing and any additional field services authorized in writing by the Board.
- c. Reproduction costs for Contract Documents for bidding purposes, special reports, and other data and documents specifically requested by and furnished to or on behalf of the Board. This does not include the daily and incidental copying cost of daily reports or document reproduction at the jobsite or in the CM's offices.
- d. Approved reimbursable expenses shall be reimbursed at 1.0 multiplier.

4.3 The total lump sum compensation and reimbursable expenses payable under this Agreement shall in no event exceed the sum of XXXX unless approved by Board. Said compensation and reimbursable expenses shall be paid by the Board to the CM in monthly installments in accordance with Exhibit C in proportion to the services rendered by the CM. The CM shall, on a monthly basis, submit for the Program Manager's approval a properly executed Application for Payment, on a form prescribed by the Board, together with appropriate backup supporting the amount billed. The Program Manager may require the CM to submit to it such additional information with respect to the CM's Services and payment requests as the Program Manager deems necessary. The Board shall pay the undisputed amounts of the CM's Application for Payments within 30 days of the Board's approval of an Application for Payment or a portion thereof.

4.4 Whenever any payment to or fee of the CM is dependent in whole or in part on the CM's or its consultants' cost or costs, the CM shall maintain efficient and accurate cost and accounting records as to all such costs and the CM shall require its consultants to maintain similar records. The CM, at any time during the term of the Agreement or within six (6) years thereafter, shall make such records and require its consultants to make their records available to the Board or its authorized representatives for review and audit. In the event all or any part of such records are not maintained or made available to the Board, any item not supported by reason of the unavailability of such records shall, at the election of the Board, be disallowed and, if payment therefore has already been made, the CM, on demand, shall refund to the Board the amounts so disallowed. Payment to the CM and/or approval by the Board of any invoice submitted by the CM shall in no way affect the CM's obligations hereunder or the right of the Board to obtain a refund of any payment to or fee of the CM that was in excess of that to which it was lawfully entitled.

4.5 Upon satisfactory completion by the CM of all Services required by this Agreement or, if this Agreement is terminated by the Board, all services provided prior to said termination, the Board shall make a final payment to the CM. Acceptance by the CM of the final payment shall operate as, and shall be, a release of the Board from all liability to the CM for anything provided or arising in connection with this Agreement.

4.6 No payment, final or otherwise, by the Board shall in any way release or affect the obligations and responsibilities of the CM hereunder.

4.7 Although the CM may recommend and contract with others for laboratory testing, inspection service and special investigations, when approved in advance and in writing by the Board, nothing in this Agreement shall be deemed to require, or authorize, or permit the CM to perform any act which would constitute design services, laboratory testing, inspection services, special investigations, or the practice of architecture, professional engineering, certified public accounting or law.

It is expressly understood that the CM is not a guarantor or insurer of the Contract Documents, including the plans and specifications, or of any Work which is to be performed by others.

Unless otherwise provided in this Agreement, the CM and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), mold, or other toxic substances.

#### **ARTICLE 5 Field Office and Key Personnel**

5.1 The cost to provide, set up, equip and maintain the CM's field office will either be included in the Prime Contractors' scope and bid for the Project or be provided and equipped by the Board. At the conclusion of the Project all equipment and any remaining supplies purchased for the Project will be inventoried and turned over to the Board.

5.2 The CM's project manager will be XXXX, and the CM's superintendent will be XXXX. Both are designated representatives of the CM and are authorized to act on its behalf. To the extent those designated cannot continue to serve as project manager and superintendent, respectively, beyond the control of the CM any replacement shall be mutually agreed upon by the Board and the CM.

#### **ARTICLE 6 Ownership of Documents**

All reports, estimates, schedules, and other documents and data, including, but not limited to, computer data and files prepared by and for the CM pursuant to this Agreement shall be the property of the Board and, upon its request, the CM shall promptly deliver all of the same to the Board.

#### **ARTICLE 7 Bidding on Project(s)**

Neither the CM nor any firm of which any officer, director, supervisory employee, or principal stockholder of the CM is an officer, director, supervisory employee, or principal stockholder, or of which the CM is a principal stockholder, shall, during the term of this Agreement and until final payment for the services provided herein is made by the Board, make or cause to be made, without prior written approval of Board, any bid on the Project covered under this Agreement. For purposes of this provision, the term "principal stockholder" shall mean any stockholder holding ten percent (10%) or more of the capital stock of such corporation in his/her or its own name or that is held directly or indirectly for his/her or its account or ten percent (10%) or more ownership of or interest in any firm either in his/her or its own name or directly or indirectly for his/her or its account.

#### **ARTICLE 8 Liability and Insurance**

8.1 The CM shall be liable to the Board for all losses, expenses, and damages caused by the CM's breach of this Agreement, its failure to use reasonable care and diligence and its failure to exercise its best efforts to properly perform its obligations under this Agreement. The CM shall not be entitled to any compensation for services or reimbursement for costs or expenses with respect to any such obligations not properly performed by it hereunder; provided, however, that nothing set forth in this Agreement shall be deemed to make the CM a guarantor or insurer of the design of the Project.

8.2 To the fullest extent permitted by law, at its own cost and expense, the CM shall indemnify, defend and hold harmless the Board, the RCSD, City of Rochester, Program Manager, Savin, Gilbane, Architect/Engineer(s), Technology Consultant (if any), and their affiliates, subsidiaries, directors, trustees, officers, board members, employees and agents (collectively, the "Indemnitees"), from and against any and all liabilities, obligations, claims, damages, demands, causes of action, losses and expenses (including, without limitation, reasonable attorneys' fees and costs of suit) directly or indirectly relating to, arising from or in connection with: (a) any actual or alleged negligent act or omission or willful misconduct of CM or any of its agents, employees or subcontractors; (b) any breach by CM of any of its representations, warranties, covenants or obligations set forth in this Agreement; (c) injury to person or property



(including death) to the extent arising out of or resulting from violation by CM of any State, Federal, or local law, rule or regulation; or (d) any actual or alleged injuries to person or property (including death) suffered by any of CM's agents, employees, subcontractors or sub-consultants, or any employees or agents of CM's agents, subcontractors or sub-consultants in the course of their performance or completion of any Services or other obligations arising under or pursuant to the Agreement, or upon any premises owned, leased or controlled by the Indemnitees, or any Project site; provided, however, nothing herein shall be construed as requiring the CM to indemnify the Indemnitees or any of them for any claim for damage or loss of any kind to the extent such loss or damage is caused by the negligence or willful misconduct of the Indemnitees or any of them. The CM shall include in each of its subconsultant agreements for the Project a provision substantially similar to this indemnification provision.

8.3 Nothing in this Agreement shall create or give to third parties any claim or right of action against the CM or the Board beyond such as may legally exist irrespective of this Agreement.

8.4 The CM shall maintain the specific insurance coverages (including, but not limited to, additional insured requirements) and limits as set forth in Schedule D, which is attached hereto and made a part hereof. Before commencing its performance of this Agreement, the CM shall furnish to the Board a certificate, in a form satisfactory to the Board, showing that it has procured such insurance, which certificate shall provide that the policy shall not be changed or canceled without thirty (30) days prior written notice to the Board.

#### **ARTICLE 9**

##### **Nature of Contractual Relationship**

9.1 Nothing contained herein shall be deemed to create any contractual relationship between the CM and the Program Manager, the Architect, other Project Consultants, or any of the Contractors, subcontractors, or material suppliers on the Project or to make the CM responsible or liable to the Consultant or any of the Contractors.

9.2 The relationship of the CM to the Board shall be that of an independent contractor, and the CM shall have no authority to bind the Board in any way with third parties without the prior written consent of the Board. It is further understood that this Agreement is intended to secure the services of the CM because of its particular ability and experience and that this Agreement shall not be assigned, sublet, or transferred by the CM without the prior written consent of the Board.

#### **ARTICLE 10**

##### **Termination of Agreement**

At any time during the effective term of this Agreement, the  
Page 45 of 73

Board shall have the right, on seven (7) calendar days' written notice to the CM, to terminate the Agreement or to postpone, delay, suspend, or abandon all or any part of the Project and, in the event of such termination, postponement, delay, suspension, or abandonment, the CM shall deliver to the Board all plans, drawings, specifications, reports, and other data and records pertaining to the Project and the Board shall pay to the CM all amounts earned to the effective date of such termination. Except as expressly provided in the previous sentence, such termination, postponement, delay, suspension, or abandonment shall not give rise to any claim or cause of action against the Board for damages, extra compensation, unabsorbed overhead, or for loss of anticipated profits on Services unperformed. In the event any postponement, delay, suspension, abandonment, or termination is due to the CM's failure to properly perform its obligations hereunder, the CM shall be liable to the Board for all damages suffered by it by reason therefore and the Board shall have the right to withhold any monies due to the CM hereunder and to apply such monies toward the payment of such damages.

#### **ARTICLE 11**

##### **Diversity Plan**

11.1 The CM shall comply with Board's Diversity Plan, all applicable Federal, State and local civil rights and human rights laws with reference to equal employment opportunities in the provision of services. The CM shall undertake or continue existing programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

11.2 Prior to the execution of this Agreement, the CM shall submit an Equal Employment Opportunity ("EEO") Policy Statement (OCSD-1) to the Board's Independent Compliance Officer ("ICO"). This EEO Policy Statement shall contain, but not necessarily be limited to as a precondition to entering into a valid and binding Agreement with the Board, shall, during the performance of this Agreement, agree to the following:

- a. The CM will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and good faith efforts to employ and utilize minority group members and women in its work force on the Agreement.
- b. The CM shall state in all solicitations or

advertisements for employees that, in the performance of this Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

- c. At the request of the Board or ICO, the CM shall request each employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such agency, union or representative will affirmatively cooperate in the implementation of the CM's obligations herein.
- d. Prior to the execution of this Agreement and within ten (10) calendar days after receipt of a request therefore from the Board or ICO, the CM shall submit to the Board's ICO a staffing plan of the CM's anticipated work force to be utilized under this Agreement or, where required, information on the CM's total work force, including apprentices, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Board.
- e. The form of the staffing plan shall be supplied by the ICO.
- f. Within ten (10) calendar days after receipt of a request from the Board or ICO, the CM shall submit to the ICO a work force utilization report, in a form and manner required by the Board, of the work force actually utilized to provide the Services required by this Agreement, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Board.

#### ARTICLE 12

##### Provisions Required by Law

Each and every provision required by law to be inserted in this Agreement, including, but not limited to, the provisions set forth in Exhibit A, which is attached hereto and made a part hereof, shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein and in the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this Agreement shall forthwith be physically amended to make insertion or correction.

#### ARTICLE 13

##### General Provisions

13.2 The Board shall determine every question of fact which may arise in relation to the interpretation of this Agreement and the performance by the parties hereto of their respective obligations and responsibilities hereunder, and the decision of the Board shall be final, conclusive and binding upon the CM unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as to necessarily imply bad faith.

13.3 No action or proceeding shall lie or be maintained by the CM, or anyone claiming under or through the CM, against the Board, or any of its trustees, members, officers, agents or employees, upon any claim arising out of or based upon this Agreement or any alleged breach thereof or by reason of any act or omission of the Board, or its trustees, officers, consultants, agents and employees, unless such action or proceeding is instituted in the Supreme Court of the State of New York in and for the County of Monroe and such action or proceeding is commenced within one (1) year after the Board's final acceptance of the construction work on the Project or the termination of this Agreement, whichever shall first occur. All such actions or proceedings shall be governed by the laws of the State of New York.

13.4 Notwithstanding any claim, dispute, or legal action by a party under this Agreement, the CM shall continue to perform Services under this Agreement in a timely manner unless otherwise directed by the Board or Program Manager.

13.5 No delay or omission by the Board to exercise any right or remedy accruing to it under this Agreement or existing at law or in equity or by statute or otherwise shall be construed as a waiver of any of the provisions of this Agreement or of any such right or remedy or be construed to be a waiver of or acquiescence in the act or acts or omission or omissions to act giving rise to the accrual of such right or remedy, upon the occurrence of any subsequent event of the same or of a different nature.

13.6 If any term or provision of this Agreement or the application thereof to any person, firm or corporation or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such terms and provisions to persons, firms or corporations or circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

13.7 The term "Contractors" as used in this Agreement shall be deemed to include all Contractors who have previously or may hereafter be awarded construction contracts by the Board for the Projects.

13.8 The terms "Project Consultant" and "Consultant" as used herein shall mean the person(s) or firm(s) designated by the Board as the Consultant(s) for the Project.

13.9 The captions of Articles of this Agreement are intended for convenience and for reference purposes only and in no way define, limit, or describe the scope or intent thereof or of this Agreement or in any way affect this Agreement.

13.10 As used in this Agreement, the singular of any word or designation, whenever necessary or appropriate, shall include the plural.

13.11 This Agreement constitutes the entire Agreement between the parties hereto and supersedes all previous understandings and agreements with respect to the Project or any of the provisions hereof. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, except the proposal provided by the CM that is not contained herein shall be binding or valid, and this Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto. The Scope of Services attached as Exhibit B expands on the role and responsibilities of the CM.

#### **ARTICLE 14**

##### **Time of Performance**

The CM shall complete all work of this Agreement within allotted schedule duration from the date of the authorization to proceed by the Board.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**Rochester Joint Schools Construction Board**

By \_\_\_\_\_  
RJSCB Chair  
Thomas Richards

Witness: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

XXXXXXXXXX.

By \_\_\_\_\_  
title  
name

Witness: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Federal ID # \_\_\_\_\_

*(If Corporation affix Corporate Seal)*

Approved as to form:

Attorney for Rochester Joint School Construction Board By:

\_\_\_\_\_  
Edward Hourihan, General Counsel

Date \_\_\_\_\_

**EXHIBIT A: PROVISIONS REQUIRED TO BE INSERTED BY LAW**

The parties to the attached Agreement (also referred to as “the Contract” or “this Contract” and the CM being referred to in this Exhibit A as the “Contractor”) agree to be bound by the following clauses which are hereby made a part of the Contract:

1. **Executory Clause.** In accordance with Section 376 of the Education Law, the Board shall have no liability under this Contract to the Contractor or to anyone else beyond funds appropriated and available for this Contract.
2. **Non-Assignment Clause.** In accordance with Section 138 of the State Finance Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Board and any attempts to assign the Contract without the Board’s written consent are null and void. The Contractor may, however, assign its right to receive payment without the Board’s prior written consent unless this Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **Workers’ Compensation Benefits.** In accordance with Section 142 of the State Finance Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefits of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.
4. **Non-Discrimination Requirements.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work, or for the manufacture, sale, or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239, as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.
5. **Wage and Hours Provisions.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
6. **Non-Collusive Bidding Requirement.** In accordance with Section 139-d of the State Finance Law, if this Contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Board a non-collusive bidding certification on the Contractor’s behalf.
7. **International Boycott Prohibition.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Contract exceeds \$5,000, the Contractor agrees, as a material condition of this Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract’s execution, such Contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

8. **Records.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the Board, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the state, for the term specified above for the purposes of inspection, auditing and copying. The Board shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Board official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Board's right to discovery in any pending or future litigation.

9. **Identifying Information and Privacy Notification.**

(a) Federal Employer Identification Number and/or Federal Social Security Number.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Board must include the payee's identification number, i.e. the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification.

- (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property and the authority to maintain such information is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Board and the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
- (2) The personal information is requested by the Board. The information is maintained in the New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, 110 State Street, Albany, New York 12207.

10. **Conflicting Terms.** In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A shall control.

11. **Governing Law.** This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

12. **Prompt Payment Requirements.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law. For the purposes of Article XI-A of the State Finance Law, the Rochester Joint School Board's office, whose mailing address is 70 Carlson Road, Rochester, NY 14610, is the Board's designated payment office.

13. **No Arbitration.** Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York, County of Monroe.

14. **The Omnibus Procurement Act of 1992**, as amended, requires that, by signing this Proposal, the bidder certifies that whenever its Total Bid amount is greater than \$1,000,000.00: (a) it has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this Project, and has retained the documentation of these efforts to be provided upon request to the State; (b) it has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) it agrees to make reasonable effort, to provide notification to New York State residents of employment opportunities on this Project through listing any such positions with the Community Services Division of the New

York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The bidder further agrees to document these efforts and to provide said documentation to the State and the Fund upon request; and (d) it acknowledges notice that New York State may seek to obtain offset credits from foreign countries as a result of this Contract and agrees to cooperate with the State in these efforts. Documented efforts by a successful bidder shall consist of and be limited to showing that such bidder has:

- (a) Solicited bids, in a timely and adequate manner, from New York State Business Enterprises including certified Minority and Women's Business Enterprises, or
- (b) Contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises, or
- (c) Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or
- (d) Participated in bidder outreach conferences.
- (e) If the bidder determines that New York State Business Enterprises are not available to participate on the Contract as subcontractors or suppliers, the bidder shall provide a statement indicating the method by which such determination was made.
- (f) If the bidder does not intend to use subcontractors on the Contract, the bidder shall provide a statement verifying such intent.

15. **Chapter 807 of the Laws of New York of 1992**, requires the Contractor and any individual or legal entity in which the Contractor holds a 10 percent or greater ownership interest and any individual or legal entity that holds a 10 percent or greater ownership interest in the Contractor's firm either (a) have no business operations in Northern Ireland or, if they do have such an interest, (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the **MacBride Fair Employment Principles** and shall permit independent monitoring of their compliance with such.
16. The Contractor certifies that all information provided to the Board with respect to **State Finance Law Section 139-k** is complete, true and accurate.
17. The Board reserves the right to immediately terminate this contract in the event that it is found that the certification filed by the Contractor in accordance with **State Finance Law Section 139-k** was intentionally false or intentionally incomplete.



## EXHIBIT B: SCOPE OF SERVICES

The Rochester Joint Schools Construction Board ("Board" or "RJSCB") has employed the services of a Program Manager ("PM") to oversee the development and implementation of the Rochester Schools Modernization Program ("RSMP"). In addition, the PM administers the design and construction-related agreements entered into by the RJSCB. The Construction Manager ("CM") shall recognize and report to the PM. The CM shall provide the following services as part of its Basic Services as set forth in the Construction Management Agreement annexed hereto [hereinafter, "the Contract" or "this Contract"], which are hereby made a part of the Contract.

### **I. GENERAL**

#### **A. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN**

The RJSCB recognizes the need to take action to ensure that minority and women-owned business enterprises, disadvantaged business enterprises, and minority and women employees and principals are given the opportunity to participate in the performance of contracts of the RJSCB. This opportunity for full participation in our free enterprise system by persons traditionally, socially and economically disadvantaged is essential to obtain social and economic equality. Accordingly, the RJSCB fosters and promotes the participation of such individuals and business firms in contracts with the RJSCB.

Each firm for this undertaking should acknowledge its understanding and support of the social policy herein stated and will be expected to demonstrate its efforts to solicit the participation of such individuals as employees, and/or partners as Firms teaming for this Project. In this regard, the RJSCB expects the CM to undertake or continue successful diverse teaming relationships to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

The RJSCB is committed to providing Minorities and Women and Minority-Owned Businesses, and Disadvantaged Businesses with equal opportunities in the performance of all contracts. In order to achieve the Business Development goals of the RSMP, each professional service firm or other business providing goods or services with a RJSCB contract of \$25,000 or more shall strive to and use best efforts to meet the above stated commitment of the RJSCB regarding the participation and use of Women, Minorities, Women and Minority Owned Enterprises, Disadvantaged, and Small Business Enterprises. Those supplying construction services of \$100,000 or more shall be required to do the same.

One of the principal goals of the RJSCB is to support workforce development and the creation of diversification opportunities. As such, all professional service firms and/or other business entities providing goods or services related to a RJSCB Project, and in the amount of \$25,000 or more (and \$100,000 or more for construction services), shall agree to comply with the following workforce diversity goals:

- Minority Workforce: 23% of project personnel, including skilled trades people, trainees, journeymen, apprentices and supervisory staff
- Female Workforce: 7% of project personnel, including skilled trades people, trainees, journeymen, apprentices and supervisory staff

The RJSCB is also committed to the meaningful participation of qualified Minority-Owned, Women-Owned, Disadvantaged Business Enterprises and Small Business Enterprises throughout the RSMP. In order to meet this commitment, suppliers, professional service firms and/or other business entities providing goods or services under a RJSCB contract of \$25,000 or more (and \$100,000 or more for construction services), shall engage qualified Minority-owned, Women-owned, Disadvantaged Business entities, and Small Business entities to assist in the completion of all work under any such contract. With each sub-contract of \$25,000 or more (and \$100,000 or more for construction services), the selected contractor, supplier, professional service firm and/or other business entity shall provide for the following:

- Minority-Owned Business Enterprises shall participate in a minimum of 18% of each Contract, or purchase order
- Women-Owned Business Enterprises shall participate in a minimum of 12% of each Contract, or purchase order
- Disadvantaged Business Enterprises shall participate in a minimum of 2% of each Contract, or purchase order
- Small Business Enterprises shall participate in a minimum of 2% of each Contract, or purchase order

The RJSCB reserves the right to revise, adjust and/or modify the above goals for future contracts awarded as Phase 3 of the RSMP evolves, new information/data, or circumstances arise.

## B. PROJECT MANAGEMENT SOFTWARE

Project Management Software will be Project Sight for change orders, meeting minutes, Submittals, RFIs, and items noted in the following list, as a minimum. Change Order templates to be supplied by Program Manager. Submittal Exchange shall be purchased through an Allowance to the General Trades Contractor's Contract but coordination is done by the CM with assistance from the PM. This coordination is needed and is included regardless of the software selected. Schedules of construction activities will be developed by the CM using Primavera P6, OPC, using the milestones shown in Section C 3.2.3, and in accordance with the WBS breakdown as shown in Sample C.2. All information provided to the CM from the A/E Team, and Trade Contractors is to be actively managed in real time to assure overall Project coordination. Accordingly, all 'raw data,' schedule information, deliverables, reports, submittals, etc., shall be formatted for PM approval, and fully integrated in a Primavera database, accessible at any time by Savin as the Program Manager. The CM shall become fluent in the use of the Project Sight and Primavera platforms, specifically Project Management and P6 scheduling software (see Section C – Scheduling General Framework Requirements).

### CONTRACT MANAGEMENT MODULES FOR USE BY THE CM ON THE PROJECT

WORK ITEM/ DOCUMENTATION DESCRIPTION	PLANNED USE	SOFTWARE
<b>Project information</b>		
Schedule	Yes	P6, OPC
Contacts	Yes	Project Sight
Issues	Yes	Project Sight
<b>Communications</b>		
Transmittals	Yes	Project Sight
Request for Information	Yes	Project Sight
Notices	Yes	Project Sight
Non-Compliance Notices	Yes	Project Sight
Letters	Yes	Project Sight
Correspondence Sent	Yes	Project Sight
Correspondence Received	Yes	Project Sight
Meeting Minutes	Yes	Project Sight
Telephone Records	Yes	Project Sight
Safety	Yes	Project Sight

**Contract Information**

Contracts – Budgeted	Yes	Project Sight
Contracts – Committed	Yes	Project Sight
Purchase Orders	Yes	Project Sight
Payment Requisitions	Yes	Project Sight
Change Management	Yes	EXCEL/PDF and Project Sight
Potential Change Orders (PCO)	No	Project Sight
Change Orders	Yes	Project Sight

Procurement	Optional	TBD
-------------	----------	-----

**Logs and Documents**

Drawing Sets	Yes	Project Sight
Drawings and specs.	Yes	Project Sight
RFIs	Yes	Project Sight
RFI Logs and status	Yes	Project Sight
Submittal Packages	Yes	Project Sight
Submittals	Yes	Project Sight
Material Deliveries	Yes	Project Sight
Daily Reports	Yes	Project Sight
Insurance	Yes	Project Sight - Set alerts for expiration
Punch Lists	Yes	Project Sight

**NOTE:** As templates are produced by the Program Manager, they will be provided to the CM for use.

**C. SCHEDULING GENERAL FRAMEWORK REQUIREMENTS****Rochester Schools Modernization Program: Schedule Guidance Document Contents****1. Purpose**

The RJSCB is committed to delivering quality, cost-effective Projects to the RCSD in a timely manner. One of the most important tools the RJSCB uses to achieve this goal is an accurate, updated, current Master Schedule for its Projects. Accurate and updated scheduling allows the RJSCB to effectively track and deliver its Projects in a reliable manner.

The RJSCB's goal is to take every reasonable step to ensure that Projects start and finish on time and within budget. Integrated schedules are the fundamental building blocks to planning and executing Projects efficiently. These schedules are best prepared by those responsible for expertly managing the Construction Work, which will be a prime responsibility of the CM.

This information that follows is designed to guide the CM, Contractors and Consultants in preparing and submitting acceptable 'raw data' for the CM to integrate, coordinate and maintain for an accurate and reliable Master Schedule.

**2. Applicability and Basic Requirements**

The CM, Contractors and consultants are responsible for preparing schedules as defined herein and as required in their contracts and agreements.

There are five (5) basic elements to schedule submittals. (See Sample C.1). The first four items below should eventually appear on one schedule, updated monthly:

1. **Pre-Construction Baseline.** Initial schedule submitted before work begins that will serve as the baseline for measuring progress and departures from the schedule. This information is shown in the schedule as Baseline: Start/Finish.
2. **Pre-Construction Progress.** Monthly submittal of a progress schedule documenting progress on the project and any changes anticipated. This information is shown in the Schedule as Actual: Start/Finish columns.
3. **Construction Baseline.**
4. **Construction Progress.**
5. **Schedule Narrative.** Concise narrative that highlights changes in the schedule, expected delays, key schedule issues, etc., along with a cash flow graph or summary table. Also, schedule impacts should be documented using the "Notes" attribute in P6.

The **Schedule Narrative**, in MS Word format, is submitted to the RJSCB on a monthly basis at minimum, or as necessitated by the Progress Schedule course of events. The Schedules required herein will be prepared by the CM using the following software in order to be compatible with the Phase 3 reporting/monitoring needs ( unless prior permission to use another software is requested and granted by the RJSCB): **Primavera P6** (OPC).

### 3. Baseline Schedule

#### 3.1 General

The file naming convention is demonstrated in the examples below.

##### Baseline Example:

SCHOOL NAME – 3X – CM\_Schedule\_Baseline\_2024May30.xer

##### Monthly Update Example:

SCHOOL NAME – 3X – CM\_Schedule\_Update\_2024May30.xer

##### Monthly Schedule Narrative:

SCHOOL NAME – 3X – CM\_Schedule\_Narrative\_2024May30.docx

Please note: The X next to the 3s above represents the sub-phase of Phase 3 the firm is working on, i.e. a, b, c, d.

The approved Construction Baseline-Build Schedule is made a part of the Agreement by reference. The CM has the sole responsibility to correct any latent defects in its Baseline Schedule and perform to the subsequently revised Construction Schedule.

The CM shall use the Construction Schedule to coordinate and manage the Work (including the activities of the A/E Team, Prime Contractors, long lead items, pro-active notifications, recovery measures, etc.).

The CM shall, at all times, maintain a copy of the approved Baseline Schedule, as well as each update to the approved Construction Baseline-Build Schedule for review at any time by the PM.

#### 3.2 Schedule Work Breakdown Structure and Activities

##### 3.2.1 Work Breakdown Schedule (WBS)

The RSMP Work Breakdown Structure (WBS) is designed to meet the basic reporting needs for the RSMP financial and tracking systems. The CM's and/or Prime Contractors' Project-specific WBS should work within this basic framework and provide additional detail to efficiently deliver and track the Work.

WBS elements that are clearly not a part of the Scope of Services need not be included in the Schedule. Note that as many subtasks and activities as desired may be included underneath the tiered WBS elements.

Refer to Sample C.2 for use in developing a WBS numbering scheme that matches the Master Program Schedule that is maintained by the Program Manager.

### 3.2.2 Activities

Activities are the discrete elements of Work that make up the Schedule. They should be organized underneath the umbrella of the WBS as described in Sample C.2. The following information will be provided for each activity:

#### 3.2.2.1 Activity ID Number

- Use a four-digit number left justified in the activity I.D. field.

#### 3.2.2.2 Activity Description

- Activity descriptions should adequately describe the activity and in some cases the extent of the activity. Examples of acceptable descriptions might include “install gas pipe between column A and column B.”

#### 3.2.2.3 Activity Durations

- Applies to A/E Team, CM and Prime Contractors, as well as the time allowances for necessary reviews and approvals.
- The activity duration will be based upon the physical amount of work that is to be performed for the stated activity and is limited to 20 working days (approximately a calendar month). If work is to exceed a calendar month, then break the Work down into additional activities with a duration not to exceed 20 work days.

#### 3.2.2.4 Activity Start and Finish Dates

- Activity Start and Finish Dates will only be accepted if calculated by the software.
- Actual Activity Start and Finish Dates should not be assigned as a baseline. However, they must accurately be assigned in the Progress Schedule updates (see following Section 4 – Progress Schedules).

#### 3.2.2.5 Activity Dependencies

All activities will be logically tied with a predecessor and a successor. The only exception to this rule will be for the Start and Finish Milestones.

### 3.2.3 Milestone Activities

The following Milestone Activities (i.e., important events on a Project that mark critical points in time) are of particular interest to the Program Manager and should be reflected in the Pre-Construction Baseline and Progress Schedules for all Phases of Work, or as the CM determines to be applicable.

#### 3.2.3.1 Pre-Construction Schedule (Engineering Design)

- Notice to Proceed
- Schematic Design & Cost Estimate
- RJSCB Approval
- Design Development
- Construction Documents & Cost Estimate
- SED Approval & Document Checking (QA/QC)
- RJSCB Approval
- Advertising & Bidding
- Bidder Qualifications & Award

### 3.2.3.2 Construction Schedule

- Construction Notice-to-Proceed
- Draft Construction Baseline and Progress Schedule Submittal
- Preparation and submission of shop drawings, submittals, and any required resubmittals (as applicable)
- Prime Contractor Mobilization
- Fabrication and Delivery (materials and equipment as applicable)
- High level rolled-up activities with durations
- Punch List
- Substantial Completion & Occupancy
- Construction Complete
- Project Close-Out
- Project Warranty and Inspection Sign-Offs

## 3.3 Baseline Schedule Development

The CM shall designate an authorized representative responsible for developing and updating the Schedule, and preparing requested and monthly reports. It is required that this designated qualified expert develop the Baseline Schedule.

The CM's initial Schedule Submittal shall contain NO progress and represent the planned Work for the duration of the Project. Once approved by the PM, this Schedule will become the Baseline against which all future variance analysis will be performed.

The use of activity external constraint dates and lags on relationships is discouraged unless specified or approved by the PM. An example of an external constraint date is "concrete placement will begin no later than January 1." The reason for this requirement is that it creates an artificial (rather than calculated) critical path.

The Baseline Schedule must anticipate submittal processes, approvals, fabrications, and delivery lead times, construction and access constraints, as well as the coordination of Construction with RCSD operations.

### 3.3.1 Safety Requirements

Schedule performance can never take precedence over safety. All Project Master Schedules shall allow Work to be performed in a safe manner. It shall not be acceptable for any Contractor(s) to reduce safety, or worker protection, in order to shorten the Schedule, recover lost time or accelerate the Work.

### 3.3.2 Inclement Weather

Refer to climatology data for anticipating Work that can be affected by inclement weather. Historical rain days can be reviewed from the following web site: [www.intellicast.com/local/history.aspx?location=USNY1232](http://www.intellicast.com/local/history.aspx?location=USNY1232).

## 3.4 Changes to Approved Baseline Schedules (Pre-Construction and Construction)

The approved Baseline Schedule is the basis for measuring progress on the Project (see Section 4 – Progress Schedules). The procurement process to select the A/E Team and the CM was predicated on the same RFP Project Schedule Milestones. As such, the Pre-Construction Baseline Schedule will entail collaboration toward mutually acceptable Milestones without extending the Final Bid Date. The CM has the primary responsibility to establish and drive the Baseline Schedule to be incorporated in the Bid Documents for the Construction Phase and reconcile with the respective Prime Contractors awarded the Work, again, without extending the approved Milestone for Occupancy of the School Project. In conclusion, the CM shall effectively develop, monitor, and manage each Baseline Schedule considering the realistic delivery of the Work Tasks and likely constraints.

Changes to the approved Baseline Schedule may only be considered under limited circumstances. If warranted, any changes will require PRIOR approval by the PM. Project circumstances that could be

considered by the PM as potentially warranting such re-baselining include the following:

- Significant modifications to the CM Agreement, and/or Trade Contracts affecting the Scope of Work to be performed and the associated Schedule.
- RJSCB directs significant changes in Schedule or Scope to meet RSCD needs.
- Significant delays by acts of God.

#### **4. Progress Schedules (Pre-Construction and Construction)**

As described in Section 3, the Baseline Schedule shall be used to coordinate and monitor the Work. The CM must at all times maintain a copy of the approved Baseline Schedule, as well as each revision to the approved Pre-Construction and Construction Schedules for review at any time by the PM.

The Progress Schedule is a working copy of the approved Baseline Schedule. The CM shall update the Baseline Schedule at least monthly. If progress lags, the Progress Schedule will be updated as often as the CM deems necessary between the regular monthly updates. Monthly schedule updates and narratives are a CM deliverable requisite for approval and processing of CM's own monthly progress pay requisition on the Project.

Note, at minimum, the Progress Schedule shall be updated (data date) on the same day of each month as agreed with the PM. Note: All "Float Time" is for the exclusive use of the RJSCB.

##### **4.1. Progress Updates**

The CM shall show on the Progress Schedule at minimum the following updates:

- The actual dates that activities start
- The actual dates that activities finish
- The remaining duration of activities in progress
- The percent complete of all activities on the schedule (0 percent to 100 percent complete).

##### **4.2 Schedule Narratives**

The Progress Schedule will be accompanied monthly by a concise Schedule Narrative that explains the submitted schedule. The purpose of the schedule narrative is to:

- Speed review time
- Explain variances from baseline on critical path activities
- Explain to the PM logic changes and potential Schedule conflicts related to dependencies
- Provide a concise summary of the projected cash flow for the Project based on the updated Progress Schedule
- Document interventions to recover time or delays, as well as recommendation on 'action' needed

If the Project is falling behind, and/or there are significant conflicts and obstacles to meeting the approved Master Schedule, then the Schedule Narrative shall describe in detail these issues and what steps will be necessary for the Project to recover. Sharing this information ensures that the entire Project Team will be aware of the issues and have ample opportunity to assist where applicable. The cash flow graphs/tables (both planned and actual) summarize the past and future projected cost, by month, of delivering the work.

#### **5. Submittal of Schedules**

##### **5.1 Submittal File Formats**

Every time that a Report is submitted (baseline and monthly progress) the following file formats are required (actual schedule files will be housed in the RJSCB Cloud database and accessible to the PM at all times).

###### **5.1.1 Baseline Schedule**

Submit the Tasks/Gantt Chart Schedule in PDF consisting of the following columns:

- Activity ID
- Activity Name



- Original Duration
- Start Date
- Finish Date
- Float
- Cost
- Show all relationships
- Manpower

### 5.1.2 Progress Schedule

Submit the Tasks/Gantt Chart Schedule in PDF consisting of the following columns:

- Activity ID
- Activity Name
- Physical Percent Complete
- Original Duration & Remaining duration
- Start Date
- Finish Date
- Total Float
- Remaining Total Cost

### 5.1.3 Schedule Narrative

Submit the Schedule Narrative in .doc format with each Progress Schedule update.

### 5.1.4 Native Schedule File Formats

- When submission of a file is necessary, submit the Schedule in Primavera 6, latest version as an .xer file.

## 5.2 Monthly Progress Schedule Submittal Requirements

### 5.2.1 General Submittal Requirements

All Schedules are to be submitted in PDF format. The Savin Team, as the Program Manager, must be allowed three (3) workdays to review the Draft Progress Schedule for general accuracy before submission to the RJSCB.

### 5.2.2 Baseline Schedules for Professional Service Contracts – not required (optional)

### 5.2.3 Monthly Progress Updates for Professional Service Contracts – not required (optional)

### 5.2.4 Baseline Schedules for Construction Trade Contracts

For the Project, the integrated Draft Baseline Schedule for Construction Trade Contracts shall be submitted to the PM. Draft Project Baseline Schedules must be submitted within twenty (20) calendar days (approximately one (1) month, or as specified in the Contract Documents) after the formal Notice to Proceed from the RJSCB. The final, approved Construction Baseline Build Schedule shall be completed within thirty-five (35) days of the Notice to Proceed (or as agreed in the Bid Award).

### 5.2.5 Monthly Progress Updates for Construction Trade Contracts

Each Construction Trade Contractor will be required to submit its 'raw scheduling data' in a form agreed to by the PM and CM, for Draft Progress Schedule updates no later than the 20th day of each month. The CM shall produce a unified, reconciled and integrated Draft Progress Schedule incorporating each Trade Contractor's 'raw scheduling data' no later than the 23rd of each month to allow reasonable review and comment by the

PM regarding the CM's Draft update.

For general reference, the following sample documents are provided to further clarify the scheduling aspects of required as part of the CM's Basic Services:

Sample C.1 – Basic Schedule Elements

Sample C.2 – Typical Work Breakdown Structure

Sample C.3 – Typical Consultant Schedule

\*Note: The application to construction Trade Contractors would be similar.

#### SAMPLE C1: BASIC SCHEDULE ELEMENTS

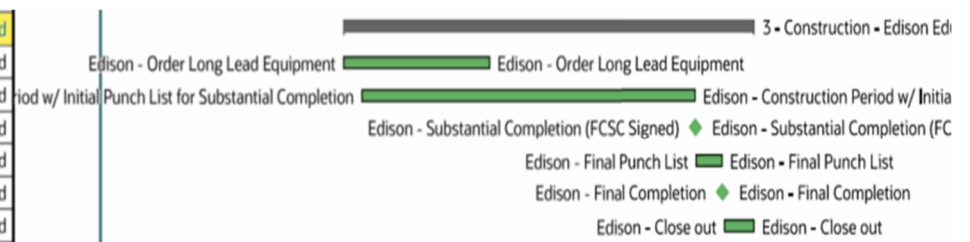
RSMP Phase 3 Scheduling Framework Requirements					
Schedule Element	Produced by:	Update Frequency	Primary Update	Update info from:	Key Elements
Pre-construction Baseline	CM	Only at major scope-schedule	N/A	RJSCB	Pre-Construction Sub-Phases, all approval dates from AHJs, Town Hall Meetings, BACs, Key bid/award dates, key decision dates.
Pre-construction Progress	CM	Monthly	PM then CM	RJSCB, A/E, PM	Record progress against plan, recovery plans if necessary. Identify impact from scope and/or schedule changes or missed decision dates.
Construction Baseline - Bidding	CM	N/A	N/A	PM, A/E, RJSCB	prescribed start and finish dates. Show Phased Construction if required. Show work required beyond standard single shift per work day. Show duration for rolled up activities. Show anticipated Submittal processing and procurement information.
Construction Baseline - Build	CM	Once	N/A	Primes, PM, CM	Revise logic of Construction Baseline-Bidding Schedule with the sole goal to improve outcome for all parties. Add additional levels to the WBS to show in great detail how the Project is to be built. Fully integrate prioritized submittal process, approvals and procurement activities to support the critical path.
Construction Progress	CM	Monthly	CM	Primes, PM, CM	Record actual progress against the Baseline-Build Schedule. Identify need for and produce recovery schedules as needed to assure key dates are met.

**SAMPLE C2: PHASE 3C SCHEDULE WBS FORMAT (DATES ARE FOR EXAMPLE ONLY)**

WBS Code	WBS Name	Start	Finish
Master-4	Phase 3C Schools	2025-Mar-11	2030-Jun-14
Master-4.0070	Preliminary Schedule	2025-Mar-11	2030-Jun-14
<b>Master-4.0070.1</b>	<b>East Campus</b>	2025-Mar-11	2030-Jun-14
Master-4.0070.1.1	Pre-Construction Phase	2026-Jul-02	2027-Feb-09
Master-4.0070.1.1.1	Predesign	2025-Mar-11	2025-Aug-13
Master-4.0070.1.1.2	Design	2025-Mar-11	2026-Oct-30
Master-4.0070.1.1.3	Interdisciplinary Document Coordination (IDC) Review	2026-Jul-29	2026-Aug-11
Master-4.0070.1.1.4	SED Approval Process (Final Step)	2026-Sep-11	2026-Sep-25
Master-4.0070.1.1.5	Prime Contract Bid & Award	2026-Sep-25	2026-Nov-10
Master-4.0070.1.2	Construction	2027-Feb-09	2029-Dec-12
Master-4.0070.1.3	Closeout	2030-Mar-11	2030-Jun-14

**SAMPLE C3: PRIMAVERA P6 SCHEDULE (DATES ARE FOR EXAMPLE ONLY)**

3 - Construction - Edison Educational Campus		897d	897d	16-Dec-26	14-Jun-30	249d
Edison - Order Long Lead Equipment	Phs3-3230	320d	320d	16-Dec-26	15-Mar-28	616d
Edison - Construction Period w/ Initial Punch List for Subst...	Phs3-3380	730d	730d	09-Feb-27	12-Dec-29	249d
Edison - Substantial Completion (FCSC Signed)	Phs3-3680	0d	0d		12-Dec-29	249d
Edison - Final Punch List	Phs3-3400	60d	60d	13-Dec-29	08-Mar-30	249d
Edison - Final Completion	Phs3-3410	0d	0d		08-Mar-30	249d
Edison - Close out	Phs3-3990	70d	70d	11-Mar-30	14-Jun-30	249d



## **I. PRE-CONSTRUCTION PHASE**

### **A. PROGRAM VERIFICATION AND SCHEMATIC DESIGN PHASE:**

The CM shall provide, at minimum, the following Services in support of the Schematic Design Phase:

1. The CM shall make or assist in presentations regarding the Project to the PM, the RJSCB, representatives of the Rochester City School District ("RCSD"), Building Advisory Committee ("BAC") and a minimum of 3 presentations during design to the public as part of Basic Services.
2. Provide an independent Construction Cost Estimates for each of the Program Verification and the Schematic Design documents, with regard to conformance with the RJSCB Program, Budget and Schedule. The CM's assessments of the Project shall be in written form acceptable to the PM and with supporting detail. The CM shall include appropriate contingencies for design, bidding or negotiating price escalation, and market conditions in the estimates of the Cost of the Work. This effort may require analysis of multiple options. Reconcile the CM estimate with the A/E estimate.
3. Develop the Construction Cost Estimate framework or model based upon both the Program Verification and the Schematic Design ("SD") in increasing detail and refinement, for all divisions and sections, commensurate with the Design Documents. The Cost Estimate model will include work understood to be necessary but not yet shown on drawings as a further step of transitioning beyond the A/E's Schematic Design Construction Cost Estimate.
4. Provide written value engineering report(s) as required to hold the cost of construction within the fixed limit of the budget as necessary to reconcile the Scope and Construction Cost Estimate from the A/E's Schematic Design Submissions.
5. The reconciled estimate at each stage must be within 95% of the Maximum Cost allowance prior to submission of the package to SED. If the cost is over that, the scope must be value engineered and potentially reduced or redesigned to meet those requirements of the RSMP Enabling Legislation (the "Legislation"). This is part of basic services.
6. Develop and periodically update, as requested by the PM or Board, a design schedule, bid schedule, and preliminary Critical Path Method (CPM) construction schedule in Primavera P6 (see topic C and Sample C3 above). The CM shall obtain the Architect's and PM's input, for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the CM's services, Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.
7. Participate in Project-related meetings and presentations as requested.
8. As it affects and / or impacts this Project's scope of work, provide coordination with the RJSCB's Move Management stage of work for the orderly strategy to move out to Swing Space and the return from Swing Space of building occupants, equipment, supplies, materials, furniture, etc.

### **B. DESIGN DEVELOPMENT:**

The Design Development has been superseded by moving straight from Schematics into the different phases of Construction Documents due to the SED reviews required by the Legislation:

### **C. CONSTRUCTION DOCUMENTS:**

The CM shall provide, at minimum and, in addition to the above, the following services in support of the Construction Documents Phase:

1. Using the Construction Cost Estimate developed at the Schematic Development level, develop a series of Construction Cost Estimates or models based upon the 25%, 50%, 75% then 90% Construction Documents ("CD") in increasing detail and refinement, for all divisions and sections, commensurate with the Design Documents. The Cost Estimate model will include work understood to be necessary but not yet shown on drawings as a further step of transitioning beyond the Schematic Design Construction Cost Estimate. There will also be an update of the cost estimate once the SED comments and IDC review items are identified from the 90% complete set in order to update the 90% estimate to a Final CD estimate that would represent the final documents to be used for bidding.
2. Provide written reports (including detailed Construction Cost Estimates) to the PM and A/E team within 15 calendar days of receipt of the 25%, 50%, 75% then 90% complete Construction Documents to be submitted to the State Education Department for approval at each stage of the approval process required.
  - i. The reconciled estimate at each stage must be within 95% of the Maximum Cost allowance prior to submission of the package to SED. If the cost is over that, the scope must be value engineered and potentially

- reduced to meet those requirements of the Legislation. This is part of basic services.
- ii. The measure of the CM's acceptable performance of the final Cost Estimating Services will be the total of the lowest responsible Bids that could be Awarded for the Construction of the Final Construction Documents as approved by the RJSCB being within five (5) percent less, or no more than 5% above the CM's Final Estimate submitted to the RJSCB for approval to Bid.
  - iii. The CM will be responsible to the RJSCB for any and all damages resulting from the CM's material or significant omissions or errors in its final Construction Document (CD) estimate or caused by the CM's negligence in the preparation of the final CD estimate.
3. The CM shall review and finalize all Sections of the front-end template provided by the PM to the CM; including the general conditions prior to their inclusion into bid documents, for clarity and completeness from the viewpoint of prospective bidders, to minimize ambiguities, mistakes, omissions, and conflicts thereon, and to assure uniformity of understanding of Bid Documents by the bidders. The front-end template, including but not limited to the general conditions, must be approved by the Board's general counsel and the PM prior to inclusion in the Bid Documents.
  4. The CM shall prepare the scope, for bidding in the General Trades Bid, for the provisioning of a project site trailer, utility connections, and necessary furnishings, telephones, copiers, desks, chairs, etc. to allow for the operation of the CM's on-site office functions.
  5. Provide a final draft of Special Conditions specific to the project. Review the Contract Documents to verify that the requirements of the Part 155 of the Regulations of the Commissioner of Education are included in the Contract Documents.
  6. Concurrent with the SED submissions, the CM will provide a written Constructability Review to the Design Team and PM on constructability issues observed in the Construction Documents drawings. (See below – Constructability Review below). In addition, the CM shall be responsible for reviewing all Design Documents following the Interdisciplinary Document Coordination ("IDC") Review to ensure incorporation of changes and comments identified in the IDC Report and submit an acknowledgement statement when complete.
  7. Develop a comprehensive scope of work for inclusion in the Bid Documents for each prime contract, assigning all items of work to a specific Contract to provide that the Work of the Contractors is coordinated, all requirements for the Project are assigned to the appropriate Contract, the likelihood of jurisdictional disputes is minimized, and proper coordination is provided for phased construction. Provide a bidding schedule and construction schedule for inclusion in the Bid Documents in a form acceptable to the PM (see Sample C1 for schedule requirements).
  8. Collaborate with the Architect to produce final and complete Bid Documents. The CM shall assist the Owner and the PM in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Prime Contractors. The CM shall verify that the Board has paid applicable fees and assessments. The CM shall assist the Board, the PM, and the Architect, in connection with the filing of documents required for the approvals of governmental authorities having jurisdiction over the Project.
  9. Participate in project related meetings and presentations as requested.

#### **D. CONSTRUCTABILITY REVIEW ("CR")**

One of the primary goals of the Project team during the Pre-Construction effort is to produce plans and specifications of the highest quality and utmost clarity. Doing so accurately and completely communicates the Project's requirements and results in the most accurate Contractor bids. The CR is the last opportunity to create the highest quality set of Project documents by identifying and correcting errors, omissions and ambiguities. A good effort made here can eliminate the unnecessary expenditure of countless hours of RFI /Answer processing, change document negotiations / processing, and delay.

As part of the CM's CR, the CM will, as necessary, confer and coordinate with A/E Team as to form of reporting log for maximum ease of tracking and status reporting of items by all parties.

The CM should begin preparing the CR as soon as practical in the pre-Construction phase and revise / update up through the 100% CDs. Log and organize any error, omission or ambiguous item. The CR should be reviewed with the Architect and RSMP PM in an on-going basis, especially if addressing a concern early in the process will prevent having to re-work the design. Submit the CR log to Architect to address concerns and, simultaneously, to PM for record. When notified by the Architect that all logged items have been resolved, the CM will perform Back Checks to verify all logged items have been, in the CM's opinion, satisfactorily resolved. The CM will notify Architect and PM in writing when the CR is complete and the documents are, in the CM's opinion, of a quality that is ready to bid.

The 90-percent Construction Drawings and Specifications package will be sent by the RSMP PM to an independent consultant for an Interdisciplinary Document Compliance ("IDC") Review. The IDC review will determine if there are apparent coordination issues with the documents that need to be corrected before issuing the documents to contractors for bidding. The CM will be

required to review the IDC review list separately and independently from developing the CR, and will not use the IDC as a basis for the CR. However, items identified in the IDC review that may affect constructability, over-and-above what is identified in the CR, will be accounted for by the CM in its review for constructability.

As soon as possible after being hired, and preferably concurrent with the CM's detailed Schematic Design Estimate, but no later than the completion of the 25% CD phase, the CM will submit to the PM its written Preliminary Phasing and Site Logistical Plans as deliverables for review and approval. The CM will revise it based on feedback from the PM and other stakeholders until a satisfactory strategy is achieved.

## **E. BIDDING AND AWARD:**

The CM shall provide, at minimum, and, in addition to the above, the following services in support of the Bidding and Award:

1. Manage reproduction and distribution of final Bid Documents. Maintain a log of distribution and retrieval of Bid Documents, as well as the amounts of deposits, if any, received from and/or returned to prospective bidders. Upon completion of the bidding process, request the return of all Bid Documents issued to bidders. (Note: coordinate with the assigned vendor for printing.) A discussion on the issuance of digital documents will be a part of the Bidding strategy and plan.
2. Solicit contractor interest and participation in bidding. Provide a detailed daily log and summary report to document outreach efforts to prospective bidders. These reports shall be submitted with the CM's monthly invoices during that time period.
3. In conjunction with the Architect, schedule and conduct Pre-Bid and site walk-through meetings with prospective bidders. Provide meeting minutes within 3 business days to PM and A/E along with attaching to the CM's monthly invoices submitted during the bidding period.
4. Collaborate with the A/E Team in receiving, recording, routing all pre-bid inquiries and the issuance of Addenda. Ensure that the Bidding process is conducted in accordance with all applicable laws, statutes, codes, rules and regulations in effect at the time of Bidding. Maintain a log and submit a summary report with the CM's monthly invoices during that time period.
5. Participate in the Bid opening to ensure that the Bidding process is conducted in accordance with all applicable laws, statutes, codes, rules and regulations in effect at the time of Bidding.
6. Identify irregularities in the bid responses and bring them to the attention of the PM and RJSCB Procurement Officer. If the CM determines that the lowest bidder is not responsive and or not responsible, the CM shall furnish to the PM the reasons substantiating such a determination in writing. Upon the PM's approval, the CM shall then review the next lowest bidder until the lowest responsive and responsible bidder is identified.
7. Schedule and conduct scope review of apparent low bidders. Provide a written report of any issues affecting the Project, including without limitation, implementation, scope, schedule, and quality.
8. Collaborate with the Board's Independent Compliance Officer in reviewing and evaluating the MWBE Utilization Plan submissions (OCSD-1 and OCSD-4 Forms) by the bidders.
9. Make a written Recommendation of Award to the PM for each Prime Contract.
10. In conjunction with the A/E Team, manage and enforce the Substitutions process as set forth in the Specifications.

## **III. CONSTRUCTION PHASE:**

### **A. CONSTRUCTION ADMINISTRATION:**

The scope of work shall include Construction Administration Services required to manage the performance of Contractor(s) whose agreements are held by the RJSCB for the Construction Phase of the Project – potentially including food service equipment and FF&E, or any other Consultant Agreements held by the Board. Qualified personnel will be required for the Construction Administration Phase, which at minimum will include the following services:

1. Provide Construction Phase Services commencing with the awarding of any Contract for Construction until the A/E Team issues the final Certification for Payment, and the Close-Out Record Documents are accepted by the RJSCB.
2. After Contract award, organize and conduct Kick-off meeting(s) with the Contractors, RCSD and PM Representatives to facilitate mobilization and field construction activities. Detailed agenda and minutes for such meetings shall be prepared by the CM and copies furnished to the PM, RJSCB, RCSD, Architect, Contractors and other attendees.
3. Prior to commencement of the construction, obtain and review for completeness and accuracy the Certificates of Insurance then forwarding to the PM and the RJSCB's Insurance Consultant, the Insurance Certificates, endorsements, Assent Letters, if required, and Bonds from the Contractor(s).
4. Provide field staffing as required to meet the responsibilities of this Contract, with qualifications as specified in Section

- 3.5 of the CM Services Agreement including OSHA-certified personnel where required.
5. Review and recommend acceptance or rejection of Schedule of Values prepared by each Trade Contractor.
  6. Using P6, produce a baseline Master Project CPM Schedule, prepared with input from each Trade Contractor which will identify and deliver the goals of the Program: Schedule for start, completion and turnover of the school in a format satisfactory to the PM. Once created by the CM and approved by the PM, the baseline Master Project Schedule will be formally accepted and approved, in writing, by all Prime Trade Contractors. Provide updates, on at least a monthly basis, summarize the status of the activities of the Contractors on the Project, including activity sequences, logic and durations, progress, actual start dates, actual finish dates, a 6 week "look ahead", allocation of labor and materials, processing of submittals including but not limited to: Shop Drawings, Product Data and Samples, and delivery of products requiring long lead time and procurement. The construction schedule shall include the Board's occupancy requirements showing portions of the Project having occupancy priority. All updated schedules shall reference current project status against the original approved baseline Master Project Schedule. The CM shall submit a variance report to PM along with each schedule update plus a recovery schedule, if needed, to illustrate what actions will occur to regain any behind-schedule activities. Priority shall be given to producing recovery schedules whenever needed.
  7. Maintain a list of the names, addresses and telephone numbers of the employees of the Contractors who can be contacted in the event of an off-hours emergency at the Project site. The CM shall provide weekly updated copies of said list to the PM and the Board for each scheduled RJSCB meeting, and to distribute to the Owner as necessary.
  8. Make independent written recommendations to the PM and the Architect regarding changes or variances in the Work which the CM thinks may be necessary and/or advisable. No written or oral instructions shall be construed as directing a change in the Work unless in the form of an approved Change Order or Construction Change Directive. Change Orders or Construction Change Directives prepared by the CM shall describe in detail the changes to be performed and shall state the changes, if any, in the Contract Sum and/or Contract Time from the relevant Contractor and the agreed methodology to determine cost of the change. There shall be no extension of Contract Time on account of any Change Order or Construction Change Directive unless specifically stated in a Change Order or Construction Change Directive approved by the RJSCB. If a change in Contract Sum and/or Contract time is not determined until after the change in Work has been performed, the Change Order or Construction Change Directive shall specify the extent and method for determining same when the change in the Work is completed. All changes in the Work shall be executed in conformity with the terms and conditions of the Contract Documents unless otherwise provided in the Change Order or Construction Change Directive.
  9. Manage and coordinate the Request for Information ("RFI") process including the maintenance of the log, review of each open item at all scheduled OACM Meetings and inclusion of a summary update with respective monthly invoice submitted by the CM. Note, other aspects/issues may arise as the work progresses that the PM will request to also be included in this monthly update.
  10. The coordination process to ensure the system installation fits within the space available shall be done digitally in 3D by utilizing BIM software. The CM, in preparing the bidding documents, shall assign the responsibility for maintaining the BIM model to the Mechanical Contractor and to have all other Contractors participate in the inclusion of their systems and information into the Model. They will then all participate in resolving all of the clashes detected prior to starting any construction in the field. The CM will manage this process and participants including the A/E Team as may be needed to assure its completion and effectiveness. The CM to identify in writing at each scheduled Construction Meeting any trade contractor considered to be non-cooperative/non-responsive in providing the required critical information for the comprehensive BIM model. A BIM status summary shall also be included in each Monthly Project Report.
  11. Manage and coordinate the Shop Drawings review process to ensure timely processing. Facilitate a planning session between the A/E Team and the Contractors to develop a schedule for prioritizing, submission and processing of submittals to support the Master Project Schedule. The CM shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Prime Trade Contractors for completeness in compliance with the submittal requirements of the Contract Documents, coordinate submittals with information contained in related documents, and transmit to the A/E Team and PM those that the CM recommends for approval. The CM's actions shall be taken in accordance with the Project submittal schedule approved by the Architect and PM, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in activities of the Contractor, other Contractors, RCSD or the A/E Team. The CM shall develop and maintain a weekly critical submittal list the CM determines should have priority to be received and/or reviewed out of sequence, or delinquent relative to the approved schedule. Collect and include these lists in the Monthly Project Report.
  12. Manage field operations. Review all Contractor field observation reports and daily reports for accuracy. Maintain record of these reports. The CM shall produce its own Daily Report in the designated Management Software and provide a non-compliant item summary Monthly Project Report.



13. Coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the CM, the PM and the Board's consultants to manage the Project in accordance with the latest approved estimate of construction cost, the Project schedule and the Contract Documents, and provide a non-compliant summary in each Monthly Project Report.
14. The CM shall maintain accurate and complete accounting records -- Original Contract Amount, Approved Changes to Date, Pending Changes, Potential Changes, Work performed under Unit Costs, Additional Work performed on the basis of actual costs of labor and materials (T&M), and other Work requiring accounting records, in a format acceptable to the PM. The PM will work with the CM to determine what information in addition to what is tracked in Project Sight is needed such as cash flow projections etc.
15. The CM shall develop, submit for PM approval and then implement procedures for the review and processing of applications by Contractors for progress and final payments.
16. Based on the CM's observations and evaluations of each Contractor's Application for Payment, the CM shall review and certify the amounts due the respective Contractors. The review and certification will be done in concert with the project A/E Team's review and certification.
17. The CM shall prepare an Application and Certification for Payment based on the Contractors' Certificates for Payment including back up documentation as may be required by the RJSCB.
18. The Construction Managers' certification for payment shall constitute a representation to the Owner that the CM has reviewed requisitions received from Contractors, sub-contractors and material suppliers to substantiate the Contractors' right to payment and that the Contractor is entitled to payment in the amount certified.
19. The issuance of a Certificate for Payment shall not be a representation that the CM has made exhaustive or continuous on-site inspections to check the quality or quantity of the work, reviewed construction means, methods, techniques, sequences for the Contractor's work, or procedures, ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The Contractors shall submit completed lien waivers for all work and supplies covered by the Certificate of Payment to the CM. CM to prepare and maintain a lien log. Such lien waivers shall be reviewed and approved by the CM. The review and approval of the lien waivers by the CM shall constitute a representation by the CM that the lien waivers have been submitted by the Contractor for each of their identified sub-contractors and have been executed and delivered by Contractors. The CM shall give PM immediate notice in writing of the filing of any lien by a Contractor, as well as suitability for submission to RJSCB.
20. Coordinate with the Architect and Contractors to conduct pre-installation meetings of unique equipment, building systems and assemblies, such as food service equipment, elevators, switchgear, millwork, etc.
21. Assist the Commissioning Agent (Cx), if used, to schedule and coordinate commissioning as may be specified with the Contractors and A/E Team.
22. Monitor all materials testing and inspection activities. Establish procedures to ensure that all parties acknowledge and respond to the deficiencies identified in these testing and inspection reports. Provide the A/E Team the reports in a timely manner. Maintain a record of all reports and remediation and retesting.
23. Monitor the delivery, inspection, installation and testing of all specified material and equipment. Review the submittal log with the A/E Team and Contractors on a biweekly basis until all submittals have been submitted and approved.
24. Verify the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents. The CM shall 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. The CM shall recommend to the PM the rejection and replacement of Work that does not conform to the requirements of the Contract Documents.
25. CM, at its own expense, will provide all services, labor, and equipment to remedy defects in the Work of the Contractor(s) or their agents or employees which, through the exercise of reasonable care in the performance of the CM's services pursuant to this Agreement, could have been discovered by the CM and promptly reported to the PM, but which the CM failed to discover and/or report.
26. Review and evaluate requests for changes for appropriateness and accuracy. Negotiate on behalf of the Owner the Contractors' proposals and submit recommendations to the PM for review and comment. If changes are accepted by the Board, prepare Change Orders and Construction Change Directives, as required, that incorporate the Architect's modifications to the Contract Documents.
27. On a Monthly basis and as a prerequisite to payment to the Contractor, review and assure Contractor's record documents are fully conformed to reflect all current change documentation, posted RFIs, SK drawings, etc. Perform a daily along with other periodic walk-throughs with the A/E Team, Contractors and PM to generate and update a deficiency list and a rolling completion list throughout the construction phase. Submit a summary update in each Monthly Project Report.
28. Meet with Contractors on site weekly to review progress of work, status of submittals, RFIs, schedule, safety,

manpower utilization, material status, housekeeping and Project issues. Prepare a written agenda and provide meeting minutes within 48 hours of all such meetings. Should any issue persist, it will become a topic in the summary update included in each Monthly Project Report.

29. Review and monitor the safety programs developed by each of the Contractors for purposes of coordinating the safety programs with those of the other Contractors and to ensure that it conforms to the minimum requirements set forth in the Specifications, Federal, State, Local statutes, rules, regulations and codes regarding safety. Promote safety and endeavor to guard against the creation of unsafe conditions by any Contractor. All supervisory employees must accept their responsibility for the prevention of accidents and for conducting all operations under their direction in a safe and efficient manner. Specific responsibilities include the following:
  - a. Audit activities of the Trade Contractor's safety program so that it conforms to the Project Safety Plan contained in the Contract Documents.
  - b. Provide weekly, written site inspections of the job site, notify the Trade Contractors of any unsafe practices and conditions for which they are responsible and counsel them on the appropriate corrective actions when necessary. Site inspections shall be reviewed and discussed with the construction team.
  - c. Provide all new Trade Contractors and their subcontractors' employees with a safety orientation before they start working on site. The orientation shall include at least a list of work rules, identification of hazardous areas, and the location of MSDS sheets. This orientation will inform the Trade Contractor's/subcontractor's employees of hazards specific to the site operations. After the orientation is complete, employees shall be required to sign a statement and complete an exam in order to confirm that they received and understood the training.
  - d. Identify the location where MSDS sheets provided from the Trade Contractors/subcontractors can be found for the Project.
  - e. Maintain required records and accident prevention materials at the job site so that an adequate history is maintained for the Project.
  - f. Establish and control the entrance and exit for the Trade Contractor's/subcontractor's employees and visitors to and from the Project site. Prevent unauthorized visitors from entering the Project site.
  - g. Review injury and first aid records during the project to identify injury trends to take positive action to reduce or eliminate such injuries from continuing to occur on the Project.
  - h. The CM shall examine and familiarize himself/herself with the Project site and adjacent areas from the standpoint of access and facilities regarding safety. The Project site should be explored with regard to installing and operating the construction plan, and evaluating any difficulties that might be encountered in complete execution of the work safely. Make frequent inspections of the Project site so as to initiate corrective measures to eliminate unsafe practices and conditions.
  - i. The Construction Manager shall immediately investigate all accidents or near miss accidents and take corrective actions to help prevent reoccurrence.
  - j. The CM shall enforce compliance with all rules and regulations promulgated by the Board in connection with the use and occupancy of the Project site and surrounding areas.
  - k. The CM shall ensure that the Contractors follow all laws, statutes, codes and regulations during construction and maintain required exit pathways.
30. Maintain onsite copies of Contractor's: Safety Program, COMIDA employee Residency log, & OCSD-4.
31. Manage the field coordination among Contractors.
32. Review, evaluate and document all Claims submitted by Contractors and others in connection with the Work. Make recommendations to PM and RJSCB for resolution and assist in the negotiation of any settlements including providing any and all documentation of information associated with the Claim.
33. Coordinate the delivery, storage, protection and security of RJSCB and/or Rochester City School District purchased materials, systems and equipment that are part of the Project until such items are incorporated into the Project. Any additional costs for storage, protection and security of Owner-purchased material, systems and equipment are not the responsibility of CM. An updated listing and anticipated installation date for all such items shall be included in each Monthly Project Report.
34. Maintain at the Project site for the RJSCB one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders, As-Builts and other modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required Submittals. The CM shall also maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The CM shall make all such records available to the PM, and upon completion of the Project shall deliver them to the PM in a form acceptable to the PM.
35. Prepare a monthly project report, in a form acceptable to the PM, to record progress, issues, financial status,

schedule status, safety issues, percentages of completion, etc. Present the report at public meetings if requested by the PM or the Board. Submit report to the PM no later than the 10th of the following month. The report shall include:

- a. Pictures representative of progress during the period.
  - b. Work completed to date.
  - c. Status and update of the Project Schedule including a non-compliant scheduled activities summary.
  - d. BIM Status Summary
  - e. Submittal schedule and status report, including a summary of remaining and outstanding Submittals, critical submittal status lists and any other issues impacting scheduled completion of the Project.
  - f. Requests for Information, Change Orders and Construction Change Directive status report.
  - g. Tests and inspection reports.
  - h. Status of nonconforming and rejected Work.
  - i. Deficiency and Rolling Completion List.
  - j. Daily logs.
  - k. Summary of all Prime Contractors' Application for Payment.
  - l. Cumulative total of the Cost of the Work to date including the CM's compensation, reimbursable expenses, if any.
  - m. Cash-flow and forecast reports.
  - n. Workforce diversity of Contractors' and CM's staff as required by the RJSCB Diversity Plan including any Pro-active diversity efforts.
  - o. Training completion logs.
  - p. Contractors overall on-site work force report including man-hours by trade.
  - q. Equipment utilization report.
  - r. Cost summary comparing actual costs to updated cost to complete estimate.
  - s. All previously described updates and any other items the PM and the Board may require.
36. Develop cash flow reports and forecasts for the Project. Reports shall be provided once a month or more frequently if necessitated by the demands of the Project or required by the PM for the RJSCB. The CM shall advise the PM and A/E Team whether projected costs exceed or appear likely to exceed construction budgets and contingency estimates so timely action can be taken to avert budget overruns.
37. In conjunction with the Independent Compliance Officer [ICO], manage Contractor(s) compliance with the Board's Diversity Plan and where necessary recommend corrective measures. If applicable, manage Contractor compliance with the Project Labor Agreement. Any such pro-active activity shall be provided as a monthly update and submitted with the CM's Invoice.

## B. PUNCH LIST

1. Schedule and coordinate the Punch-List walk-through with respective Trade Contractors to confirm work is complete in the opinion of the CM, who will then schedule the A/E Team to review the installation.
2. Review and confirm said Punch List is ready for A/E Team's on-site review that all Work identified on Punch List is satisfactorily complete to justify that the Owner could take beneficial occupancy (i.e., Substantial Completion).
3. The CM shall notify the Architect and the Program Manager of what Construction Contract Work is ready for Punch List Review on-site by the A/E Team to justify final completion of all punch list items and acceptance of the Final Work.
4. Schedule and coordinate, when all incomplete, noncompliant or unsatisfactory work has been completed, a second, and Final Punch List Review for acceptance by A/E Team for determination of the Substantial Completion date. (Note, may not be necessary should the A/E and CM agree that the Initial Punch List and all required Work Scope has already been completed by a respective Trade Contractor and accepted in writing by the PM).

## IV. CONSTRUCTION SUBSTANTIAL / FINAL COMPLETION PHASE

The CM will provide at minimum the following, in a timely manner in conjunction with the Construction Substantial/Final Completion Phase as appropriate to the Master Schedule and Owner Occupancy:

1. Coordinate and schedule final testing and start-up of utilities, operational systems and equipment.
2. Assist the Commissioning Agent (Cx), if used, Architect and Contractors in the commissioning of equipment and

systems.

3. Develop, distribute and manage completion of Final Punch List. (see prior item III.B.4.)
4. The date of Substantial Completion of the Work or designated portion thereof is the Date certified by the A/E Team when construction is sufficiently complete, in accordance with the contract documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it was intended.
5. Notify all authorities having approval jurisdiction of Project status and coordinate inspections and approvals necessary for timely project completion.
6. Schedule and coordinate substantial completion certification issuance by the A/E Team.
7. Schedule all required training sessions with all required parties. Provide a written log of all training. Include in log: List of invitees, list of attendees, date and time of training, component or system for which training was provided, list of training materials distributed at session, any other pertinent information. Submit this log monthly with the CM's invoice during the Substantial Completion and Final Occupancy Phase.
8. Review O&M Manuals and warranties provided by each Trade Contractor for completeness and compliance with the Contract Documents.
9. Assist the PM and A/E Team in obtaining all final governmental approvals of the Work, including but not limited to: Temporary and permanent certificates of occupancy, approvals of the New York State Education Department, Monroe County Health Department, Fire Marshall, City of Rochester, and other Monroe County Jurisdictions.
10. The CM shall manage all initial and final inspections by all authorities having jurisdiction, resulting in final completion.

## **V. CLOSEOUT PHASE**

The duration of this Closeout Phase is to be no longer than 120 days from the issuance of the Certificate of Final Completion for the Work agreed to with the RJSCB. Prior to approving final payments to Contractor(s), the CM shall provide to the Program Director or other designated representatives of the PM, by itemized letter of transmittal, the following final documents at the completion of the Project:

1. Forward to the PM, with copy to Architect, the following information received from the Contractor(s)
  - a. Certificates of insurance received from Contractors
  - b. Consent of surety or sureties, if any, to reduction in or partial release of retainage or making of final payment
  - c. Affidavits, receipts, releases and waivers of liens or bonds indemnifying the Board, PM, RCSD and Architect against liens
  - d. Any other documentation required of the Contractor(s) under the Contract Documents
2. The CM shall receive and transmit to Architect of Record and RCSD Facilities department, final as-built record plans including all modifications made during the project.
3. The CM shall certify in writing that all Punch List items have been successfully resolved.
4. Deliver all keys, attic stock & etc. to the PM designated representative for signature of receipt by said representative.
5. All Warranties, Operation and Maintenance Manuals for all equipment and support systems and similar submittals required by the Contract Documents.

## **VI. WARRANTY PHASE**

During the twenty-four (24) months of warranty, which starts on the date of Substantial Completion, CM is to, at minimum, provide manpower resources to:

1. Receive and log all warranty issue claims from Rochester City School District personnel.
2. Verify the warranty claim issue is within the project scope.
3. Forward the claim issue to the responsible Prime Contractor and schedule timely resolution.
4. Verify, by inspection if required, that the issue is indeed satisfactorily resolved once the Contractor reports it is.
5. Notify contractor of acceptance or need for re-work.
6. Update Log with completion date and acceptance.

Prior to the end of the Warranty period, no earlier than the tenth month and no later than the first day of the eleventh month, the CM shall organize and lead a walk-through inspection of the Project with RCSD personnel, users and Architect in attendance, to identify and list any Project-related defects, adjustments, failures, etc. to be corrected, replaced, repaired or adjusted by Contractors under their respective warranties. Issue this list to Prime Trade Contractors prior to the expiration of the warranty period for their immediate corrective action. The CM shall schedule Contractor's corrective work to avoid interference with RCSD's educational operations and to be in compliance with NYSED regulations. The CM shall inspect and re-inspect corrective work. When corrective work is in compliance with the Contract Documents, the CM shall issue a report to Contractor, PM, Architect and

RCSD that work is complete and acceptable.

For projects with phased turnover and phased issuance of Substantial and Final Certificates of Completion, track phased end of warranty period dates and conduct phased eleven-month walkthroughs and corrective processes as per above.

The CM shall provide staffing, at no additional cost to RSMP, to completely resolve all warranty issues identified during the warranty period, even if the resolution extends past the 24-month warranty period.

## EXHIBIT C: PAYMENT FOR SERVICES

### A. GENERAL:

The Construction Manager ("CM") shall submit monthly invoices (accompanied by a Progress Schedule update and other required / requested summary updates) in accordance with Article 4 of the Agreement. Payment by the Board shall be made monthly and include the portion of the CM's Lump Sum Fee and Reimbursable Costs in accordance with Article 4 and the billing terms specified below. In no event shall the total of all payments to the Construction Manager exceed the sum specified under Article 4.3 without approval of the Board and a fully-executed written amendment to this Agreement.

For the additional costs not included in the Lump Sum Fee that are Reimbursable at cost (i.e. no markup) under the terms of Article 4.2, such items will not be payable unless the monthly invoices include receipts and detailed backup of the actual costs incurred along with prior RJSCB authorization for providing these Additional Services.

For the CM's Services included in the Lump Sum Fee amount, the Board shall compensate the CM for this Fee in accordance with the following not-to-exceed breakdown by Project Phase. If assumed durations are different than those used in the billing calculation, in no event shall the amount of the fee billed during each Phase exceed these amounts without prior written approval of the Board.

Reimbursable expenses shall be pre-approved by the RJSCB and billed each month as they occur and shall together with the Lump Sum Fee not exceed the total specified in Article 4.3 without prior written Board approval:

#### **1.0 Preconstruction Phase Services:**

Not-to-Exceed Lump-Sum Fee Amount for Preconstruction Phase Services of \$XXXXXX (XXXXXX XXXXX Dollars and Zero Cents).

#### **2.0 Construction Phase Services:**

Not-to-Exceed Lump-Sum Fee Amount for Construction Phase Services of \$XXXXXX (XXXXXXXX Dollars and Zero Cents).

#### **3.0 Substantial/Final Completion Phase Services:**

Not-to-Exceed Lump-Sum Fee Amount for Substantial/Final Completion Phase Services of \$XXXXXX (XXXXXX Dollars and Zero Cents).

#### **4.0 Closeout Phase Services:**

Not-to-Exceed Lump-Sum Fee Amount for Closeout Phase Services of \$XXXXXX (XXXXXX Dollars and Zero Cents).

#### **5.0 Warranty Phase Services:**

Not-to-Exceed Lump-Sum Fee Amount for Warranty Phase Services of \$XXXXXX (XXXXXX Dollars and Zero Cents).

#### **6.0 Other:**

- Not-to-Exceed Amount for Reimbursable Expenses (as defined in Section 4.2 of the Agreement) of \$XXXXX (XXXXXX Dollars and Zero Cents), including all Reimbursable Expenses billed at actual cost.
- Document Printing Allowance (Bid Documents), not to exceed \$XXXXX (XXXXXX Dollars and Zero Cents).

**B. REIMBURSABLE EXPENSES:**

As specified in Article 4.2 of the Agreement, Reimbursable Expenses shall be the actual expenses incurred by the Construction Manager and the CM's consultants. Reimbursable Expenses are included in the compensation for Basic Services, and include expenses incurred by the CM and the CM's consultants directly related to the Project as follows:

1. Traveling expenses, including transportation, meals (excluding alcoholic beverages) and lodging, and long distance telephone calls, may be reimbursed as an additional contract cost with prior written authorization of the Board, provided, however, that normal commuting and daily travel expenses for CM's field or home office support staff shall not be reimbursable unless such travel is required for off-site visits to vendors or contractors in support of Project activities or is approved in writing by the Board. Reimbursement for these expenses is capped at \$XXXX (XXXXXX Dollars).
2. Testing and any additional field services authorized in advance and in writing by the Board.
3. Reproduction costs for Contract Documents for bidding purposes, special reports, and other data and documents specifically requested by and furnished to or on behalf of the Board are capped at \$XXXXXX (XXXXXX Dollars) and does not include the daily and incidental copying cost of daily reports, Monthly Reports, document reproduction at the jobsite or in the Construction Manager's offices, which are non-reimbursable costs.
4. Approved reimbursable expenses shall be reimbursed by a 1.0 multiplier.

**Hourly Rates Eligible for Additional Services**

Principal	\$XXX.00	Project Executive	\$XXX.00
Associates	\$N/A	Project Manager	\$XX.00
Project Scheduler	\$XX.00	Assistant Project Manager	\$XX.00
Project Cost Estimator	\$XX.00	CAD Technician	\$XX.00
Field Superintendent	\$XX.00	Administrative Assistant	\$XX.00

## EXHIBIT D: INSURANCE REQUIREMENTS

### Insurance Policies:

The Construction Manager ("CM") shall procure and maintain the following coverage, limits and requirements.

#### Commercial General Liability Limits

Per Occurrence Limit:	\$1,000,000
General Aggregate (other than Products/Completed Operations):	\$2,000,000
Products and Completed Operations:	\$2,000,000
Personal and Advertising injury:	\$1,000,000
Fire Damage Legal Liability:	\$300,000
Medical Payments, any one person:	\$5,000
Business Automobile:	\$1 million per accident
Professional Liability Insurance:	\$1 million per claim/ \$3,000,000 aggregate
Workers' Compensation:	Statutory amount
Employer's Liability:	\$500,000.00
Excess/Umbrella (for general aggregate and auto liability only):	\$5 million

The Construction Manager shall furnish the RJSCB with a certificate of insurance evidencing that it has complied with the obligations under this Exhibit D. In addition, the Construction Manager shall require its sub-consultants, if any, to carry similar liability insurance, to name the RJSCB as a certificate holder and an additional insured on such policies and to furnish the RJSCB with certificates of insurance establishing compliance with this obligation. Thirty (30) days' written notice of cancellation for the above-referenced policies is required. The Construction Manager is responsible for the payment of all insurance premiums.

All liability policies (excluding workers compensation and professional) shall also include the following as additional insured on a primary and non-contributory basis: Rochester Joint Schools Construction Board ("RJSCB"); the City of Rochester ("City"); the Rochester City School District ("RCSD"); Savin Engineers, P.C. ("Savin"), Gilbane Building Company ("Gilbane"), (capital bonding agency to be named by RJSCB), and (Trustee to be named by the RJSCB). A waiver of subrogation in favor of the RJSCB, City, RCSD, Savin, Gilbane, (capital bonding agency to be named by RJSCB), and Trustee (Trustee to be named by the RJSCB) applies to general liability, automobile liability, umbrella and worker's compensation (GL additional insured, ongoing & completed operations, form CG2010 1185 or equivalent - to be attached to certificate). Copies of all additional insured/primary-noncontributing/waiver of subrogation endorsements must be attached to certificate. Policies shall include a 30-day notice of cancellation to the RJSCB by registered or certified mail, return receipt requested. Copies of all other endorsements to be attached to the certificate.

### **Indemnification & Hold Harmless:**

The Construction Manager shall indemnify, defend and save harmless the RJSCB, the City, the RCSD, Savin Engineers, P.C., Gilbane Building Company, ( capital bonding agency to be named by RJSCB) and their officers, agents, and employees (collectively, the "Indemnitees") as set forth in Paragraph 8.2 of the Construction Management Services Agreement between the Board and the Construction Manager.

The Construction Manager shall include in each agreement with a subcontractor and/or sub-consultant for the Project, a provision substantially similar to the paragraph above, which provides that such subcontractors and/or sub-consultants shall indemnify the Construction Manager and the Indemnitees for all losses, claims, liabilities, injuries, damages and expenses, including attorneys' fees, that the Construction Manager or the Indemnitees may incur arising out of or resulting from such subcontractor's performance of services, violation of state, federal, or local law, rule or regulation, or negligence.