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**From:** Staton, Jennifer A  
**Sent:** Tuesday, February 20, 2018 10:17 AM  
**To:** 'Meyerhofer, Kelly'  
**Cc:** Foster, James H  
**Subject:** RE: FOIA #11: MR, RR Contracts  
**Attachments:** 14004 Prof Design Svcs New PK-8 - Hite Assoc Contract.pdf; 14005 Prof Design Svcs New 9-12 - Hite Assoc Contract.pdf

Kelly-

Thank you for your request for public records pursuant to the South Carolina Freedom of Information Act. The requested public records are attached.

Jennifer Staton, MS, CSP  
Risk Manager  
Beaufort County School District  
843-322-2355 (w) | 843-812-6405 (m)

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**From:** Meyerhofer, Kelly <[kmeyerhofer@islandpacket.com](mailto:kmeyerhofer@islandpacket.com)>  
**Sent:** Monday, February 19, 2018 4:00:43 PM  
**To:** Staton, Jennifer A; Foster, James H  
**Subject:** FOIA #11: MR, RR Contracts

February 19, 2018

Jennifer Staton  
Beaufort County School District  
2900 Mink Point Boulevard  
Beaufort, South Carolina 29902

Ms. Staton:

Pursuant to South Carolina's Freedom of Information Act, I am making a public records request for copies of the contracts signed between Beaufort County School District and Hite Associates for River Ridge Academy and May River High School. Both, according to change orders provided in a previous FOIA request, were dated Nov. 20, 2013.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes, so I ask you to waive any and all fees. In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request be filled electronically, by e-mail attachment if available or jump drive if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

--  
Kelly Meyerhofer

Education and Projects Reporter  
The Island Packet | The Beaufort Gazette  
843-706-8136  
[kmeyerhofer@islandpacket.com](mailto:kmeyerhofer@islandpacket.com)  
@kellymeyerhofer

# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## ***Standard Form of Agreement Between Owner and Architect***

**AGREEMENT** made as of the Twentieth day of November in the year Two-Thousand Thirteen.

*(In words, indicate day, month and year)*

**BETWEEN** the Architect's client identified as the Owner:

*(Name, address and other information)*

Beaufort County School District, School District  
P. O. Drawer 309  
2900 Mink Point Blvd.  
Beaufort, SC 29901-0309  
Telephone Number: 843 322-0783  
Fax Number: 843 322-0785

and the Architect:

*(Name, address and other information)*

Hite Associates, P.C.  
2600 Meridian Drive  
Greenville, NC 27834  
Telephone: 252.757.0333

For the following Project:

*(Include detailed description of Project)*

New Davis Road Pre K-8 School, Request for Qualifications 14-004

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

*(Paragraphs deleted)*

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

### **§ 1.1**

*(Paragraphs deleted)*

The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

### **§ 1.2 The**

*(Paragraphs deleted)*

Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

**§ 1.3** The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

## **ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES**

### **§ 2.1 DEFINITION**

The Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, civil, mechanical and electrical engineering services. If the Owner elects to employ Construction Management At-Risk for preconstruction services and construction (i.e. AIA Document A121CMc-2003), the Architect, as part of Basic Services, will fully cooperate with the Construction Manager selected by the Owner.

### **§ 2.2 SCHEMATIC DESIGN PHASE**

**§ 2.2.1** The Architect and Owner shall mutually develop an approved program and educational specification on which the design of the Project will be based. Development of the educational specification shall have community involvement. The Architect shall assist the Owner with the development of educational specification meetings and assist in the collection of community input. Design work will not begin without an approved program.

**§ 2.2.2** The Architect shall provide a preliminary evaluation of the Owner's program, design guidelines, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

**§ 2.2.3** The Architect shall review with the Owner alternative approaches to design and construction of the Project.

**§ 2.2.4** Based on the approved program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. If either the Owner or the Architect elects to submit the Schematic Design Phase documents for review to the State Department of Education, the Architect shall make such submittal as provided for in the South Carolina School Facilities Planning and Construction Guide, and the Architect shall participate in any plan review activities based on such submittals. If requested by the Owner, the Architect shall further prepare and provide to the Owner a rendering of the Project for preliminary use..

### **§ 2.3 DESIGN DEVELOPMENT PHASE**

**§ 2.3.1** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

**§ 2.3.2** The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

§ 2.3.3 The Architect shall make the required submittals to the South Carolina Department of Education's Office of School Planning and Facilities, and participate fully in the plan review process for the same.

#### § 2.4 CONSTRUCTION DOCUMENTS PHASE

§ 2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Architect shall not proceed to the Construction Document Phase in the absence of approval to proceed from the State Department of Education unless directed by the Owner.

§ 2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

§ 2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

§ 2.4.4 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.

§ 2.4.5 The Construction Documents shall incorporate the final resolution of all review comments from the Owner and other authorities having jurisdiction. The Construction Documents shall comply with the requirements of the South Carolina State Department of Education and shall be complete, including the application of all professional seals as required by South Carolina laws and regulations, and ready for bidding without further modification by the Architect.

§ 2.4.6 The review of the Construction Documents by the Owner shall not relieve the Architect of its responsibility for compliance with the requirements of the South Carolina School Facilities Planning and Construction Guide, with applicable statutes, regulations and codes, or for design deficiencies, omissions or errors.

#### § 2.5

*(Paragraphs deleted)*

#### BIDDING OR NEGOTIATION PHASE

§ 2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

§ 2.5.2 Working through the Owner Procurement Coordinator, the Architect shall evaluate substitutions proposed by Bidders and make any subsequent revisions to Bidding Documents by Addenda.

§ 2.5.3 The Architect and any appropriate consultants to the Architect shall attend any pre-bid conferences and the bid opening.

§ 2.5.4 The Architect shall post all drawings and project documents in two (2) plans rooms in the general area to be available for use during the bidding phase. The Architect shall also provide a read-only CD to the Owner and Construction Manager or Contractor at no cost to the Owner other than the nominal cost of the CD reproduction. The read-only CD shall contain hyper-linked connections between the listed sheets in the Index of Drawing to the individual sheet listed. The read-only CD contains hyper-linked connections between the listed specification table of contents to the individual specification sections. The Owner reserves the right to distribute and post these documents on-line to interested parties.

#### § 2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment for the Contractor or 90 days after the date of Substantial Completion of the Work, as determined by approved Change Order, if any.

§ 2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, as amended for this Project. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Section 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, 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 neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Architect of Record or an Owner-approved representative of the Architect shall attend all inspections by OSF and/or the State Fire Marshal. A qualified representative of the Architect's consultants (PME, Civil, etc/) shall also attend all inspections involving the scope of their respective work.

§ 2.6.6 The Architect shall report to the Owner its observations made during its site visits and shall report any deviations from the contract Documents apparent to the Architect in the course of its site visits. The Architect shall also report any deviations from the most recent construction schedule submitted by the Contractor. In addition, the Architect shall provide the Owner with monthly progress reports as set forth in Section 2.6.9. However, the Architect shall not 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, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.8.2 The Architect will arrange for and conduct Owner-Architect-Contractor (OAC) meetings at the Project site during the Construction Phase. The Architect will keep meeting minutes and submit the same as provided in Section 2.6.9. The Owner and Architect will agree to a frequency of OAC meetings based on the needs of the project.

§ 2.6.8.3 Prior to the expiration of one year after the date of Substantial Completion, the Architect will schedule and conduct a Project inspection with the Contractor to identify any warranty items to be addressed by the Contractor.

#### § 2.6.9 CERTIFICATES FOR PAYMENT

§ 2.6.9.1 The Architect shall review with the Owner and certify the amounts due the Contractor and shall issue certificates in such amounts.

§ 2.6.9.2 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 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 2.6.9.3 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 material 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.

§ 2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Where immediate rejection to protect the Owner's interests or the safety of the public is unnecessary, the Architect shall give the Owner prior notice of its intention to reject work. Notice to the Owner of the Architect's intention to reject work shall not impose upon the Owner any duty in regard to such decision to reject work nor shall it relieve the Architect of its obligations and responsibilities to the Owner hereunder. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. 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, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any 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. The Architect will meet with the Contractor selected for the Project and will make its best efforts to come to a mutual agreement with the Contractor regarding the submission of RFIs and other submittals and the Architect's time to respond to them. The Architect will endeavor to agree with the Contractor on a specific response time based upon the urgency of the RFIs or other submittals (i.e. emergency, urgent, or routine).

§ 2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. When the Architect delegates design services to the Contractor or requires certifications by a design professional retained by the Contractor, the Architect shall make certain that all such delegated services and responsibilities have been provided as required by the Contract Documents prior to commencement of the Work by the Contractor in the areas of the Project related to such delegated services.

§ 2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Sections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work

not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

§ 2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor 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.

§ 2.6.16 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. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

§ 2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents.

§ 2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Section 2.6.17, shall be subject to Article 7 as provided in this Agreement.

### ARTICLE 3 ADDITIONAL SERVICES

#### § 3.1 GENERAL

§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner, indicating the Owner's acknowledgement that the requested services will be additional services. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Section 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or parts of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

§ 3.1.2 The Architect is not entitled to any additional fee or compensation of any nature, either by way of Basic Services or Additional Services, if the Architect performs additional services or the Owner incurs additional construction costs in order to correct or remedy any error or omission by the Architect in the performance of its services required by the Agreement.

*(Paragraphs deleted)*

#### § 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

§ 3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

§ 3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

§ 3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

*(Paragraphs deleted)*

### **§ 3.3 CONTINGENT ADDITIONAL SERVICES**

**§ 3.3.1** Making revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by an excessive number of adjustments in the Owner's program or Project budget given the nature and character of this Project.
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

**§ 3.3.2** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.5.

**§ 3.3.3** Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with excessive Change Orders and Construction Change Directives given the nature and character of this Project.

### **§ 3.3.4**

**§ 3.3.5** Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

**§ 3.3.6** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

**§ 3.3.7** Providing services in evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work given the nature and character of this Project..

**§ 3.3.8** Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

**§ 3.3.9** Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

### **§ 3.4 OPTIONAL ADDITIONAL SERVICES**

*(Paragraph deleted)*

**§ 3.4.2** Providing financial feasibility or other special studies.

**§ 3.4.3** Providing planning surveys, site evaluations or comparative studies of prospective sites.

**§ 3.4.4** Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**§ 3.4.5** Providing services relative to future facilities, systems and equipment.

*(Paragraphs deleted)*

**§ 3.4.6** Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

**§ 3.4.7** Providing services to verify the accuracy of drawings or other information furnished by the Owner.

*(Paragraph deleted)*

### **§ 3.4.8**

*(Paragraphs deleted)*

§ 3.4.9

§ 3.4.10 Providing detailed estimates of Construction Cost.

*(Paragraph deleted)*

§ 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

*(Paragraphs deleted)*

§ 3.4.12

*(Paragraphs deleted)*

§ 3.4.13

*(Paragraph deleted)*

§ 3.4.14 Providing services for planning tenant or rental spaces.

*(Paragraphs deleted)*

§ 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

*(Paragraphs deleted)*

§ 3.4.16

*(Paragraph deleted)*

§ 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

*(Paragraphs deleted)*

§ 3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 90 days after the date of Substantial Completion of the Work, as amended by Change Order, if any.

*(Paragraphs deleted)*

§ 3.4.19 Providing services of consultants for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

*(Paragraph deleted)*

§ 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

*(Paragraphs deleted)*

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

*(Paragraphs deleted)*

§ 4.1

*(Paragraphs deleted)*

The Owner shall provide full 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. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

*(Table deleted)*

§ 4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

§ 4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents

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submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

*(Paragraphs deleted)*

§ 4.4 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; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and 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.

§ 4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

§ 4.6 The Owner shall furnish the services of consultants other than those designated in Section 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required of the Owner by law or the Contract Documents.

§ 4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

§ 4.9 The services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

§ 4.10 The Owner shall use its best efforts to provide prompt written notice to the Architect if the Owner acquires actual knowledge of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service. The Owner's failure to give such notice does not relieve the Architect of its responsibilities for any such fault or defect nor does it make the Owner wholly or partially responsible for such fault or defect.

§ 4.11 Whenever this Agreement requires the Owner to give directions to the Architect or to request services from the Architect in writing, and the Owner provides the Architect such written directive or request, the Architect is deemed to have accepted the responsibility to perform such directive or provide such services or information unless the Architect declines, amends, or modifies the Owner's written directive or request in writing.

## ARTICLE 5 CONSTRUCTION COST

### § 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect. The Construction Cost shall not include any costs expended by the Owner due to the Architect's negligence and/or failure to meet the relevant standard of care in the performance of its professional services. The Architect is not entitled to any fee on any additional Construction Costs that are incurred as a result of the Architect's negligence and/or failure to meet the relevant standard of care in the performance of its services under this Agreement or as required by applicable standards of care.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor,

plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

## § 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

*(Paragraphs deleted)*

§ 5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over 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 Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect. The Contractor or Construction Manager (if this Project proceeds pursuant to the A121 agreement) shall be responsible for cost estimating functions over and above that called for to be provided by the Architect pursuant to section 2.2.5 herein.

§ 5.2.2 The fixed limit of Construction Cost established as a condition of this Agreement is \$23,458,342.00 (Twenty-Three Million Four Hundred Fifty-Eight Thousand Three Hundred Forty Two Dollars and Zero Cents), which amount shall include all Construction Cost, which includes Owner purchased project items. 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 make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. The Fixed Limit of Construction Cost shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

§ 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 5.2.4 If the fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal of it the CM or Contractor provides information that some or all of the design by the Architect cannot be constructed within the fixed limit of construction cost, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 5.2.5 If the Owner chooses to proceed under Section 5.2.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the fixed limit and shall otherwise assist the Owner in negotiations to achieve the acceptable price, if the fixed limit established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility under this Section 5.2.5. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

## ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

§ 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The Architect shall provide to the Owner, at such times during the Project as the Owner requests, copies of any and all documents and instruments of service pertaining to the Work in electronic format for the Owner's use for operating and maintaining the Project.

§ 6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using, renovating, making additions to, and

maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Owner's nonexclusive license includes the right of the Contractor to use computer aided design and drafting (CADD or BIM) files for purposes of preparing shop drawings submittals and other uses solely for this Project. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this initial license. Upon termination of this Agreement by either the Owner or the Architect, with or without cause, the foregoing license shall be replaced by a second, nonexclusive license, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Instruments of Service, solely for the purpose of completing, using, renovating, making additions to, and maintaining the Project. This second, nonexclusive license permitting the Owner to use all Instruments of Service shall continue uninhibited, without regard to which party initiates termination and without regard to whether termination is with or without cause. Any dispute existing between the Owner and the Architect regarding the existence of cause for termination shall not be grounds to prohibit the Owner's continued use of the Instruments of Service. The Architect waives and relinquishes any right to prohibit the Owner's continued use of the Instruments of Service for the completion of the Project on the grounds that termination was without cause. If the Owner terminates the Architect and another design professional uses the Architect's Instruments of Service to complete the Project, the Owner agrees that the Architect shall have no liability or responsibility for the acts or failure to act by the completing design professional in regard to the use or interpretation of the Architect's Instruments of Service. The Owner agrees to waive all claims against the Architect arising out of such completing professional's subsequent use of the Architect's Instruments of Service; provided, however, the Owner does not waive claims that arise, in whole or in part, out of the Architect's errors or omissions in the Instruments of Service (excluding Electronic Files) or the Architect's construction administration services provided under the terms of this Agreement prior to termination. Additionally, the Owner acknowledges that the Architect shall only be responsible for the revised Instruments of Services or other services that it provided. This second, nonexclusive license shall not operate if the Owner is in breach of its obligation to pay the Architect any uncontested balance due at the time of termination of this Agreement. Any payment of such uncontested balance shall not waive any claim or defense of either the Owner or the Architect.

§ 6.3 Except for the licenses granted in Section 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 6.2. 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 the reserved rights of the Architect and the Architect's consultants. The Owner may use the Instruments of Service for future additions or alterations to this Project, without consent of or compensation to the Architect. The Owner shall not use the instruments of service for any other project, unless the Owner obtains the prior written consent of the Architect and the Architect's consultants.

§ 6.4 The Architect will provide the Owner, at Owner's request and without additional fee (except for reproduction costs), the Instruments of Service in electronic form. Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

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

#### § 6.6

*(Paragraphs deleted)*

Under no circumstances shall the transfer of the Drawings and other Instruments of Service on electronic media for use by the Owner be deemed a sale by the Architect. For the purposes of this Agreement, Work Product shall include any computer-generated data including, but not limited to, CADD files, BIM files, PDF, excel or computer word processing files recorded on electronic storage media.

*(Paragraphs deleted)*

## **ARTICLE 7 DISPUTE RESOLUTION**

§ 7.1 All disputes between the Owner and the Architect, Architect's consultants, Bidders, Contractors or Construction Managers shall be resolved in accordance with the School District of Beaufort County's Procurement Code, as may be amended or updated. Except in the instance where the appeal, claim, or dispute is between the Owner and the Architect, the Architect shall provide any interpretations or assistance required by the Owner in rendering a decision within the time frames stipulated in the School District of Beaufort County's Procurement Code.

§ 7.2 After exhausting the administrative process under the School District of Beaufort County's Procurement Code, Architect agrees that judicial venue for any suit, action or proceeding arising out of or relating to the Agreement shall be proper only in the Court of Common Pleas for Beaufort County, State of South Carolina. The Architect and the Owner hereby waive and disclaim any and all right to a jury trial on any controversy arising from this Agreement.

§ 7.3 Notwithstanding any other provision of this Agreement, the Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Agreement shall be governed by the laws of the State of South Carolina.

§ 7.4 Architect agrees that any act by the Owner regarding the Agreement is not a waiver of the Owner's sovereign immunity. Architect agrees to be joined with every other party deemed necessary by the Owner for the full and proper examination, settlement or judgment of each dispute, claim, contract controversy, or civil action, whether in mediation, proceedings under the Beaufort County School District's Procurement Code, or any court of competent jurisdiction.

§ 7.5 The Architect and the Owner agree that prior to the initiation of litigation concerning a dispute arising from their relationship under the terms of this Agreement, the parties will submit such dispute to an agreed-upon neutral for a non-binding mediation. The parties may waive mediation by separate agreement. This Section 7.5 does not prevent a party from applying to a court of competent jurisdiction for such equitable relief as may be necessitated by exigent circumstances.

§ 7.6 The terms of this Article 7 shall be binding upon the Architect's consultants and shall be incorporated into any agreement between the Architect and the Architect's consultants.

## **ARTICLE 8 TERMINATION OR SUSPENSION**

§ 8.1 If the Owner without reasonable, good-faith justification fails to make payments properly due and owing to the Architect in accordance with 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 or to terminate this Agreement, prior to suspension of services or termination, the Architect shall give ten days' written notice to the Owner of the event that gives rise to the right to terminate or suspend services. If the Owner cures or, with respect to any default other than the payment of money due to the Architect, commences to cure any default with the ten-day period, the right to suspend or terminate shall be extinguished. In the event of a suspension of services, 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 Architect shall be paid all sums due prior to suspension and any expenses 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.

*(Paragraphs deleted)*

§ 8.2 If the Project is suspended by the Owner for more than 30 consecutive days, 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 necessary and unavoidable expenses 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.

*(Paragraphs deleted)*

§ 8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

*(Paragraphs deleted)*

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§ 8.4 This Agreement may be terminated by either party 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.

§ 8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

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

## ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the State of South Carolina.

§ 9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, as amended for this Project.

§ 9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run as provided by South Carolina law.

§ 9.4 *Paragraph deleted.*

§ 9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of 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 an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

§ 9.6 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 Owner and Architect.

§ 9.7 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. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services between the Architect and third parties retained by the Architect to perform the services required by this Agreement. The Architect shall include a provision in its contracts with any other architects, engineers, consultants, or subconsultants working on this Project that the Owner is a third-party beneficiary of the services provided thereby.

§ 9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§ 9.9 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 only with the Owner's express written consent, which consent shall not be unreasonably withheld. 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.

§ 9.10 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. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

## ARTICLE 10 PAYMENTS TO THE ARCHITECT

### § 10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 10.2 REIMBURSABLE EXPENSES

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence.;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 *Item deleted.*
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Article 12;
- .8 other similar direct Project-related expenditures.

§ 10.2.2 *Paragraph deleted.*

### § 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 10.3.1 An initial payment as set forth in Section 11.1 is the minimum payment under this Agreement.

§ 10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.2.2.

§ 10.3.4 When compensation is based on a percentage of Construction Cost 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, in accordance with the schedule set forth in Section 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

### § 10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

### § 10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect is liable.

### § 10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

*(Paragraphs deleted)*

## ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

§ 11.1

*(Paragraphs deleted)*

An Initial Payment of Zero (\$ 0 ) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

§ 11.2

*(Paragraphs deleted)*

**BASIC COMPENSATION**

§ 11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

The Architect's compensation for Basic Services is a lump sum fee of One Million One Hundred and Seventy Two Thousand and Nine Hundred and Seventeen Dollars (\$1,172,917.00). The Architect's compensation for basic services is amended to include civil and site engineering services as indicated on the attached Exhibit "A", New Davis Road PK-8 School Civil/Site Engineering Compensation Schedule.

§ 11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:  
*(Insert additional phases as appropriate.)*

Schematic Design Phase: To be completed by <i>as required</i> by Owner's Schedule	Fifteen percent ( 15 %)
Design Development Phase: To be completed by <i>as required</i> by Owner's Schedule	Twenty percent ( 20 %)
Construction Documents Phase: To be completed by <i>as required</i> by Owner's Schedule	Forty percent ( 40 %)
Bidding or Negotiation Phase:	Five percent ( 5 %)
Construction Phase: To be completed by August 1, 2015	Twenty percent ( 20 %)
Total Basic Compensation	one hundred percent ( 100.00 %)

§ 11.3

*(Paragraphs deleted)*

**COMPENSATION FOR ADDITIONAL SERVICES**

§ 11.3.1 For Project Representation Beyond Basic Services, as described in Section 3.2, compensation shall be computed as follows:

As negotiated between the Owner and Architect, if required.

§ 11.3.2 For Additional Services of the Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

As negotiated between the Owner and Architect, if required.

§ 11.3.3 For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one ( 1.00 ) times the amounts billed to the Architect for such services.

*(Identify specific types of consultants in Article 12, if required.)*

#### **§ 11.4 REIMBURSABLE EXPENSES**

For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one ( 1.00) times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project. However, the Architect shall provide the following services at the Architect's actual, direct cost, without markup, as set forth below.

#### **§ 11.5**

*(Paragraphs deleted)*

#### **ADDITIONAL PROVISIONS**

##### **§ 11.5.1**

**§ 11.5.2** Payments are due and payable thirty ( 30 ) days from the date of the Architect's invoice, unless Owner responded during the pay period with questions for the Architect regarding the invoice, support data, or invoice format. Unquestioned amounts 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 interest agreed upon.)*

One (1) point above the Federal Reserve prime interest rate for the date on which payment becomes due and is unpaid.

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 11.5.3** The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.

#### **ARTICLE 12 OTHER CONDITIONS OR SERVICES**

*(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)*

##### **§ 12.1 INSURANCE**

**§ 12.1.1** The Architect shall, at no additional cost to the Owner, purchase and maintain "Errors and Omissions" professional liability insurance issued by an insurance carrier licensed to provide such coverage in the State of South Carolina to compensate the Owner for all negligent acts, errors, and omissions by the Architect, its firm, or its agents, employees and consultants arising out of this Agreement.

**§ 12.1.2** The Architect shall provide and maintain a specific project professional liability insurance policy, with coverage of \$2,000,000.00 per claim.

**§ 12.1.3** Upon execution of this Agreement, and at every date for renewal of the Architect's professional liability insurance policy for the following six years, the Architect shall provide the Owner with a Certificate of Insurance issued by an insurance carrier licensed in the State of South Carolina. Provision of a valid Certificate of Insurance is a condition precedent to the payment of any amounts due to the Architect by the Owner.

**§ 12.1.4** The Architect shall maintain the specific project policy professional liability insurance for the benefit of the Owner for the duration of this Agreement and for the following six years.

**§ 12.1.5** The specific project policy carried by the architect shall also cover the architect's consultants in the amount of \$ 2,000,000.00 per claim.

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§ 12.1.6 The Architect agrees that the Owner may, in its sole discretion, elect to purchase project-specific professional liability insurance for the Architect that will apply only to the particular Project covered by this Agreement. The Architect will cooperate with the Owner in obtaining this project specific insurance. Such policy shall include the longest reporting tail available.

## § 12.2 ITEMS INCLUDED IN BASIC SERVICES

§ 12.2.1 The Architect shall perform all tasks required by and ensure that its design meets the criteria set forth in the South Carolina School Facilities Planning and Construction Guide.

§ 12.2.2 The Architect shall provide the services of geotechnical engineers when such services are deemed necessary by the Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations. The cost of providing these services will be a Reimbursable Expense and will be invoiced to the Owner in accordance with Section 11.4

§ 12.2.3 The Architect shall review and evaluate the information provide by the Owner and advise the Owner if any additional information is needed for Project completion.

§ 12.2.4 The Architect shall investigate the site to become familiar with the respective site conditions and any existing facilities.

§ 12.2.5 The Architect shall provide a preliminary seismic evaluation of structures

§ 12.2.6 The Architect shall provide the Owner with record plans showing any significant changes in the Work during construction based on marked-up prints, plans, and other data furnished by the Contractor to the Architect and Owner.

§ 12.2.7 The Architect shall identify all "standard and special inspections" per the latest edition of IBC Chapter 1 and 17 compliance requirements and as adopted by the South Carolina Office of School Facilities and Office of the State Engineer. Owner will provide independent OSF approved inspections for this portion of the Work.

§ 12.2.8 The Architect shall provide its professional services as described in the latest edition of the South Carolina School Facilities Planning and Construction Guide promulgated by the South Carolina Office of School Facilities.

§ 12.2.9 The Architect shall provide an updated "Code Footprint" of structures associated with the scope of this Project.

§ 12.2.10 The Architect will make presentations to the Board of Education and (if requested by the District) to the public at the end of each design phase.

§ 12.2.11 If the Owner elects to use prequalification of contractors or construction management at risk, the Architect shall participate and consult with the Owner during the procurement, solicitation, and evaluation process if requested by the Owner. If a construction manager at risk is engaged, the Architect's preconstruction phase services in cooperating with the construction manager at risk are included in Basic Services. The Architect will be compensated for the development of additional bidding packages to assist the Construction Manager and Owner in securing subcontractor bids.

§ 12.2.12 Upon final completion of construction and at no additional cost to the Owner, the Architect shall prepare and provide to the Owner a set of durable reproducible record drawings showing all significant changes to the Work made during construction. Drawings shall be stamped as "Record Drawings." The Architect shall also prepare and provide to the Owner an electronic version of the Record Drawings in PDF format and suitable for use on a CADD machine and not in "read only" or "write protected" format. The PDF formatted document shall include hyperlinks from the Index of Drawings to the individual pages. The Architect shall also provide a PDF format of the specifications that has hyperlinked connections between the table of contents and the individual pages. Final payment to the Architect for Project close out shall not be made until Record Drawings are received in the formats specified. The Owner

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recognizes that electronic documents not saved in a fixed format can become corrupted and will hold harmless the Architect for any such corruption. Notwithstanding any provision of the Agreement to the contrary, the Owner agrees that if it makes use of the drawings referred to in Section 12.2.12, the Owner shall be responsible for such use.

**§ 12.2.13** The complete official file for any Project shall be maintained by the Owner and shall include all pertinent data available for audit by the Office of General Services and/or Budget and Control Board of the State of South Carolina. The Architect shall ensure that one set of any official documents containing original signatures, official stamps or other such notations of authenticity to include, but not be limited to, plans, specifications, contract documents, change orders or change directives, approval letters or documents by regulatory authorities, warranties, proof of bid advertising, documents required at substantial and final completion, shall be forwarded to the Owner for the official files. Any documents determined to be missing from the files shall be supplied by the Architect within seven (7) calendar days upon request of the Owner.

**§ 12.2.14**

**§ 12.2.15** Owner will provide to Architect District technology requirements for technology infrastructure and equipment during the Design Development phase of the Project.

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

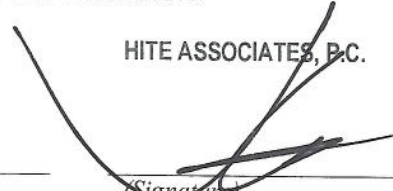
BEAUFORT COUNTY SCHOOL DISTRICT

HITE ASSOCIATES, P.C.

  
(Signature)

Dr. Jeffrey Moss, Superintendent

(Printed name and title)

  
(Signature)

James Hite, AIA

(Printed name and title)

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User Notes:

(808809073)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
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#### 11.2.1 NEW DAVIS ROAD PK-8 SCHOOL CIVIL / SITE ENGINEERING COMPENSATION SCHEDULE

BASIC COMPENSATION UNDER 11.2.1 INCLUDES CIVIL / SITE PLANNING / MASTER PLANNING SERVICES AS FOLLOWS:

- 1 Preliminary Planning/Engineering/Programming
- 2 Scope Survey, Wetland, Traffic, and Geotech Tasks, Obtain Bids, Manage Execution, Reporting
- 3 Local Zoning & Development Permitting
- 4 Compliance with Local Zoning/Development Ordinance
- 5 Management and oversight of site development consultants: geotechnical, traffic, surveyors, wetlands
- 6 Site Geometry, Layout, and Development of Master Plan
- 7 Site construction Phasing Plan
- 8 Stormwater/Drainage Design
- 9 Erosion/Sediment Control Design
- 10 Landscape design, including planting plans and details and irrigation systems
- 11 Tree mitigation calculations
- 12 Athletic facilities design, including stadia, outbuildings, ball field irrigation systems and lighting
- 13 Water & Sewer Design
- 14 Electrical, telecommunications, and gas utilities
- 15 Paving & Roadway Design (traffic compliance per Traffic Engineering consultant)
- 16 Site Lighting Design
- 17 Striping & Traffic Signage Design, including on site Signage
- 18 Turn Lanes/Intersection Design at Connection to Public Roads
- 19 Permitting (OCRM, BJWSA, DHEC, SCDOT/County Encroachment, Fire District, Dry Utilities, State Fire Marshall)
- 20 Construction Phase Services (Pre-Con, Material Submittal Review, Wkly Site Inspections, NPDES inspections, Pay App Review, Review Geotech Testing, Prep Utility Record Dwg, Close-Out w/Agencies)

ADDITIONAL / OPTIONAL SERVICES OR SITE DEVELOPMENT FEES INCLUDE:

- 1 Annexation of Davis Road Site (not to exceed \$6,000)
- 2 Permit Fees, Impact Fees, Application Fees, and Water/Sewer Capacity Fees are paid by BCSD (TBD)
- 3 Traffic Signal Design (Traffic Engineer - indeterminate at this time)
- 4 Design of third entrance to PK-8 school via Davis Road to SC170, which would be 1600 ft of added roadway (TBD)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Paragraphs deleted)

(Table deleted)

# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Twentieth day of November in the year Two-Thousand Thirteen.

*(In words, indicate day, month and year)*

**BETWEEN** the Architect's client identified as the Owner:

*(Name, address and other information)*

Beaufort County School District, School District  
P. O. Drawer 309  
2900 Mink Point Blvd.  
Beaufort, SC 29901-0309  
Telephone Number: 843 322-0783  
Fax Number: 843 322-0785

and the Architect:

*(Name, address and other information)*

Hite Associates, P.C.  
2600 Meridian Drive  
Greenville, NC 27834  
Telephone: 252.757.0333

For the following Project:

*(Include detailed description of Project)*

New 9-12 Grade School & Master Plan, Request for Qualifications 14-005

The Owner and Architect agree as follows.

*(Paragraphs deleted)*

### 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

## ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

### § 1.1

*(Paragraphs deleted)*

The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

### § 1.2 The

*(Paragraphs deleted)*

Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

## ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

### § 2.1 DEFINITION

The Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, civil, mechanical and electrical engineering services. If the Owner elects to employ Construction Management At-Risk for preconstruction services and construction (i.e. AIA Document A121CMc-2003), the Architect, as part of Basic Services, will fully cooperate with the Construction Manager selected by the Owner.

### § 2.2 SCHEMATIC DESIGN PHASE

§ 2.2.1 The Architect and Owner shall mutually develop an approved program and educational specification on which the design of the Project will be based. Development of the educational specification shall have community involvement. The Architect shall assist the Owner with the development of educational specification meetings and assist in the collection of community input. Design work will not begin without an approved program.

§ 2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, design guidelines, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

§ 2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

§ 2.2.4 Based on the approved program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. If either the Owner or the Architect elects to submit the Schematic Design Phase documents for review to the State Department of Education, the Architect shall make such submittal as provided for in the South Carolina School Facilities Planning and Construction Guide, and the Architect shall participate in any plan review activities based on such submittals. If requested by the Owner, the Architect shall further prepare and provide to the Owner a rendering of the Project for preliminary use..

### § 2.3 DESIGN DEVELOPMENT PHASE

§ 2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

§ 2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

§ 2.3.3 The Architect shall make the required submittals to the South Carolina Department of Education's Office of School Planning and Facilities, and participate fully in the plan review process for the same.

#### § 2.4 CONSTRUCTION DOCUMENTS PHASE

§ 2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Architect shall not proceed to the Construction Document Phase in the absence of approval to proceed from the State Department of Education unless directed by the Owner.

§ 2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

§ 2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

§ 2.4.4 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.

§ 2.4.5 The Construction Documents shall incorporate the final resolution of all review comments from the Owner and other authorities having jurisdiction. The Construction Documents shall comply with the requirements of the South Carolina State Department of Education and shall be complete, including the application of all professional seals as required by South Carolina laws and regulations, and ready for bidding without further modification by the Architect.

§ 2.4.6 The review of the Construction Documents by the Owner shall not relieve the Architect of its responsibility for compliance with the requirements of the South Carolina School Facilities Planning and Construction Guide, with applicable statutes, regulations and codes, or for design deficiencies, omissions or errors.

#### § 2.5

*(Paragraphs deleted)*

#### BIDDING OR NEGOTIATION PHASE

§ 2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

§ 2.5.2 Working through the Owner Procurement Coordinator, the Architect shall evaluate substitutions proposed by Bidders and make any subsequent revisions to Bidding Documents by Addenda.

§ 2.5.3 The Architect and any appropriate consultants to the Architect shall attend any pre-bid conferences and the bid opening.

§ 2.5.4 The Architect shall post all drawings and project documents in two (2) plans rooms in the general area to be available for use during the bidding phase. The Architect shall also provide a read-only CD to the Owner and Construction Manager or Contractor at no cost to the Owner other than the nominal cost of the CD reproduction. The read-only CD shall contain hyper-linked connections between the listed sheets in the Index of Drawing to the individual sheet listed. The read-only CD contains hyper-linked connections between the listed specification table of contents to the individual specification sections. The Owner reserves the right to distribute and post these documents on-line to interested parties.

#### § 2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment for the Contractor or 90 days after the date of Substantial Completion of the Work, as determined by approved Change Order, if any.

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§ 2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, as amended for this Project. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Section 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, 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 neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Architect of Record or an Owner-approved representative of the Architect shall attend all inspections by OSF and/or the State Fire Marshal. A qualified representative of the Architect's consultants (PME, Civil, etc/) shall also attend all inspections involving the scope of their respective work.

§ 2.6.6 The Architect shall report to the Owner its observations made during its site visits and shall report any deviations from the contract Documents apparent to the Architect in the course of its site visits. The Architect shall also report any deviations from the most recent construction schedule submitted by the Contractor. In addition, the Architect shall provide the Owner with monthly progress reports as set forth in Section 2.6.9. However, the Architect shall not 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, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 2.6.8.2 The Architect will arrange for and conduct Owner-Architect-Contractor (OAC) meetings at the Project site during the Construction Phase. The Architect will keep meeting minutes and submit the same as provided in Section 2.6.9. The Owner and Architect will agree to a frequency of OAC meetings based on the needs of the project.

§ 2.6.8.3 Prior to the expiration of one year after the date of Substantial Completion, the Architect will schedule and conduct a Project inspection with the Contractor to identify any warranty items to be addressed by the Contractor.

#### § 2.6.9 CERTIFICATES FOR PAYMENT

§ 2.6.9.1 The Architect shall review with the Owner and certify the amounts due the Contractor and shall issue certificates in such amounts.

§ 2.6.9.2 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 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 2.6.9.3 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 material 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.

§ 2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Where immediate rejection to protect the Owner's interests or the safety of the public is unnecessary, the Architect shall give the Owner prior notice of its intention to reject work. Notice to the Owner of the Architect's intention to reject work shall not impose upon the Owner any duty in regard to such decision to reject work nor shall it relieve the Architect of its obligations and responsibilities to the Owner hereunder. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. 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, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any 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. The Architect will meet with the Contractor selected for the Project and will make its best efforts to come to a mutual agreement with the Contractor regarding the submission of RFIs and other submittals and the Architect's time to respond to them. The Architect will endeavor to agree with the Contractor on a specific response time based upon the urgency of the RFIs or other submittals (i.e. emergency, urgent, or routine).

§ 2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. When the Architect delegates design services to the Contractor or requires certifications by a design professional retained by the Contractor, the Architect shall make certain that all such delegated services and responsibilities have been provided as required by the Contract Documents prior to commencement of the Work by the Contractor in the areas of the Project related to such delegated services.

§ 2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Sections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work

not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

§ 2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor 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.

§ 2.6.16 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. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

§ 2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents.

§ 2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Section 2.6.17, shall be subject to Article 7 as provided in this Agreement

### ARTICLE 3 ADDITIONAL SERVICES

#### § 3.1 GENERAL

§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner, indicating the Owner's acknowledgement that the requested services will be additional services. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Section 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or parts of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

§ 3.1.2 The Architect is not entitled to any additional fee or compensation of any nature, either by way of Basic Services or Additional Services, if the Architect performs additional services or the Owner incurs additional construction costs in order to correct or remedy any error or omission by the Architect in the performance of its services required by the Agreement.

*(Paragraphs deleted)*

#### § 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

§ 3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

§ 3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

§ 3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

*(Paragraphs deleted)*

### § 3.3 CONTINGENT ADDITIONAL SERVICES

§ 3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by an excessive number of adjustments in the Owner's program or Project budget given the nature and character of this Project.
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

§ 3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.5.

§ 3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with excessive Change Orders and Construction Change Directives given the nature and character of this Project.

### § 3.3.4

§ 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

§ 3.3.7 Providing services in evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work given the nature and character of this Project..

§ 3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

§ 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

### § 3.4 OPTIONAL ADDITIONAL SERVICES

*(Paragraph deleted)*

§ 3.4.2 Providing financial feasibility or other special studies.

§ 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites. Master planning services shall be

§ 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

§ 3.4.5 Providing services relative to future facilities, systems and equipment.

*(Paragraphs deleted)*

§ 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

§ 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

*(Paragraph deleted)*

### § 3.4.8

*(Paragraphs deleted)*

§ 3.4.9

§ 3.4.10 Providing detailed estimates of Construction Cost.

*(Paragraph deleted)*

§ 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

*(Paragraphs deleted)*

§ 3.4.12

*(Paragraphs deleted)*

§ 3.4.13

*(Paragraph deleted)*

§ 3.4.14 Providing services for planning tenant or rental spaces.

*(Paragraphs deleted)*

§ 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

*(Paragraphs deleted)*

§ 3.4.16

*(Paragraph deleted)*

§ 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

*(Paragraphs deleted)*

§ 3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 90 days after the date of Substantial Completion of the Work, as amended by Change Order, if any.

*(Paragraphs deleted)*

§ 3.4.19 Providing services of consultants for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

*(Paragraph deleted)*

§ 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

*(Paragraphs deleted)*

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

*(Paragraphs deleted)*

§ 4.1

*(Paragraphs deleted)*

The Owner shall provide full 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. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

*(Table deleted)*

§ 4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

§ 4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents

submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

*(Paragraphs deleted)*

§ 4.4 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; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and 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.

§ 4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

§ 4.6 The Owner shall furnish the services of consultants other than those designated in Section 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required of the Owner by law or the Contract Documents.

§ 4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

§ 4.9 The services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

§ 4.10 The Owner shall use its best efforts to provide prompt written notice to the Architect if the Owner acquires actual knowledge of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service. The Owner's failure to give such notice does not relieve the Architect of its responsibilities for any such fault or defect nor does it make the Owner wholly or partially responsible for such fault or defect.

§ 4.11 Whenever this Agreement requires the Owner to give directions to the Architect or to request services from the Architect in writing, and the Owner provides the Architect such written directive or request, the Architect is deemed to have accepted the responsibility to perform such directive or provide such services or information unless the Architect declines, amends, or modifies the Owner's written directive or request in writing.

## ARTICLE 5 CONSTRUCTION COST

### § 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect. The Construction Cost shall not include any costs expended by the Owner due to the Architect's negligence and/or failure to meet the relevant standard of care in the performance of its professional services. The Architect is not entitled to any fee on any additional Construction Costs that are incurred as a result of the Architect's negligence and/or failure to meet the relevant standard of care in the performance of its services under this Agreement or as required by applicable standards of care.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor,

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plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

## § 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

*(Paragraphs deleted)*

§ 5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over 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 Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect. The Contractor or Construction Manager (if this Project proceeds pursuant to the A121 agreement) shall be responsible for cost estimating functions over and above that called for to be provided by the Architect pursuant to section 2.2.5 herein.

§ 5.2.2 The fixed limit of Construction Cost established as a condition of this Agreement is \$42,000,000.00 (Forty-Two Million Dollars and Zero Cents), which amount shall include all Construction Cost, which includes Owner purchased project items. 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 make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. The Fixed Limit of Construction Cost shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

§ 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 5.2.4 If the fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal of it the CM or Contractor provides information that some or all of the design by the Architect cannot be constructed within the fixed limit of construction cost, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 5.2.5 If the Owner chooses to proceed under Section 5.2.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the fixed limit and shall otherwise assist the Owner in negotiations to achieve the acceptable price, if the fixed limit established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility under this Section 5.2.5. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

## ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

§ 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. The Architect shall provide to the Owner, at such times during the Project as the Owner requests, copies of any and all documents and instruments of service pertaining to the Work in electronic format for the Owner's use for operating and maintaining the Project.

§ 6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using, renovating, making additions to, and

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maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Owner's nonexclusive license includes the right of the Contractor to use computer aided design and drafting (CADD or BIM) files for purposes of preparing shop drawings submittals and other uses solely for this Project. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this initial license. Upon termination of this Agreement by either the Owner or the Architect, with or without cause, the foregoing license shall be replaced by a second, nonexclusive license, permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Instruments of Service, solely for the purpose of completing, using, renovating, making additions to, and maintaining the Project. This second, nonexclusive license permitting the Owner to use all Instruments of Service shall continue uninhibited, without regard to which party initiates termination and without regard to whether termination is with or without cause. Any dispute existing between the Owner and the Architect regarding the existence of cause for termination shall not be grounds to prohibit the Owner's continued use of the Instruments of Service. The Architect waives and relinquishes any right to prohibit the Owner's continued use of the Instruments of Service for the completion of the Project on the grounds that termination was without cause. If the Owner terminates the Architect and another design professional uses the Architect's Instruments of Service to complete the Project, the Owner agrees that the Architect shall have no liability or responsibility for the acts or failure to act by the completing design professional in regard to the use or interpretation of the Architect's Instruments of Service. The Owner agrees to waive all claims against the Architect arising out of such completing professional's subsequent use of the Architect's Instruments of Service; provided, however, the Owner does not waive claims that arise, in whole or in part, out of the Architect's errors or omissions in the Instruments of Service (excluding Electronic Files) or the Architect's construction administration services provided under the terms of this Agreement prior to termination. Additionally, the Owner acknowledges that the Architect shall only be responsible for the revised Instruments of Services or other services that it provided. This second, nonexclusive license shall not operate if the Owner is in breach of its obligation to pay the Architect any uncontested balance due at the time of termination of this Agreement. Any payment of such uncontested balance shall not waive any claim or defense of either the Owner or the Architect.

§ 6.3 Except for the licenses granted in Section 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 6.2. 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 the reserved rights of the Architect and the Architect's consultants. The Owner may use the Instruments of Service for future additions or alterations to this Project, without consent of or compensation to the Architect. The Owner shall not use the instruments of service for any other project, unless the Owner obtains the prior written consent of the Architect and the Architect's consultants.

§ 6.4 The Architect will provide the Owner, at Owner's request and without additional fee (except for reproduction costs), the Instruments of Service in electronic form. Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

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

#### § 6.6

*(Paragraphs deleted)*

Under no circumstances shall the transfer of the Drawings and other Instruments of Service on electronic media for use by the Owner be deemed a sale by the Architect. For the purposes of this Agreement, Work Product shall include any computer-generated data including, but not limited to, CADD files, BIM files, PDF, excel or computer word processing files recorded on electronic storage media.

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*(Paragraphs deleted)*

#### **ARTICLE 7 DISPUTE RESOLUTION**

§ 7.1 All disputes between the Owner and the Architect, Architect's consultants, Bidders, Contractors or Construction Managers shall be resolved in accordance with the School District of Beaufort County's Procurement Code, as may be amended or updated. Except in the instance where the appeal, claim, or dispute is between the Owner and the Architect, the Architect shall provide any interpretations or assistance required by the Owner in rendering a decision within the time frames stipulated in the School District of Beaufort County's Procurement Code.

§ 7.2 After exhausting the administrative process under the School District of Beaufort County's Procurement Code, Architect agrees that judicial venue for any suit, action or proceeding arising out of or relating to the Agreement shall be proper only in the Court of Common Pleas for Beaufort County, State of South Carolina. The Architect and the Owner hereby waive and disclaim any and all right to a jury trial on any controversy arising from this Agreement.

§ 7.3 Notwithstanding any other provision of this Agreement, the Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Agreement shall be governed by the laws of the State of South Carolina.

§ 7.4 Architect agrees that any act by the Owner regarding the Agreement is not a waiver of the Owner's sovereign immunity. Architect agrees to be joined with every other party deemed necessary by the Owner for the full and proper examination, settlement or judgment of each dispute, claim, contract controversy, or civil action, whether in mediation, proceedings under the Beaufort County School District's Procurement Code, or any court of competent jurisdiction.

§ 7.5 The Architect and the Owner agree that prior to the initiation of litigation concerning a dispute arising from their relationship under the terms of this Agreement, the parties will submit such dispute to an agreed-upon neutral for a non-binding mediation. The parties may waive mediation by separate agreement. This Section 7.5 does not prevent a party from applying to a court of competent jurisdiction for such equitable relief as may be necessitated by exigent circumstances.

§ 7.6 The terms of this Article 7 shall be binding upon the Architect's consultants and shall be incorporated into any agreement between the Architect and the Architect's consultants.

#### **ARTICLE 8 TERMINATION OR SUSPENSION**

§ 8.1 If the Owner without reasonable, good-faith justification fails to make payments properly due and owing to the Architect in accordance with 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 or to terminate this Agreement, prior to suspension of services or termination, the Architect shall give ten days' written notice to the Owner of the event that gives rise to the right to terminate or suspend services. If the Owner cures or, with respect to any default other than the payment of money due to the Architect, commences to cure any default with the ten-day period, the right to suspend or terminate shall be extinguished. In the event of a suspension of services, 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 Architect shall be paid all sums due prior to suspension and any expenses 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.

*(Paragraphs deleted)*

§ 8.2 If the Project is suspended by the Owner for more than 30 consecutive days, 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 necessary and unavoidable expenses 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.

*(Paragraphs deleted)*

§ 8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

*(Paragraphs deleted)*

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§ 8.4 This Agreement may be terminated by either party 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.

§ 8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

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

#### ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the State of South Carolina.

§ 9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, as amended for this Project.

§ 9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run as provided by South Carolina law.

§ 9.4 *Paragraph deleted.*

§ 9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of 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 an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

§ 9.6 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 Owner and Architect.

§ 9.7 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. However, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services between the Architect and third parties retained by the Architect to perform the services required by this Agreement. The Architect shall include a provision in its contracts with any other architects, engineers, consultants, or subconsultants working on this Project that the Owner is a third-party beneficiary of the services provided thereby.

§ 9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

§ 9.9 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 only with the Owner's express written consent, which consent shall not be unreasonably withheld. 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.

§ 9.10 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. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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## ARTICLE 10 PAYMENTS TO THE ARCHITECT

### § 10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 10.2 REIMBURSABLE EXPENSES

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence.;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 *Item deleted.*
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Article 12;
- .8 other similar direct Project-related expenditures.

§ 10.2.2 *Paragraph deleted.*

### § 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 10.3.1 An initial payment as set forth in Section 11.1 is the minimum payment under this Agreement.

§ 10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.2.2.

§ 10.3.4 When compensation is based on a percentage of Construction Cost 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, in accordance with the schedule set forth in Section 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

### § 10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

### § 10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect is liable.

### § 10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

*(Paragraphs deleted)*

## ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

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§ 11.1

*(Paragraphs deleted)*

An Initial Payment of Zero (\$ 0 ) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

§ 11.2

*(Paragraphs deleted)*

**BASIC COMPENSATION**

§ 11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

The Architect's compensation for Basic Services is a lump sum fee in the amount of Two Million One Hundred Thousand dollars (\$2,100,000.00). The Architect's compensation for basic services is amended to include civil, master planning and site engineering services as indicated on the attached Exhibit "A", New Riverside High School Civil/Site Engineering Compensation Schedule.

§ 11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:  
*(Insert additional phases as appropriate.)*

Schematic Design Phase: To be completed by <i>as required</i> by Owner's Schedule	Fifteen percent ( 15 %)
Design Development Phase: To be completed by <i>as required</i> by Owner's Schedule	Twenty percent ( 20 %)
Construction Documents Phase: To be completed by <i>as required</i> by Owner's Schedule	Forty percent ( 40 %)
Bidding or Negotiation Phase:	Five percent ( 5 %)
Construction Phase: To be completed by January 1, 2016	Twenty percent ( 20 %)
<hr/>	
Total Basic Compensation	one hundred percent ( 100.00 %)

§ 11.3

*(Paragraphs deleted)*

**COMPENSATION FOR ADDITIONAL SERVICES**

§ 11.3.1 For Project Representation Beyond Basic Services, as described in Section 3.2, compensation shall be computed as follows:

As negotiated between the Owner and Architect, if required.

§ 11.3.2 For Additional Services of the Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

As negotiated between the Owner and Architect, if required.

§ 11.3.3 For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one ( 1.0 ) times the amounts billed to the Architect for such services.

*(Identify specific types of consultants in Article 12, if required.)*

#### **§ 11.4 REIMBURSABLE EXPENSES**

For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one ( 1.0 ) times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project. However, the Architect shall provide the following services at the Architect's actual, direct cost, without markup, as set forth below.

#### **§ 11.5**

*(Paragraphs deleted)*

#### **ADDITIONAL PROVISIONS**

##### **§ 11.5.1**

**§ 11.5.2** Payments are due and payable thirty ( 30 ) days from the date of the Architect's invoice, unless Owner responded during the pay period with questions for the Architect regarding the invoice, support data, or invoice format. Unquestioned amounts 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 interest agreed upon.)*

One (1) point above the Federal Reserve prime interest rate for the date on which payment becomes due and is unpaid.

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 11.5.3** The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.

#### **ARTICLE 12 OTHER CONDITIONS OR SERVICES**

*(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)*

#### **§ 12.1 INSURANCE**

**§ 12.1.1** The Architect shall, at no additional cost to the Owner, purchase and maintain "Errors and Omissions" professional liability insurance issued by an insurance carrier licensed to provide such coverage in the State of South Carolina to compensate the Owner for all negligent acts, errors, and omissions by the Architect, its firm, or its agents, employees and consultants arising out of this Agreement.

**§ 12.1.2** The Architect shall provide and maintain a specific project professional liability insurance policy, with coverage of \$2,000,000.00 per claim.

**§ 12.1.3** Upon execution of this Agreement, and at every date for renewal of the Architect's professional liability insurance policy for the following six years, the Architect shall provide the Owner with a Certificate of Insurance issued by an insurance carrier licensed in the State of South Carolina. Provision of a valid Certificate of Insurance is a condition precedent to the payment of any amounts due to the Architect by the Owner.

**§ 12.1.4** The Architect shall maintain the specific project policy professional liability insurance for the benefit of the Owner for the duration of this Agreement and for the following six years.

**§ 12.1.5** The specific project policy carried by the architect shall also cover the architect's consultants in the amount of \$ 2,000,000.00 per claim.

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§ 12.1.6 The Architect agrees that the Owner may, in its sole discretion, elect to purchase project-specific professional liability insurance for the Architect that will apply only to the particular Project covered by this Agreement. The Architect will cooperate with the Owner in obtaining this project specific insurance. Such policy shall include the longest reporting tail available.

## § 12.2 ITEMS INCLUDED IN BASIC SERVICES

§ 12.2.1 The Architect shall perform all tasks required by and ensure that its design meets the criteria set forth in the South Carolina School Facilities Planning and Construction Guide.

§ 12.2.2 The Architect shall provide the services of geotechnical engineers when such services are deemed necessary by the Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations. The cost of providing these services will be a Reimbursable Expense and will be invoiced to the Owner in accordance with Section 11.4

§ 12.2.3 The Architect shall review and evaluate the information provide by the Owner and advise the Owner if any additional information is needed for Project completion.

§ 12.2.4 The Architect shall investigate the site to become familiar with the respective site conditions and any existing facilities.

§ 12.2.5 The Architect shall provide a preliminary seismic evaluation of structures

§ 12.2.6 The Architect shall provide the Owner with record plans showing any significant changes in the Work during construction based on marked-up prints, plans, and other data furnished by the Contractor to the Architect and Owner.

§ 12.2.7 The Architect shall identify all "standard and special inspections" per the latest edition of IBC Chapter 1 and 17 compliance requirements and as adopted by the South Carolina Office of School Facilities and Office of the State Engineer. Owner will provide independent OSF approved inspections for this portion of the Work.

§ 12.2.8 The Architect shall provide its professional services as described in the latest edition of the South Carolina School Facilities Planning and Construction Guide promulgated by the South Carolina Office of School Facilities.

§ 12.2.9 The Architect shall provide an updated "Code Footprint" of structures associated with the scope of this Project.

§ 12.2.10 The Architect will make presentations to the Board of Education and (if requested by the District) to the public at the end of each design phase.

§ 12.2.11 If the Owner elects to use prequalification of contractors or construction management at risk, the Architect shall participate and consult with the Owner during the procurement, solicitation, and evaluation process if requested by the Owner. If a construction manager at risk is engaged, the Architect's preconstruction phase services in cooperating with the construction manager at risk are included in Basic Services. The Architect will be compensated for the development of additional bidding packages to assist the Construction Manager and Owner in securing subcontractor bids.

§ 12.2.12 Upon final completion of construction and at no additional cost to the Owner, the Architect shall prepare and provide to the Owner a set of durable reproducible record drawings showing all significant changes to the Work made during construction. Drawings shall be stamped as "Record Drawings." The Architect shall also prepare and provide to the Owner an electronic version of the Record Drawings in PDF format and suitable for use on a CADD machine and not in "read only" or "write protected" format. The PDF formatted document shall include hyperlinks from the Index of Drawings to the individual pages. The Architect shall also provide a PDF format of the specifications that has hyperlinked connections between the table of contents and the individual pages. Final payment to the Architect for Project close out shall not be made until Record Drawings are received in the formats specified. The Owner

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recognizes that electronic documents not saved in a fixed format can become corrupted and will hold harmless the Architect for any such corruption. Notwithstanding any provision of the Agreement to the contrary, the Owner agrees that if it makes use of the drawings referred to in Section 12.2.12, the Owner shall be responsible for such use.

§ 12.2.13 The complete official file for any Project shall be maintained by the Owner and shall include all pertinent data available for audit by the Office of General Services and/or Budget and Control Board of the State of South Carolina. The Architect shall ensure that one set of any official documents containing original signatures, official stamps or other such notations of authenticity to include, but not be limited to, plans, specifications, contract documents, change orders or change directives, approval letters or documents by regulatory authorities, warranties, proof of bid advertising, documents required at substantial and final completion, shall be forwarded to the Owner for the official files. Any documents determined to be missing from the files shall be supplied by the Architect within seven (7) calendar days upon request of the Owner.

§ 12.2.14

§ 12.2.15 Owner will provide to Architect District technology requirements for technology infrastructure and equipment during the Design Development phase of the Project.

§ 12.2.16 The Architect shall provide the services of a master planning. Such services may include, but are not limited to, design sessions, owner meetings, presentations, community meetings, planning options, permitting through the PUD agreement and the Town of Bluffton, multiple design scenarios, including necessary operations for anticipated future developments, with reports and appropriate recommendations. The cost of providing these services will be a Reimbursable Expense and will be invoiced to the Owner in accordance with Section 11.4

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

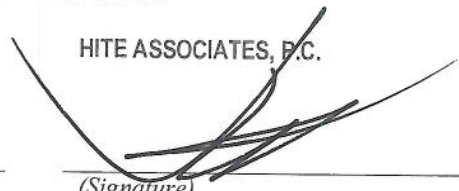
BEAUFORT COUNTY SCHOOL DISTRICT

HITE ASSOCIATES, P.C.

  
(Signature)

Dr. Jeffrey Moss, Superintendent

(Printed name and title)

  
(Signature)

James Hite, AIA

(Printed name and title)

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Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
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### 11.2.1 NEW RIVERSIDE HIGH SCHOOL CIVIL / SITE ENGINEERING COMPENSATION SCHEDULE

BASIC COMPENSATION UNDER 11.2.1 INCLUDES CIVIL / SITE PLANNING / MASTER PLANNING SERVICES AS FOLLOWS:

- 1 Preliminary Planning/Engineering/Programming
- 2 Scope Survey, Wetland, Traffic, and Geotech Tasks, Obtain Bids, Manage Execution, Reporting
- 3 Local Zoning & Development Permitting
- 4 Compliance with PUD and Local Zoning/Development Ordinance
- 5 Management and oversight of site development consultants: geotechnical, traffic, surveyors, wetlands
- 6 Site Geometry and Layout
- 7 Site construction Phasing Plan
- 8 Stormwater/Drainage Design
- 9 Erosion/Sediment Control Design
- 10 Landscape design, including planting plans and details and irrigation systems
- 11 Tree mitigation calculations
- 12 Athletic facilities design, including stadia, outbuildings, ball field irrigation systems and lighting
- 13 Water & Sewer Design
- 14 Electrical, telecommunications, and gas utilities
- 15 Paving & Roadway Design (traffic compliance per Traffic Engineering consultant)
- 16 Site Lighting Design
- 17 Striping & Traffic Signage Design, including on site Signage
- 18 Turn Lanes/Intersection Design at Connection to Public Roads
- 19 Permitting (OCRM, BJWSA, DHEC, SCDOT/County Encroachment, Fire District, Dry Utilities, State Fire Marshall)
- 20 Construction Phase Services (Pre-Con, Material Submittal Review, Wkly Site Inspections, NPDES Inspections, Pay App Review, Review Geotech Testing, Prep Utility Record Dwg, Close-Out w/Agencies)

ADDITIONAL / OPTIONAL SERVICES OR SITE DEVELOPMENT FEES INCLUDE:

- 1 Permit Fees, Impact Fees, Application Fees, and Water/Sewer Capacity Fees are paid by BCSD (TBD)
- 2 Traffic Signal Design (Traffic Engineer - indeterminate at this time)
- 3 Development of a Masterplan to be permitted through the Town of Bluffton

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Paragraphs deleted)*

*(Paragraphs deleted)*

*(Paragraphs deleted)*

*(Table deleted)*