

AGREEMENT
BETWEEN OWNER and OWNER'S REPRESENTATIVE / CLERK

THIS AGREEMENT is entered into this [REDACTED] day of [REDACTED], 2024, between [REDACTED]
("Owner's Representative")

and

Allegheny Valley School District, 300 Pearl Avenue, Cheswick, Pennsylvania 15024
("Owner").

1. Project. The Project involves the demolition of the former Colfax Elementary School located at 430 Colfax Street, Springdale, PA 15144.

2. Designated Representatives. The Owner's designated representative through whom the Owner's Representative shall communicate to the Owner is the Supervisor of Buildings and Grounds, Jay Zangrille. The person designated to serve as the Owner's Representative is [REDACTED].

3. Cooperation. The Owner and the Owner's Representative shall cooperate with one another to fulfill their respective obligations under this Agreement. Both Parties shall endeavor to maintain good working relationships among all members of the Project Team.

3.1. The Owner shall provide prompt written notice to the Owner's Representative if the Owner becomes aware of any errors, omissions or inconsistencies in the Owner's Representatives services, but the Owner shall have no obligation to investigate, test for, or ascertain the same.

3.2 Although some of the services of Owner's Representative's are to be performed in conjunction with the Project Architect, Canzian/Johnston & Associates, LLC, and other consultants, if Owner's Representative has an opinion or recommendation different from that of the Architect or another Consultant, Owner's Representative shall make his opinion or recommendation known to the Owner and, as applicable, the Architect and other Consultant(s).

4. Owner's Representative's Services. The services the Owner's Representative shall provide are designated as follows:

4.1. Participate in Pre-Construction Conferences. Owner's Representative will assist in conducting and participating in the preconstruction meetings with the Architect, contractors, consultants, and the Owner.

4.2. Workmen Clearances. The Owner's Representative shall develop, implement and enforce such procedures as may be necessary to verify that all Contractors' and subcontractors' Owner's employees have been screened for criminal record and child abuse limitations that are required by applicable Pennsylvania law, including, without limitation, the criminal background check and child abuse clearance procedures required under applicable law, including the Child Protective Services Law and Section 111 of the Pennsylvania Public School Code of 1949 as amended. The Owner's Representative shall provide prompt notice to the contractor, the Architect and the Owner of any workmen present on the site without compliance with such procedures.

4.3. Permits and Notices. The Owner's Representative shall verify that all permits to be obtained by the contractors have been secured and that all permits and notices required to be displayed at the Project site are posted.

4.4. Site Observations. The Owner's Representative shall assist with the administration of the Contracts for Construction in cooperation with the Architect as set forth herein and in the General Conditions of the Contract for Construction. Owner's Representative will observe the progress and quality of the Work to determine that the work is being performed in compliance with the contract documents and evaluate the material stored on site for conformity to the Contract Documents. The Owner's Representative will notify the Owner and the Architect immediately if, in the Owner's Representative's opinion, Work does not conform to the Contract Documents or requires special inspection or testing. Owner's Representative shall be present at the Project site an average of eight (8) hours per workday, Monday through

Friday. Regardless of the day or time, Owner's Representative shall be on site if a contractor is performing work which will not be left unconcealed for subsequent inspection by the Owner's Representative.

4.5. Monitor Construction Schedule. The contract documents shall require that the General Contractor develop and maintain a detailed project construction schedule for the Project, including activity sequences and durations. The Owner's Representative shall review the contractors' baseline and periodically updated construction schedules (a) to ensure that each principal element of work is separately delineated within the schedule, (b) to verify conformance of the schedule to any milestone dates or other requirements established by the contract documents, and (c) to verify that updated schedules accurately reflect and record the current status and reasonably anticipated progress of the work. If any schedule update indicates that the previously approved Project schedule may not be met, the Owner's Representative shall recommend corrective action, if any, to the Owner and Architect. The Owner's Representative shall observe, record and report construction conditions that may cause delay completion of the construction. The Owner's Representative shall make recommendations to the Owner and the Architect concerning whether requests for extensions of time should be considered.

4.6. Process Applications for Payment. Owner's Representative will review and certify contractor payment applications. This will include evaluation of the contractor's schedule of values to insure accurate and appropriate payments in contractors. The Owner's Representative's certification for payment shall not take the place of the Architect's certification for payment but shall be independent of and in addition to the Architect's certification for payment. Prior to rejection of any application for payment by a Contractor that has been approved by the Architect, the Owner's Representative shall notify the Owner and the Architect, in writing, detailing the specific reasons for the Owner's Representative's decision. The Owner's Representative's certification for payment shall constitute a representation to the Owner, based

on the Owner's Representative's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Owner's Representative's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner's Representative. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

4.7. Attend Project Meetings. Owner's Representative shall attend the periodic job conference meetings with the Owner, Architect and Contractor.

4.8. Change Order Review. The Owner's Representative, in consultation with the Owner and the Architect, will develop and implement a system for review and processing of proposed Change Orders. The Owner's Representative will advise upon the validity of Change Orders as to whether the work is beyond the contracted base scope of work, provide an independent cost estimate of all proposed Change Orders, and assist the Owner and Architect in the negotiation of the cost of Change Orders. The Owner's Representative shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records. The Owner's Representative has no authority to order any work whether represented in Change Orders or not unless it first obtains written authorization from the Owner, and no alterations or changes in the plans or specifications shall be made without the written approval of the Owner, nor shall any estimate, opinion or certificate of the Owner's Representative be binding on the Owner.

4.10. Testing. The Owner's Representative shall observe all tests and inspections required by the Contract Documents or governmental authorities, record and report to the Architect and the Owner the results of such tests and inspections and ensure that copies of the testing agency's or official's test and inspection reports are provided to the Owner and Architect.

4.11. Maintain Construction Records. The Owner's Representative shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders, Construction Change Directives and other modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, any approved Shop Drawings, Product Data, Samples and similar required submittals. The Owner's Representative shall make all such records accessible to the Architect and the Contractors, and upon completion of the Project, shall deliver them to the Owner.

4.12. Maintain Field Reports. Owner's Representative will maintain daily job site reports (log) including weather conditions, number of workers, equipment in use, Contractor activities, general activities, and special occurrences. The log shall be kept in electronic spreadsheet format and made available to the Architect during his site visits. Upon completion of the Project, bound copy or copies of the daily log shall be furnished to the Owner.

4.13. Maintain Photographic Records. Owner's Representative will coordinate and maintain photographic and/or video records of construction activities and project progress on a weekly basis. Such photographs and videos will be labeled by date, organized into a chronological library or binder and presented to the Owner at the conclusion of the project.

4.14. Provide Monthly Reports. Owner's Representative will prepare and distribute monthly reports to the Owner and the Architect which shall minimally address (a) a summary of the status of the project; (b) a Project budget and cost analysis, including payments and contract balances, a log of approved change orders and the nature of use and status of any

project contingency amount, (c) the status of the Project schedule, (d) the status of any submittals or RFI's significant to the Project budget or schedule, (e) information on pending and anticipated change order requests or proposals, (f) summaries of work completed during the previous month and of work anticipated to be completed in the forthcoming month, (g) progress photographs; and (h) general Project information of significance. In addition, a representative from the Owner's Representative shall attend at least one meeting of the Board of School Directors each month during the term of construction of the Project.

4.15. Substantial Completion. The Owner's Representative shall assist the Architect in determining when the Work or designated portion thereof is substantially complete and in identifying non-conforming and incomplete work to be corrected or completed. Following the issuance of a Certificate of Substantial Completion and accompanying punch list, the Owner's Representative shall assist in the evaluation of the completion of the Work and make recommendations to the Architect when Work is ready for final inspection. The Owner's Representative shall assist the Architect in conducting final inspections.

4.16. Coordinate Close-Out Activities. The Owner's Representative, in consultation with the Owner and the Architect, will develop a detailed program of close-out activities in compliance with the Contract Documents. The Owner's Representative will coordinate close-out activities including the completion of deficiencies and punch list items, submittal of any close-out documents, resolution of change orders, and recommendations for payment of retainage.

4.17. Final Project Documentation. Owner's Representative will organize, assemble (in labeled binders whenever feasible) and submit all project documentation including meeting minutes, photographs, project correspondence, records, drawings, submittals, samples, and other project information to the Owner in an organized and usable form.

5. Limitations of Authority.

5.1. The Owner's Representative shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Owner's Representative shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractors' rights and responsibilities under the Contract Documents.

5.2. The Project Representative does not have authority to and shall NOT:

- Authorize or direct deviations from the Contract Documents.
- Approve substitute materials or equipment except as authorized in writing by the Architect.
- Personally conduct tests or third party inspections except as authorized in writing by the Architect or the Owner.
- Assume any of the responsibilities of the Contractor or of Subcontractors.
- Direct or authorize the acceleration of the Work of the Contractor.
- Approve changes of the Contract Time or to the Contract Sum except as authorized by Change Orders approved by the Owner.
- Advise on, or issue directions concerning, aspects of construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work.
- Issue a Certificate for Payment or Certificate of Substantial Completion.
- Reject Work or require special inspection or testing except as authorized in writing by the Architect or the Owner.
- Order the Contractor to stop the Work or any portion thereof.

6. Standard of Care. The Owner's Representative shall perform its services in accordance with applicable standards of professional skill and care and consistent with the skill and care ordinarily provided by site managers or construction managers practicing in the same or similar locality.

7. Clearances. Prior to the commencement of services, the Owner's Representative shall furnish to the Owner state and federal criminal history reports and child abuse clearances for any persons providing on-site services on behalf of Owner's Representative.

8. Confidentiality. The Owner's Representative shall maintain the confidentiality of information specifically designated by the Owner in writing as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Owner's Representative from establishing a claim or defense in an adjudicatory proceeding.

9. Conflict of Interest. Except with the Owner's knowledge and consent, the Owner's Representative shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise the Owner's Representative's professional Judgment with respect to the Project.

10. Owner Information. Subject to the applicable standard of care, the Owner's Representative shall be entitled to rely on the accuracy, timeliness and completeness of services and information furnished by the Owner. The Owner's Representative shall provide prompt written notice to the Owner if the Owner's Representative becomes aware of any errors, omissions, or inconsistencies in such services or information.

11. Owner's Benefit. Services performed by the Owner's Representative pursuant to this Agreement are undertaken and performed by the Owner's Representative in the sole interest and for the exclusive benefit of the Owner. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Owner's Representative.

12. License. The Owner's Representative and the Owner's Representative's consultants, if any, shall not own or claim a copyright in any Instruments of Service generated in relation to the Project or the performance of Owner's Representative's services under this

Agreement. Owner shall be entitled, without limitation, to reproduce and use the Instruments of Service for the completion of the Project by others, the construction of any future renovations or additions to the Project and the maintenance of the Project. The Owner's Representative and its consultants, if any, warrant that in transmitting Instruments of Service, or any other information, to the Owner, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

13. Insurance. The Owner's Representative shall maintain the following insurance for the duration of this Agreement:

14.1. Comprehensive General Liability with policy limits of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for bodily injury and property damage.

14.2. Automobile Liability covering owned and rented vehicles operated by the Owner's Representative with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage.

14.3. Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars (\$500,000).

14.4. The Owner's Representative may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

14.5. The Owner shall be designated as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies and provided with coverage on a primary basis prior to any contribution by the Owner or application of other insurance maintained by the Owner.

14.6. The Owner's Representative shall provide to the Owner certificates of insurance evidencing compliance with the foregoing requirements. Such policies shall not be cancelled, non-renewed, or materially changed so as to affect the insurance described until 30 days notice of such action has been delivered to the Owner.

15. Indemnity. Owner's Representative agrees to indemnify and hold harmless the Owner from and against any and all damages, costs, including reasonable attorneys' fees, judgments, settlements, claims or expenses of any nature to the extent caused by the acts or omissions of Owner's Representative in its performance under this Project. To the fullest extent permitted by law, the Owner's Representative, for itself and for its consultants and their respective agents, employees and servants, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner pursuant to this indemnity provision. Compliance with insurance requirements shall not relieve the Owner's Representative of any responsibility to indemnify the Owner for any liability. Indemnity obligations shall not be reduced or negated by virtue of any insurance carrier's denial of insurance coverage for the occurrence or event that is the subject matter of the claim or refusal to defend the Owner as an additional insured.

16. Dispute Resolution. All claims, disputes and other matters in question between the Owner's Representative and the Owner arising out of, or relating to, this Agreement or the breach thereof shall, at the Owner's sole and exclusive option, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The Owner's election to arbitrate shall be specifically enforceable under the prevailing arbitration law. The Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party and/or include by joinder other persons or entities provided that the arbitrations to be

consolidated substantially involve common questions of law or fact. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Nothing contained in this Article is intended or shall be construed to entitle the Owner's Representative (or any Contractor) to demand arbitration, it being understood and agreed that such determination shall be at the sole discretion of the Owner. The Owner's election to proceed in arbitration shall be exercised within sixty (60) days following either a request by the Owner's Representative for arbitration or service of original process upon Owner pursuant to a civil proceeding. In the event Owner elects to have a claim litigated in a civil action, the Owner's Representative waives the right to a jury trial. The venue of any arbitration proceeding shall be Pittsburgh, Pennsylvania. The venue of any civil action shall be the Court of Common Pleas of Allegheny County, Pennsylvania.

17. Claims for Consequential Damages. The Owner's Representative waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement.

18. Suspension and Termination

18.1. Termination by Owner. This Agreement may be terminated by the Owner with or without cause upon seven (7) days written notice to the Owner's Representative. In the event of a termination without cause, Owner's Representative shall be compensated for services performed prior to termination.

18.2. Suspension of the Project. If the Project is suspended for more than ninety (90) consecutive days, the Owner's Representative may terminate this Agreement by giving not less than thirty (30) days' written notice.

18.3. Termination or Suspension by Owner's Representative. If the Owner fails to make payments to the Owner's Representative in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Owner's Representative's option, cause for suspension of performance of services under this

Agreement. If the Owner fails to make payment of any amounts due to the Owner's Representative as provided herein, the Owner's Representative may, upon not less than fourteen (14) days' written notice terminate this Agreement or suspend services. In the event such default is remedied by the Owner within the fourteen-day period by payment of the sums due, Owner's Representative shall resume the performance of services. The Owner's Representative shall have no liability to the Owner for delay or damage caused by such a suspension of services.

19. Compensation of Owner's Representative.

19.1. For the provision of services under this Agreement, the Owner's Representative shall be compensated as follows:



19.2. Compensation of the Owner's Representative shall not be based upon the Cost of the Work.

19.3. The Owner's Representative's compensation is inclusive of all costs associated with the Owner's Representative's services, including, but not limited to, transportation, out-of-town travel, subsistence, electronic communications, reproductions, postage, handling and delivery of Instruments of Service, overtime work and similar direct Project-related expenditures.

19.4. The Owner shall make payment of the Construction and Close-Out phase components of the Owner's Representative's fee in monthly installments in accordance with any mutually accepted payment schedule.

19.5. Invoices for Owner's Representative's services shall be presented to the Owner by the first (1st) day of each calendar month for services rendered during the previous month or months. Invoices received subsequent to the first day of the month shall be deemed to have been received by the Owner as of the first day of the following calendar month. Payments are due and payable thirty (30) days from the date on which the invoice is deemed to

have been received. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate of six percent (6%) per annum.

20. Miscellaneous.

20.1. Governing Law. This Agreement shall be governed by the law of the Commonwealth of Pennsylvania.

20.2. Terms. Terms not defined in this Agreement shall have the same meaning as those in the edition of AIA Document for General Conditions of the Contract for Construction utilized for this Project.

20.3. No Assignment. The Owner and the Owner's Representative, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Owner's Representative shall not assign this Agreement without the written consent of the Owner.

20.4. No Waiver. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Payment by, or tentative approval or preliminary acceptance by Owner or the failure of Owner to perform any inspection hereunder, shall not constitute a final acceptance of the Work or any part thereof and shall not release Owner's Representative or any of its obligation hereunder.

20.5. Integration. This Agreement represents the entire and integrated agreement between the Owner and the Owner's Representative and supersedes all prior

negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Owner's Representative.

20.6. Interpretation. The terms of this agreement shall not be presumptively construed in favor of or against any party hereto.

THIS AGREEMENT entered into as of the day and year first written above.

Witness:

[OWNER'S REPRESENTATIVE]

Attest:

ALLEGHENY VALLEY SCHOOL DISTRICT

Secretary

By: _____
President, Board of School Directors