

DRAFT AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the «____» day of «____» in the year «____»
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Loudoun County School Board, also known as Loudoun County Public Schools
Administration Building
21000 Education Court
Suite 210
Ashburn, VA 20148

Telephone Number: (571) 252-1161
Fax Number: (571) 252-1101

and the Architect:
(Name, legal status, address and other information)



for the following Project:
(Name, location and detailed description)

RFP #20-490 Architectural/Engineering Services for Middle School #14 (MS-14)



The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1 and in Section 13. Further detail of all other related documents are listed in Section 13.2:

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

_____.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

_____.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

_____.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

<< >>

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

<< >>

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address, and other contact information.)

<< >>

<< >>

<< >>

<< >>

<< >>

<< >>

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.)

<< >>

<< >>

<< >>

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

To be determined.

.2 Civil Engineer:

To be determined.

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

To be determined.

The Owner, in consultation with the Architect, may also elect to have the Contractor enter into a contract to perform a portion of the work as design-assist. The Architect shall work in collaboration with the Contractor and any of its design-assist subcontractors or subconsultants to produce the design documents. If the General Contractor performs any design-assist work, it shall in no way alleviate the Architect from performing its obligations required by the Work under this Agreement or the Standard of Care as defined herein.

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

(List name, address, and other contact information.)

<< >>
<< >>
<< >>
<< >>
<< >>

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

<< >>
<< >>
<< >>
<< >>
<< >>

.2 Mechanical-Electrical-Plumbing-Fire Protection Engineer:

<< >>
<< >>
<< >>
<< >>
<< >>

.3 Specifications Consultant:

<< >>
<< >>
<< >>
<< >>
<< >>

.4 Others:

<< >>
<< >>
<< >>
<< >>
<< >>

§ 1.1.11.2 Consultants retained under Supplemental Services:

<< >>

§ 1.1.12 Other Initial Information on which the Agreement is based:

<< >>

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change in a manner reasonably necessitating Additional Services and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation if and to the extent warranted by the type and kind of material changes made to the Initial Information.. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.4 The Services covered by this Agreement are subject to the Owner-approved budget for the Cost of the Work as specified below. The Architect shall perform the required Services in a manner that will render a Cost of the Work (as that term is defined in Article 6 herein) that does not exceed the most current Owner-approved budget for the Cost of the Work or estimate the Cost of the Work. As set forth herein, the Architect shall review and evaluate the budget/estimates of the Cost of the Work provided and report to the Owner any material inaccuracies and inconsistencies noted during such review.

§ 1.5 The Architect represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Services and perform its obligations under this Agreement and under the Contract Documents.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide all professional services as set forth in this Agreement and necessary for the complete design and construction phase and administration of the Project. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

The Architect agrees that the fee for Basic Services, as stated in Article 11, represents adequate and sufficient

compensation for its timely provision of all professional Basic Services (including those of its consulting structural, mechanical, electrical, plumbing, and other consulting engineers) necessary to design the Project and prepare Construction Documents that indicate the requirements for construction of the Work, whether those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being “the Owner’s responsibility” or “Owner-provided”; and (2) the cost of those engineering or consulting services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 2.2 The Architect shall perform its services and professional duties hereunder consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as is consistent with such professional skill and care and so as to be in accordance with the Project Schedule as reasonably updated from time to time by the Owner or with the Owner’s approval. The Construction Documents, designs and services shall be performed and prepared in accordance with all federal, state and local statutes, regulations and codes applicable to or governing the Project and the Work. The Architect agrees that to the best of its knowledge, information and belief, the Work will be designed so that it can be utilized as an integrated and functioning facility.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The Architect’s representative shall attend regularly scheduled Project meetings and promptly respond to Owner inquiries.

§ 2.3.1 The Key Personnel List (Attachment 1) identifies (a) the significant staff members of the Architect; (b) the consultants hired or intended to be hired by the Architect; and (c) the significant staff members of such consultants (collectively, “Key Personnel”). The Architect acknowledges and agrees that the designation and dedication of such Key Personnel and the availability of all Key Personnel to work on this Project is a material inducement to the Owner entering into this Agreement. Consequently, except in the event of death, disability or termination of employment, the Architect shall not remove or reassign personnel from the Project without the prior consent of the Owner, such consent shall not be unreasonably withheld. Attachment 1 shall be updated by the Owner and Architect jointly as necessary throughout the duration of the Project.

§ 2.3.2 The Architect shall assign only fully qualified, experienced and competent employees to work on the Project who shall devote their attention to this Project from the inception to completion of all services hereunder. The Architect agrees that the staff assigned to this Project shall provide services under the guidance of: « », Project Manager.

It is expressly understood and agreed that the Architect (i) shall remove, at the request of the Owner, any staff person assigned to the Project, that the Owner shall deem unfit to perform the task assigned to him/her or otherwise finds objectionable, and (ii) shall propose substitutes for any staff persons assigned to the Project who either cease to be in the Architect’s employ or are removed from the Project by reason of the Owner’s request as aforesaid.

§ 2.4 Except with the Owner’s knowledge and prior written consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project. The Architect shall maintain the confidentiality of Project information provided and expressly designated as Confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding.

§ 2.5 The Architect shall satisfy the following insurance requirements at its and its consultants’ sole cost and expense:

§ 2.5.1 General Liability

The Architect shall maintain Employer’s Liability Insurance/Commercial General Liability Insurance (“CGL”) and Umbrella Liability Insurance with insurance companies licensed in Virginia that are rated at A- in quality and IV or larger in size by A.M. Best and that is acceptable to the Owner. The CGL policy shall be for not less than \$1,000,000 each occurrence and its aggregate limit shall be

designated to apply per project.

§ 2.5.2 Automobile Liability

The Architect shall maintain Business Automobile Liability Insurance with an insurance company licensed in Virginia that is rated at A- in quality and IV or larger in size by A.M. Best and that is acceptable to the Owner. The business automobile liability policy shall be for a combined single limit for bodily injury and property damage of not less than \$1,000,000 with coverage including owned, non-owned, and hired automobiles.

§ 2.5.3 Workers' Compensation

The Architect shall maintain Worker's Compensation Insurance with an insurance company licensed in Virginia that is rated at A- in quality and IV or larger in size by A.M. Best and that is acceptable to the Owner. The employer's liability shall provide minimum coverage of at least \$1,000,000 bodily injury by accident, \$1,000,000 bodily injury by disease, each employee, and \$1,000,000 bodily injury by disease, policy limit. Under no circumstance will the Worker's Compensation policy be less than the amounts statutorily required by the Commonwealth of Virginia.

§ 2.5.4 Professional Liability

The Architect shall maintain Professional Liability Insurance in an amount of not less than \$2,000,000 per claim, and with a deductible of no greater than \$200,000 with an insurance company or companies licensed in Virginia that are rated at least A- in quality and IV or larger in size by A.M. Best. Such insurance shall either be on an occurrence basis and kept in force for occurrences arising at any time during the Project, or on a claims-made basis and kept in force for no less than five (5) years after Final Completion of the Project. Architect's Professional Liability Insurance shall cover Construction Design and Management Services, Architect's and Engineer's services, Professional Consulting Services, and any other professional certified services required to fulfill the requested scope of work on behalf of Loudoun County School Board. The policy shall include the Architect and the Architect's consultants of every tier as the Architect designates in the declarations.

§ 2.5.5 The Architect shall continue to maintain Products/Completed Operations coverage for a period of three (3) years after the contract completion date. The umbrella/excess policy shall be for a single limit of \$2,000,000 per occurrence for supplementing the CGL, Automobile, Employer's Liability and Worker's Compensation policies and its aggregate limit shall be designated to apply per project.

§ 2.5.6 All insurance that the Architect is required to maintain shall have the following clause or endorsement: "This insurance shall remain in force and not be canceled, allowed to lapse, non-renewed or reduced by endorsement to coverage unless written notice of such cancellation, lapse, non-renewal or reduction has been given to Loudoun County School Board and thirty (30) days have elapsed after receipt by Loudoun County School Board of such written notice."

§ 2.5.7 Coverages other than Worker's Compensation may be either on an occurrence or claims-made basis provided, however, that claims-made coverage for other than the Products/Completed Operations (and Professional Liability, which is governed in §2.5.4) shall respond to claims arising out of accidents, occurrences, incidents, and offenses happening after the commencement of the resulting contract but before the end of the contract completion date, provided that the claim is made within five (5) years after the contract completion date. Provided further, that (except for Professional Liability, which is covered in §2.5.4) coverage shall extend to claims made arising out of accidents, occurrences, incidents and offenses happening after the commencement of the resulting contract but before the end of three (3) years after the contract completion date provided that the claim is made within eight (8) years after the contract completion date.

§ 2.5.8 Prior to commencement of any work under this Agreement, and within ten (10) days after the execution of this Agreement, the Architect shall provide the Owner with (a) an original, signed, Certificate of Insurance stating that Loudoun County School Board is the Certificate Holder and (except for Professional Liability, Employer's Liability, and Worker's Compensation) Additional Insured as its interests may appear in the contracted services and identifying the RFP Number and

Title; and (b) shall furnish certified true copies of all the insurance policies for the insurance coverages required by this Agreement and any endorsements, amendments, and/or riders thereto with the coverages, provisions, clauses and endorsements required by §2.5, and with the certifications and endorsements signed by an official who is an authorized representative of the insurance company concerned, along with adequate proof of such official's authority to act on behalf of the insurance company. The Certificate of Insurance and copies of all insurance policies shall be sent to the Director of Construction, and copied to the Procurement Risk Manager, Loudoun County Public Schools, 21000 Education Court, Suite 301, Ashburn, VA 20148.

§ 2.5.9 The insurance provided under this Agreement shall not contain a supervisor or inspection exclusion that would preclude the Owner from supervising and/or inspecting the services provided.

§ 2.5.10 The Architect shall ensure that its consultants satisfy the same insurance requirements as apply to the Architect under §2.5.1 - §2.5.9 except the amount of Professional Liability coverage may be \$1,000,000, the amount of CGL coverage may be \$1,000,000 and no umbrella policy coverage is required.

§ 2.6 The Architect is responsible for, and shall indemnify, defend and hold the Owner, its board members, officers, agents, employees and representatives harmless from and against, any and all claims (both direct first-party and third-party), injuries, losses (to include, without limitation, Owner's first-party losses and/or loss of use), judgments arising from claims by third parties, damage, liabilities, costs and expenses, including without limitation reasonable attorneys' fees, reasonable experts' and consultants' fees, arising out of or resulting from, but only to the extent caused by any material breach of this Agreement by the Architect, wrongful intentional acts or the negligent acts/omissions of the Architect, its employees and its consultants in the performance of the professional services under this Agreement. The following shall be included within the definition of "costs" and "expenses" herein: (a) any time expended by the indemnified party or its employees, agents, officers and board members at their usual and customary billing rates, as well as all reasonable out-of-pocket expenses; (b) all costs and expenses of experts, consultants, engineers, and any other party retained by the indemnified party reasonably required to prosecute or defend a claim; (c) all costs, including reasonable attorneys' fees, incurred in bringing any action to enforce the provisions of this indemnification. The Architect's duty to indemnify the Owner under this provision shall not be limited to the amount of the insurance coverage stipulated in Section 2.5 herein.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described Articles 3 and 12 and Exhibit B – LCPS Submission Deliverables and Requirements and any services identified in Article 4 as part of Basic Services and include management and coordination of the Owner's civil engineer, and provision of all structural, mechanical, and electrical engineering services necessary to produce an original, reasonably complete and accurate set of Construction Documents as described in §3.4. Commissioning of the following systems are provided by the Owner and are to be coordinated under this Agreement:

- .1 Central building automation systems, including linkages to remote monitoring and control sites (including any security-related control systems or interlocks).
- .2 All equipment and controls of the heating, ventilation, and air conditioning systems.
- .3 Refrigeration systems.
- .4 Life safety systems (fire alarm, egress pressurization, and fire protection).
- .5 Service water systems.
- .6 Emergency power systems and uninterruptible power supply (UPS) systems.
- .7 Communication and paging systems.
- .8 Day-lighting and lighting control systems.
- .9 Building envelope.
- .10 Additional systems depending upon the LEED credits pursued.
- .11 Classroom technology.
- .12 Lighting controls (including emergency lighting linked to security systems).
- .13 Acoustical systems.
- .14 Security Systems.

Although actual commissioning of these systems is not within the Architect's Basic Services, coordination of the design and specifications with the Owner's commissioning consultants and cooperation with the Owner's commissioning consultants during construction administration are within the Architect's Basic Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

Notwithstanding the foregoing, the Architect understands that the Owner is not a designer, has hired the Architect for its professional expertise, and is relying on the Architect's and its consultants' professional expertise. Accordingly, nothing in this §3.1.2 or otherwise shall excuse the Architect or its consultants from their obligations under Article 2, no defense of contributory negligence by the Owner shall be made by the Architect or its consultants, and no such defense shall excuse the Architect or its consultants from any claim by the Owner or liability to the Owner based upon the failure of the Architect or its consultants to meet their professional standard of skill and care.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The Project Schedule shall show, for each element of the Project, the planned progress of design and the sequence in which the design of the various elements of the Project shall proceed. The Project Schedule shall show, for each element of the Project, milestones at which the progress of the design will be reviewed by the Owner and at which questions requiring resolution will be submitted to Owner for decision. The schedule initially shall also include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. The Architect acknowledges its understanding that time is of the essence and that timely design, construction and completion of this Project is of critical importance to Owner. Accordingly, as consistent with the exercise of sound professional practice, time is of the essence with respect to all aspects of the Architect's performance hereunder. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction, as described herein.

When events or causes, not within the control or responsibility of the Owner or the Architect (or those persons or entities for whom either the Owner or Architect is responsible) delay the Project Schedule completion, then the Project Schedule shall be adjusted as determined by the Owner in its reasonable, sole discretion. Any such resultant adjustment shall not be cause for additional compensation to Architect except as determined by the Owner in its reasonable, sole discretion, nor shall it be cause for the Architect to cease performance.

In the event the Project Schedule completion is delayed by events or causes within the control or responsibility of the Architect (or persons or entities for whom the Architect is responsible), then the Project Schedule shall not be adjusted, and the Architect shall not be entitled to additional compensation due to such delay(s).

In the event, the Project Schedule completion is delayed solely by events or causes within the control or responsibility of Owner (or those persons or entities for whom the Owner is responsible), then the Owner shall adjust the Project Schedule equal to the delay(s) and, to the extent the Owner (or those persons or entities for whom the Owner is responsible) is (are) responsible, the Owner shall compensate Architect for the Architect's additional direct cost due to such delay(s).

Pending any such adjustment in the Project Schedule, and to the extent feasible, the Architect shall continue performance in accordance with the Project Schedule then in effect, and thereafter in accordance with any adjusted Project Schedule.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities. The Architect shall prepare the Construction Documents in accordance with all applicable federal, state and local laws, codes, ordinances and regulations, including, but not limited to the Americans with Disabilities Act ("ADA") and Fair Housing Accessibility Guidelines.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. Specifically, the Architect shall (1) prepare all Plans, Specifications, and other documents in detail as necessary for all Project building permits, and documents necessary for Owner's approval, to be timely issued as a matter of right without the need for any special waivers or requests, (2) prepare all necessary responses to governmental authorities' review or other comments, and (3) meet with government agencies and officials as the Owner considers necessary prior to and subsequent to submissions for approvals and permits to expedite the approval and permit process.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review and analyze the program and other information furnished by the Owner to ascertain the requirements of the Project, shall arrive at a mutual understanding of such requirements with the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare original (re-drawn) Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of original (re-drawn) drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3. If the Architect's Cost of the Work estimate does not conform to the Initial Cost of the Work (Section 6.2) and any Owner approved modification, the Architect shall provide a written statement to the Owner to suggest alternative designs or change to the designs to bring the Architect's estimate within the Initial Cost of the Work. The

parties shall agree upon any changes required to the extent such estimate exceeds the Owner's budget for the Cost of the Work, which changes the Architect will incorporate as part of the Section 3.3 Design Development Phase.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3. If the updated estimate does not conform to the Initial Cost of the Work (Section 6.2) and any Owner approved modification, the Architect shall provide a written statement to the Owner to suggest alternative designs or change to the designs to bring the updated estimate within the Section 6.2 Cost of the Work. The parties shall agree upon any changes required to the extent such estimate exceeds the Owner's budget for the Cost of the Work, which changes the Architect will incorporate as part of the Section 3.4 Construction Documents/Contract Documents Phase.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Construction Documents shall be sufficiently complete so that a prudent contractor, following generally accepted industry procedures, could undertake and complete the Work without an unreasonable amount of clarifications from the Architect. To the extent that a prudent contractor is unable to do so due to either insufficient information and/or errors, omissions or ambiguities in the Construction Documents, the Architect shall take whatever steps are necessary promptly to provide sufficient information and/or modify and/or clarify the Construction Documents so as to expedite the Work and reduce any potential for delays. Said actions on the part of the Architect shall be considered part of the Basic Services hereunder, and shall not be considered to be Additional Services. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. The Construction Documents shall be prepared in such a manner that the Owner will be able to obtain any permit(s) necessary to construct the Project. The Architect shall assist the Contractor and Owner in obtaining all required building permits and approvals and shall respond promptly and appropriately to all questions and comments and make all required changes.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) overseeing the prequalification process for General Contractors per LCPS guidelines and coordinated directly with the Construction Supervisor such that the final approved list is distributed at a minimum of 30 days prior to bid opening. The

Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. If the updated estimate does not conform to the initial Cost of the Work (Section 6.2) and any Owner approved modification, the Architect shall provide a written statement to the Owner to suggest alternative designs or change to the designs to bring the updated estimate within the Section 6.2 Cost of the Work. The parties shall agree upon any changes required to the extent such estimate exceeds the Owner's budget for the Cost of the Work, which changes the Architect will incorporate into the Construction/Contract Documents Phase.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§3.4.6 The Architect shall use reasonable care in accordance with professional standards to incorporate the following in the Construction Documents upon review and acceptance by the Architect for compliance with applicable codes and standards as well as the Architect's standards of quality and care:

- .1 Owner-provided proprietary specifications;
- .2 Standard practices particular to Loudoun County Public Schools when provided, identified, and documented by the Owner;
- .3 Sole source products when provided, identified, and documented by the Owner;
- .4 The Architect shall submit to the Owner a list of proposed equipment and product changes (from Design Development Documents) for approval by the Owner;
- .5 During future adaptations of the prototype design for the other projects for which the Architect is employed by the Loudoun County School Board, the Architect shall endeavor to advise the Owner of any known major equipment and product changes to the prototype Construction Documents;
- .6 The Architect shall specify only electrical components approved by Underwriters' Laboratories (or other testing agencies recognized by the Statewide Building Code) including electrical and mechanical equipment.

§3.4.7 The Architect shall certify the Owner that, to the best of the Architect's knowledge, information, and belief, the Construction Documents were designed in accordance with applicable professional, architectural and engineering standards.

§3.4.8 The Architect, with the Owner's assistance, is responsible for services pursuant to obtaining normal approval of the plans by all local, state and Federal review agencies, at no additional cost to the Owner. The Owner agrees to pay all governmental authority's review fees for such approvals.

§3.4.9 The Architect shall include in the Contract Documents for the Project, a requirement that the Contractor provide Operations and Maintenance Manuals that are adequate for the Owner's needs and adequate training for the Owner's employees in the operations and maintenance of all systems, including but not limited to; mechanical, electrical, heating and air conditioning systems, communications, data, and low voltage systems installed by the Contractor.

§ 3.4.10 The Architect shall furnish to the Owner sufficient copies of the Drawings and Specifications as may be required for permits. In addition, the Architect shall furnish the Owner with one set of Construction Documents in electronic form.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders;
- .3 conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating reproduction of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 participating in selection interviews with prospective contractors; and
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 Except to the extent modified herein, the Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect 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, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 To protect the Owner's interests, the Architect shall visit the site at least four times per month, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, while the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, the Architect shall use diligent efforts in accordance with the applicable standard of care to observe and report to the Owner defects and deficiencies in the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report in writing to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Such visits shall include observation services required in Section 3.6.6. Personnel from the Architect and any of its sub-consultants with expertise in specific design disciplines that comprise the Architect's Basic Services hereunder shall also visit the Project as appropriate to maintain familiarity with the Project and the Work and to fulfill the Architect's obligations during the Construction Phase. The Architect, and as appropriate, the Architect's consultants as appropriate, shall promptly submit to the Owner a written report, within three days, subsequent to each site visit.

§ 3.6.2.2 The Architect shall notify the Owner in writing of Work that does not conform to the Contract Documents and reject the same, unless the Owner approves the deviation in writing. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness and no later than within seven (7) days of receiving such written request.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.2.6 The Owner shall assign a Project Representative during the Construction Phase. The Project Representative will coordinate observations with the Architect, and the Architect shall cooperate with the Owner's Project Representative in doing so.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Based upon the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and

inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness and no longer than ten (10) calendar days from receipt, unless the Owner is notified of the reasons for the delay and approves a longer time period.

§ 3.6.4.2 In accordance with the approved submittal schedule or as otherwise set forth herein, the Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, and mockups but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall be responsible for the adequacy, accuracy and completeness of such performance and design criteria, and for coordination with the overall design of the Project of any design undertaken by the design professional retained by the Contractor in response to such performance and design criteria. The Architect shall not be responsible for the actual design undertaken by the design professional retained by the Contractor or for its adequacy, accuracy or completeness. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Notwithstanding any terms that may be to the contrary, Architect shall report to the Owner any patent design errors or omissions in such design services or documents.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness and not later than within seven (7) days from receipt. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 With the Owner's prior approval, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Except with the consent of the Owner, the Architect will:

- .1 Perform no more than two (2) inspections to determine whether the Work or designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contractor's payments amounts paid to the Architect for any additional inspections.
- .2 Perform no more than two (2) inspections to determine whether the Work or designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contractor's payments amounts paid to the Architect for any additional inspections.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 The Architect shall work and/or coordinate with the Contractor to provide As-Built Drawings. The Architect shall also prepare and furnish to the Owner one (1) set in electronic and hard copy form As-Designed Record Drawings - a record set of the Contract Documents (and Drawings) incorporating revisions, changes or annotations to show the changes to the original design.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Basic Services Details

§ 4.1.1 The services listed below are included in Basic Services and are required for the Project.

Basic Services Details	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Owner's Civil Engineer
§ 4.1.1.5 Site evaluation and planning	Owner's Civil Engineer
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect
§ 4.1.1.8 Civil engineering	Owner's Civil Engineer
§ 4.1.1.9 Landscape design	Owner's Civil Engineer
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect
§ 4.1.1.13 On-site project representation	Architect per §4.3.3 and §12.17
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Architect
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Owner
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Architect
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

« »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

Additional Services are not included in Basic Services but may be required for the Project. The Owner may request and the Architect shall provide Additional Services after execution of this Agreement without invalidating the Agreement. Additional Services requested by the Owner will be confirmed in writing. Should the Owner request services that the Architect believes to be outside the scope of Basic Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the purported additional services. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. Notwithstanding anything to the contrary in this Agreement, Owner shall not be responsible to pay, and the Architect shall not be entitled to receive compensation for, any Additional Services to the extent such services are required due to the fault or negligence of the Architect or the Architect's failure to perform in accordance with the terms of this Agreement. The Architect shall immediately proceed to perform any Additional Services in accordance with any written direction from the Owner directing such Additional Services, pending resolution of any issue as to payment or time for such services. Except as otherwise provided herein, prior written authorization by the Owner in the form of an approved Additional Services Proposal is required before the Architect may perform Additional Services. The prior written authorization is a condition to both invoicing and payment for any Additional Services.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparation of design and documentation for excessive alternate bid or proposal requests proposed by the Owner;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing, except as noted in § 12.10.6;
- .7 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .8 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .9 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require excessive evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating extensive substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 « Two » (« 2 ») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor unless any such additional reviews are made necessary by errors, omissions and/or miscoordination in or among the Instruments of Service.
- .2 Four (4) visits to the site by the Architect per month, on average, during construction
- .3 « Two » (« 2 ») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 « Two » (« 2 ») inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 90 days after the date of Substantial Completion of the Work shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Six (6) after the date set for Substantial Completion in §1.1, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

§ 4.2.6 If the Owner causes or generates the need for a significant Change Order related to documents, the Architect shall be compensated for the cost of services and the cost for preparing such Change Order documents. The Architect shall prepare a proposal, acceptable to the Owner, detailing the cost to provide services for said document preparation, prior to the commencement of such services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project in accordance with §3.6.2.6. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 To the extent specifically requested by the Architect and where necessary for the Architect's performance of Services, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. Notwithstanding the foregoing, the Owner's failure to do so shall not excuse the Architect or its consultants from any liability for such errors, omissions, or inconsistencies.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. The Owner requires a detailed estimate of the Cost of the Work, and the Architect shall provide such an estimate.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 Notwithstanding the terms of Section 6.2 herein, if the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSE

§ 7.1 Except as provided herein, the Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, 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.

§ 7.2 Any documents, models, renderings and other materials to be furnished to Owner or anyone in connection with this Agreement by or on behalf of Architect, or by any consultants, contractor, or others retained by Architect, and all modifications made by Architect to any documents supplied by Owner to Architect, and all written information, reports, studies, object or source codes, flow charts, diagrams, and other tangible material which have been created by Architect in order to provide services pursuant to this Agreement, and all digital forms thereof (collectively, the "Instruments of Service") shall be considered "work made for hire" commissioned by the Owner, and any and all legal rights to such Instruments of Service, including all copyrights, shall be deemed permanently vested in Owner. The Architect hereby unconditionally and irrevocably transfers to Owner any and all rights Architect may be deemed to have to such Instruments of Service. The rights granted to Owner under Article 7 shall not be affected by any suspension, termination, breach of contract by Owner or dispute between Owner and Architect. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of any rights of the Architect, the Architect's consultants or the Owner.

§ 7.3 The rights granted herein with respect to the Instruments of Service are solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. The rights granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall survive and Architect's remedies shall be limited to those set forth in this Agreement.

§ 7.3.1 In the event the Owner uses the Instruments of Service for a subsequent or other project without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 The Architect shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Owner.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

§ 7.6 Upon the Owner's request, the Architect shall promptly cause to be delivered to the Owner any of the Instruments of Service for the Project including without limitation, any and all electronic files.

§ 7.7 The Architect shall include in its contracts with all its consultants, provisions that bind such consultants to this Article 7 and that ensure that the Owner will fully enjoy all its rights under this Article 7.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 CONTRACTUAL DISPUTES/CLAIMS BY ARCHITECT

§ 8.2.1 The Architect shall give the LCPS Director of Construction ("Director") written notice of the Architect's intent to make any claim within ten (10) days of the beginning of the occurrence of the event leading to the claim or beginning work upon which the claim is based. The written notice shall be a document from the Architect addressed to the Director. The written notice shall clearly state the Architect's intention to make a claim shall describe the occurrence involved, and shall be transmitted in a manner to ensure receipt by the Director within the ten (10) day limit established in the first sentence.

§ 8.2.2 The Architect shall submit the claim and any supporting data to the Director as soon as practicable after the occurrence giving rise to the claim ends, and in no event not later than sixty (60) days after final payment. The burden shall be on the Architect to substantiate that it has given written notice and submitted its claim in accordance with this §8.2.

§ 8.2.3 The claim must (i) be certified under oath as true and correct by a principal of the Architect; (ii) must be for specific relief; (iii) if any money is sought, must specify the dollar amount sought; and (iv) must contain sufficient supporting documentation to reasonably allow its consideration, including without limitation, any documentation required by this Agreement. The burden shall be on the Architect to substantiate the claim.

§ 8.2.4 The Architect shall comply with all other terms and conditions of this Agreement.

§ 8.2.5 Following initial, informal consideration by the Director or his designee(s), the parties shall endeavor to resolve any claim through direct negotiations, and if such direct negotiations fail, and if the Owner so requests, the parties shall then resort to non-binding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Ashburn, Virginia.

§ 8.2.6 Should the claim remain unresolved for more than 60 days after it is submitted, then the Division Superintendent or his designee shall, within no later than 90 days after the claim's submission, render a written decision on the claim on behalf of the Owner. The Architect may not institute any legal action with respect to the claim until after the Division Superintendent or his designee renders his written decision or 90 days from its receipt by the Director has passed, whichever comes first. The only effect of the failure by the Division Superintendent or his designee to render a decision within this 90-day period is to allow the Architect to institute a legal action pursuant to this provision without having to wait for a decision on the claim concerned.

§ 8.2.7 If the Owner denies in whole or part a claim by the Architect, or more than 90 days have passed since the claim was received by the Director but no written decision has been issued, the Architect may appeal denial of the claim by instituting an action in the Loudoun County Circuit Court, Leesburg, Virginia, or if the subject or amount in controversy is within its jurisdiction, the Loudoun County General District Court, Leesburg, Virginia, and may thereafter pursue all available appeals in Virginia state courts, to the extent they have jurisdiction, this being the Architect's sole remedy allowed.

§ 8.2.8 For purposes of § 8.2, "claim" means any demand or assertion by the Architect, seeking as a matter of right, adjustment or interpretation of this Agreement's terms, payment of money, extension of time, or other relief with respect to the terms of the Contract.

§ 8.3 METHOD OF BINDING DISPUTE RESOLUTION

§ 8.3.1 If the parties do not resolve a dispute pursuant to §8.2, the method of binding dispute resolution shall be Litigation in the Circuit Court of Loudoun County, Virginia, or if the subject or amount in controversy is within its jurisdiction, the Loudoun County General District Court, Leesburg, Virginia, and thereafter all available appeals in Virginia state courts, to the extent they have jurisdiction; all subject to the requirements and limitations of the Virginia Public Procurement Act.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner, without reasonable justification, fails to make payments due to the Architect in accordance with the terms of this Agreement, and if such failure continues after fourteen (14) days' written notice to the Owner of such failure providing a detailed explanation of why such failure constitutes a violation of this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, if the suspension was justified, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect shall be paid all sums due prior to suspension and any expenses reasonably incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. Notwithstanding the foregoing, in the event of any dispute as to payment or fees owed the Architect, the Architect shall perform and cause its consultants to perform diligently until the dispute is finally resolved under the terms of this Agreement.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses reasonably incurred because of the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, including any Reimbursable Expenses then due.

§ 9.7 No Termination Expenses shall be allowed for the services beyond what is payable under §9.6. No anticipated profit or overhead will be allowed on services not performed.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, as modified by the Owner.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Notwithstanding the foregoing, the Architect shall prepare the Contract Documents so as to preclude or limit to the extent reasonably necessary introduction of hazardous materials or toxic substances in any form at the Project site during construction, and shall ensure that, if the Architect or its consultants become aware of the existence of unauthorized hazardous materials or toxic substances at the Project site or of the storage or handling at the Project site of hazardous materials or toxic substances in an inappropriate manner, the Architect shall promptly report this information to the Owner. No asbestos containing materials of any kind are to be included in any product, material or equipment for this Project. As a Basic Service, upon completion of the Project, the Architect shall submit a certification to Owner that to the best of the Architect's knowledge, no asbestos-containing building material was specified in the construction documents of the Project, nor constructed in the Project, based upon a certification statement received from the Contractor.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively

for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Each party's performance under this Agreement shall be excused to the extent and for the time such performance is delayed, interrupted or prevented by an event of force majeure. As used within this Agreement, the term "force majeure" shall mean, by way of example, and not in limitation, fire, act of God, Governmental act, national emergency, strike, labor dispute, unusual delay in transportation, inability to procure materials, adverse weather conditions not reasonably anticipatable, unavoidable casualties, epidemic, pandemic, quarantine or any other causes beyond the Architect's or Owner's reasonable control, except as otherwise provided herein. Architect and Owner shall each exercise their respective commercially reasonable efforts to mitigate the cause of any such force majeure delay, interruption or prevention. In the event of a force majeure circumstance or event, the party claiming delay due to force majeure shall give prompt written notice to the other party within seven (7) days of the beginning of the force majeure delay and include an estimate of the delay.

§ 10.10.1 To avoid any misunderstanding, force majeure shall not include the novel coronavirus COVID-19 which is on-going as of the date of the execution of this Agreement.

§ 10.10.2 Force majeure shall also not include a party's financial distress, nor the inability of a party to make a profit or avoid financial loss, nor changes in market prices or conditions, nor a party's financial inability to perform its obligations of this Agreement.

§ 10.11 All matters that relate to the termination or expiration of the Agreement, that relate to ownership of documents or that relate to the indemnity obligations of the parties, as well as all rights and obligations of the parties that would by their nature be expected to survive any termination or expiration of this Agreement, shall survive any termination or expiration of the Agreement and shall be given full force and effect notwithstanding any termination or expiration of the Agreement, but such survival shall not operate to extend any applicable statute of limitations.

§ 10.14 Notices

§ 10.14.1 All notices required or permitted hereunder shall be in writing and may be given by messenger or may be sent by United States registered or certified mail (return receipt requested), Federal Express, Express Mail, or other national overnight courier service, or by email with written confirmation of receipt addressed as follows:

If to Owner:

Gary Van Alstyne
Director, Division of Construction Services
Loudoun County Public Schools
21000 Education Court, Suite 210
Ashburn, VA 20148

With copy to:

Melissa Tello
Architect, Division of Construction Services
Loudoun County Public Schools
21000 Education Court, Suite 210
Ashburn, VA 20148

If to Architect:

<< >>
<< >>
<< >>

<< >>
<< >>

§ 10.14.2 All notices shall be effective upon delivery or refusal to accept delivery. Each party may change the party or parties to whom notices must be sent or the address of an individual receiving notice by providing notice in accordance with the provisions of this Section.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

<< >>

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« Supplemental Services for the Architect, which are not indicated in Section 4.1.1 as included in Basic Services, shall be compensated by, and billed pursuant to, a separate agreement via a change order to this Agreement; or, in the absence of a separate agreement, in accordance with the Architect's hourly rates listed in Attachment 2. »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

« Additional Services for the Architect shall be compensated by, and billed pursuant to, a separate agreement via a change order to this Agreement; or, in the absence of a separate agreement, in accordance with the Architect's hourly rates listed in Attachment 2. »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~ten~~ percent (~~10~~%), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

« Supplemental Services or Additional Services of the Architect's consultants shall be compensated by, and billed pursuant to, a separate agreement via a change order to this Agreement; or, in the absence of a separate agreement, in accordance with the hourly rates of the Architect's consultants as listed in their respective proposals in Attachment 2. The consultants' proposals include listings of tasks that are not included in their base fees. »

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Ten	percent (10	%)
Design Development Phase	Fifteen	percent (15	%)
Construction Documents Phase	Thirty-five	percent (35	%)
Procurement Phase	Three	percent (3	%)
Construction Administration Phase	Thirty-five	percent (35	%)
Post Construction Administration	Two		2	%
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« For Architect's hourly billing rates, see Attachment 2, attached to this Agreement. For Architect's consultants' hourly billing rates, see each consultant's proposal (Attachment 2 attached to this Agreement). »

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Authorized out-of-town travel and subsistence;
- .2 Permitting and other fees required by authorities having jurisdiction over the Project;
- .3 Printing, reproductions, postage, handling, and delivery;
- .4 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .5 Physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .6 All taxes levied on professional services and on reimbursable expenses;
- .7 Site office expenses;
- .8 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .9 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent (5 %) of the expenses incurred.

§ 11.9 Compensation for Use of Instruments of Service If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall not pay any licensing fee in addition to such compensation as may be due to the Architect under this Agreement for the Owner's continued use of the Instruments of Service.

11.10 Payments to the Architect

§ 11.10.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts due and payable under this Agreement that remain unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

« »

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

« »

§ 12.1 During the performance of this Agreement, the Architect agrees as follows:

§ 12.1.1 The Architect shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or other basis prohibited by federal or state law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of the Architect. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

§ 12.1.2 The Architect, in all solicitations or advertisements for employees placed by or on behalf of the Architect, shall state that the Architect is an equal opportunity employer.

§ 12.1.3 Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the notice, advertisement, and solicitation requirements of this paragraph.

§ 12.1.4 The Architect shall cause to be included the provisions of the foregoing paragraphs §12.1.1 through §12.1.3 (substituting the consultant or vendor for Architect as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 12.2 During the performance of this Agreement, the Architect agrees to (i) provide a drug-free workplace for the Architect's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Architect's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Architect that the Architect maintains a drug-free workplace; and (iv) cause to be included the provisions of the foregoing clauses (substituting the consultant or vendor for the Architect as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each consultant or vendor.

§ 12.2.1 For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with this Agreement by the Architect where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

§ 12.3 The Architect agrees that the Owner and its authorized representative may, at Owner's option and expense, at reasonable times and upon prior notice, inspect and copy all records relating to the services provided under this Agreement to the extent necessary to confirm compliance with the terms of the Agreement. The Architect shall allow the Owner and its authorized representatives, until three (3) years after final payment under this Agreement, at reasonable times and upon prior notice, to have access to and the right to examine any books, documents, papers, or other records of the Architect involving transactions related to this Agreement. The Architect agrees to provide the Owner adequate and appropriate work space at the Architect's facilities in order to conduct such examinations. The Architect agrees to include in all subcontracts and consulting agreements under this Agreement, including without limitation, those with its consultants, and to cause its consultants to include in all their subcontracts and consulting agreements, a provision that the Owner and its authorized representatives will, until three years after final payment under this Agreement, at reasonable times and upon prior notice, have access to and the right to inspect and copy

any books, documents, papers, or other records of the Architect, consultants and subcontractors involving transactions related to the services provided and further providing that such persons shall otherwise comply with the provisions contemplated by this paragraph. The term subcontract as used in this clause excludes:

- (i) Purchase orders; and
- (ii) Subcontracts for public utility services at rates established for uniform applicability to the general public.

§ 12.5 Statement of Nondiscrimination Against Faith-Based Organizations

§ 12.5.1 Loudoun County Public Schools does not discriminate against faith-based organizations. (See Va. Code § 2.2-4343.1).

§ 12.6 Prompt Payment Requirements

§ 12.6.1 Within seven days after the Architect receives amounts paid for work subject to this Agreement performed by any "subcontractor", as defined in Va. Code § 2.2-4347, the Architect shall take one of the two following actions:

- a. Pay the subcontractor for the proportionate share of the total payment received from the Owner attributable to the work performed by the subcontractor; or
- b. Notify the Owner and the subcontractor in writing of the Architect's intent to withhold all or part of the subcontractor's payment and the reason for nonpayment.

§ 12.6.2 The Architect shall provide its Federal Employer Identification Number with each application to the Owner for payment.

§ 12.6.3 The Architect shall pay interest to any "subcontractor" on all amounts owed by the Architect that remain unpaid after seven days following receipt by Architect of payment from Owner for work performed by such subcontractor relating to this Agreement except as to amounts withheld as allowed by §12.6.1.b.

§ 12.6.4 Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of 1% per month.

§ 12.6.5 The Architect shall include in its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

§ 12.6.6 No obligation imposed by this §12.6 shall be construed to create any obligation of the Owner. Under Va. Code §2.2-4354, no modification to this Agreement may be made for the purpose of providing reimbursement for the interest charge, and the Architect shall not invoice the Owner for any such charge.

§ 12.7 The Architect during the performance of this contract shall not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

§ 12.8 The Architect warrants, represents, and certifies that neither the Architect, its consultants, nor any employee of the Architect who will have direct contact with any Loudoun County Public Schools' student has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Architect further agrees that each proprietor, partner, or employee who will have any contact with children while providing any services, will submit a signed certification to the Owner before entering school property or having contact with any student under this Agreement that he or she has not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

§ 12.9 The Architect shall ensure that any contract that the Architect enters into with any consultant for any design or contract administration services for the Project contains a provision that, in the event of the Architect insolvency, bankruptcy, or dissolution, the consultants' irrevocably consent to the Architect's assignment to the Owner of any of the Architect's rights with respect to such consultant, including without limitation, (i) any of Architect's rights relating to the consultant's obligations to render services in accordance with the applicable standard of care and to maintain professional liability insurance, and (ii) any of Architect's rights to sue the consultant for failure to perform

in accordance with the applicable standard of care. The Architect hereby gives its irrevocable consent to such assignments. It shall be at Owner's sole option to accept any such assignment.

§ 12.10 As a part of the Architect's Basic Service, the Architect shall:

- .1 Use the Owner's Project Management software for the purpose of Design Phase and Construction Phase administration and monitoring of the Project. The software program shall be used by the Architect during the entire contract period and shall include electronic versions of all correspondence and contract-related submissions including product data and shop drawings. Access to the program shall be restricted to the Owner, Architect, Contractor, and any other party deemed appropriate by the Owner.
- .2 Provide services in connection with evaluating substitutions proposed by the Bidders and/or the Contractor.
- .3 Analyze the Owner's needs and programming requirements for the Project. The Architect shall provide a Space Allocation Summary at the Schematic Design Phase and keep it up to date through the Design Development Phase.
- .4 Furnish a set of half-size bond copy and electronic (.tif and .dwg) record drawings showing significant changes in the Project made during construction based on RFI's, PCO's, ASI's and marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- .5 Coordinate the services of the Owner's consultants.
- .6 Provide architectural exhibits and presentations to aid the Owner with preparations for bond referendum or other funding mechanisms necessary to support this Project.
- .7 Coordinate and conduct monthly progress meetings for the Project, prepare and distribute minutes of aforementioned meetings in a manner as agreed to by the Owner during the contract period. Additionally, the Architect shall have its Consultants visit the site a minimum of one (1) time every month to answer questions by each of the various trades completing the construction and to do a general routine observation with a subsequent written report on any inadequacies observed and on the performance of the Contractor. This shall apply to the civil, structural, plumbing, mechanical, and electrical engineers. The Architect shall prepare and deliver to the Owner, by the third business day of each month, a written report and an 8-1/2 x 11 bar graph describing and indicating the Contractor's construction progress for the previous month's construction.
- .8 In consultation with the Owner, the Architect will develop a list of items at the Schematic Design and Design Development Phases which, in the Architect's opinion, can be considered sustainable practices; energy efficient; renewable materials; and/or environmentally friendly, as they relate to the general term of "green initiatives."
- .9 Perform a Value Engineering exercise to provide opportunities to improve or reduce the cost of the current prototype design.
- .10 Refer to Exhibit B – LCPS Submission Deliverables and Requirements for additional requirements.

§ 12.11 The Architect or his representatives shall not confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of the substantially equal or greater value is exchanged.

§ 12.12 Kickbacks:

- .1 The Architect or his representatives shall not demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- .2 The Architect or his representative shall not make, or offer to make, kickbacks as described in this section.
- .3 No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services of anything of value in return for any agreement not to compete on a public contract.
- .4 If the Architect or his representative makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

§ 12.13 Changes in Educational Specifications, Schematic Design, Construction Documents, product selection and Outline Specifications will not be authorized unless specifically approved in writing by the Director of Construction or the Owner's duly authorized agent.

§ 12.14 This Agreement shall be subject to the appropriation of funds for the construction of the Project by the Government body of Loudoun County.

§ 12.15 The parties hereto agree that included within this Agreement is the option of the Owner to have the Instruments of Service site adapted based upon multiple projects using the Owner's prototype school design. Total basic compensation for the Architect providing services for such additional projects using the Owner's building plans shall be agreed upon by the Owner and the Architect. Nothing contained herein shall obligate either the Owner or the Architect to utilize the services of the Architect, or for the Architect to perform, on such subsequent multiple projects; either party hereto may terminate this provision hereof upon thirty (30) days written notice to the other. In any event, whether or not the Architect provides the services for such additional projects, the Architect shall not be entitled to any additional compensation for use of the Instruments of Service for such additional projects.

§ 12.16 The requirements of the Code of Virginia §2.2-4311.2 apply to this Agreement and are incorporated herein. If the Architect is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the Architect must be authorized to transact business in Virginia as a domestic or foreign business entity if so required by Title 13.1 of Title 50 of the Code of Virginia or as otherwise required by law. If the Architect is a business entity, it shall not allow its existence to lapse or its certificate of authority or registration to be revoked or canceled during the term of this Agreement.

§ 12.17 Architect and its consultants, contractors, subcontractors, vendors and/or their suppliers shall comply with the Americans with Disabilities Act and Architect shall require all persons having any contractual agreement through them with respect to this Project to make this same commitment.

§ 12.18 All limitations of liability, indemnification and/or hold-harmless obligations, insurance obligations and representations contained in this Agreement shall survive the completion or termination of this Agreement and shall remain in full force and effect.

§ 12.19 Architect's and its consultants' professional services under this Agreement are to meet the applicable standard of care. This Agreement is not intended to create a guarantee or warranty as to those professional services.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit,
- .3 AIA Document G201 – 2013, Project Digital Modeling Protocol
- .4 AIA Document G202 - 2013, Project Building Information Modeling Form
- .5 AIA Document G612 – 2017, Owner's Instructions to Architect, Part A
- .6 AIA Document G612 – 2017, Owner's Instructions to Architect, Part B

Note: AIA Documents G612 – 2017 Part A and Part B will be provided for each project, as applicable, at the time a specific project scope and proposal is developed.

.7 Exhibits:

LCPS Contracts Exhibits Package:

Exhibit A – LCPS Submission Deliverables and Requirements

Exhibit B – LCPS Environmental Requirements and Goals

Exhibit C– LCPS Printing Requirements for Document Submissions

Exhibit D – LCPS Document Format Specifications

Exhibit E – LCPS Middle School Educational Specification

Exhibit F – LCPS Basis of Design Technical Specification

Note: Exhibits B – F will be provided for each project, as applicable, at the time a specific project scope and proposal is developed.

.8 Other documents:

(List other documents, if any, forming part of the Agreement.)

Attachment 1 – Key Personnel List

Attachment 2 – Architect's Billing Rate Schedule

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

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

« »« »

(Printed name, title, and license number, if required)