



**Crabtree, Rohrbaugh & Associates  
Architects**  
401 East Winding Hill Road  
Mechanicsburg, Pennsylvania 17055  
phone: (717) 458-0272 - fax: (717) 458-0047

## TRANSMITTAL

TRANSMITTAL

January 25, 2019

TO: Upper Adams School District  
161 North Main Street  
Biglerville, PA 17307  
ATTN: Dr. Wesley Doll, Superintendent

FROM: Karyle Lindsay, Office Manager

RE: Upper Adams School District  
Architect of Record

## ENCLOSED PLEASE FIND

1. (1) fully executed AIA B101 Standard Form of Agreement between Owner and Architect.
- 2.

## REMARKS

Please find the enclosed contract documents, as requested.

If enclosures are not as noted, please notify us immediately.

Sincerely,

Karyle Lindsay, Office Manager  
Crabtree, Rohrbaugh & Associates - Architects  
E: klindsay@cra-architects.com

cc: Robert L. McQuaide, Barley Snyder w/enc. 1 fully executed agreement

*If enclosures are not as indicated, please notify us immediately.*

# AIA® Document B101™ - 2017

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the « 15<sup>th</sup> » day of «January» in the year «Two Thousand Nineteen »  
(In words, indicate day, month and year.)

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

«Upper Adams School District  
161 North Main Street  
Biglerville, PA 17307 »  
« »

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

«Crabtree, Rohrbaugh & Associates »« »  
«401 East Winding Hill Road »  
«Mechanicsburg, PA 17055 ».  
« »

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

«Architect of Record for the Upper Adams School District. Architectural services  
and fees approved and assigned by the School Board will be addressed by  
amendment to this Agreement. »  
« »

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

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

**This Agreement may contain various Exhibits and Addenda. To the extent any Exhibit or Addenda is comprised of documents that purport to constitute contracts between the parties thereto, the parties agree that such Exhibit or Addenda shall not be considered of any evidentiary value in any proceeding between the parties hereto unless the same is executed by both parties hereto.**

§ 1.1.1 The Owner's program for the Project:

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

«To be determined »

§ 1.1.2 The Project's physical characteristics:

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

«To be determined »

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

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

To be determined »



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

- .1 Design phase milestone dates, if any:

«Not determined at time of Agreement »

- .2 Construction commencement date:

« Not determined at time of Agreement »

- .3 Substantial Completion date or dates:

« Not determined at time of Agreement »

- .4 Other milestone dates:

« Not determined at time of Agreement »

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

«Competitive Bid/Build »

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

« Not determined at time of Agreement »

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

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

«Not determined at time of Agreement  
« »

§ 1.1.8 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:  
(List name, address, and other contact information.)

«Not determined at time of Agreement »

§ 1.1.9 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer:

«Not determined at time of Agreement »« »  
« »



.2 Civil Engineer:

«Not determined at time of Agreement »« »  
« »

.3 Other, if any:

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

«Not determined at time of Agreement »

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
*(List name, address, and other contact information.)*

« Scott CousinAddress, etc. »

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
*(List name, legal status, address, and other contact information.)*

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«To be determined based on project scope and location »« »  
« »

.2 Mechanical Engineer:

«To be determined based on project scope and location »« »  
« »

.3 Electrical Engineer:

«To be determined based on project scope and location »« »  
« »

§ 1.1.11.2 Consultants retained under Supplemental Services:

«See §4.1 »

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

« »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. In addition, all services performed by the Architect under this Agreement shall be in compliance with all applicable laws, regulations, rules, codes and ordinances governing the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Subject to Owner's approval.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear, **in the Architect's opinion**, to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance **until substantial completion of the Project and for Professional Liability Insurance until five years after substantial completion**, of this Agreement. If the Owner requires any insurance coverage in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.8.

§ 2.5.1 Commercial General Liability with policy limits of not less than **« Two Million Dollars »** (\$ **«2,000,000 »**) for each occurrence and **« Four Million Dollars »** (\$ **«4,000,000 »**) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than **«One Million Dollars »** (\$ **« 1,000,000 »**) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than **«One Million Dollars »** (\$ **« \$1,000,000 »**) each accident, **«One Million Dollars »** (\$ **«1,000,000 »**) each employee, and **«One Million Dollars »** (\$ **«1,000,000 »**) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than **«Two Million Dollars »** (\$ **«2,000,000 »**) per claim and **«Four Million Dollars »** (\$ **«4,000,000 »**) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.



§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.6 The Architect's responsibilities shall include a visual inspection of any existing buildings to generally determine their dimensions. However, Architect's responsibilities shall not include an invasive or exhaustive "as built" survey of existing conditions. An "as built" survey of existing facilities is an additional service and may be requested by the Owner and the Architect compensated for the same pursuant to §4.1.1.4. "As Built Existing Facility Survey."

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, civil and electrical engineering services. **Unless indicated clearly to the contrary herein, services not set forth in Article 3 are Additional Services pursuant to §4.1.** The Architect shall enter a written agreement with each design sub-consultant providing any of the foregoing engineering services, which shall expressly incorporate the terms of this Agreement between the Architect and the Owner, and shall state expressly that the Owner is an intended third-party beneficiary to the agreement between the Architect and the design sub-consultant. However, at least 7 business days prior to entering any such agreement, the Architect shall advise the Owner of the proposed design sub-consultant, and if the Owner objects to the design sub-consultant within 7 business days of such notice the Architect shall not enter the agreement, The Architect shall provide the Owner a copy of each such agreement promptly after it is signed.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, including regularly-scheduled meetings and special meetings, communicate with members of the Project team, and report progress to the Owner The Architect shall promptly prepare and distribute minutes of each Project meeting it attends, unless another meeting attendee is contractually obligated to do so.

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

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities. **After the Construction Documents have been approved by any governmental authority having jurisdiction over the same, or by any entity providing utilities or other regulated services, then any changes to the Construction Documents thereafter required to be made by the Architect as a result of any instruction or direction given by such governmental authority or other entity shall be considered Additional Services. The Architect's charges for Additional Services under this paragraph 3.1.5 shall be deemed to be approved by the Owner when performed by the Architect, and the Owner shall pay Architect for such Additional Services in accordance with §11.4.**



§ 3.1.6 The Architect shall evaluate and advise the Owner in writing of all approvals by local, state and federal authorities that apply to the Project, including approvals needed for land development, zoning, code compliance, PlanCon and other governmental requirements, and shall assist the Owner with preparation and timely filing of documents required for such approvals. The Architect shall also participate in meetings, hearings or proceedings pertaining to such governmental approvals.

§ 3.1.7 Upon request of the Owner, the Architect shall make presentations to the Owner to explain the design and progress of the Project.

§ 3.1.8 The Architect shall evaluate any claims by Contractors regarding the Project or the Contract Documents, and shall report as the initial decision maker its conclusions of such evaluations in writing to the Owner.

§ 3.1.9 The Architect shall assist, upon request of the Owner, in the dispute resolution process (including any mediation, arbitration or legal proceedings) regarding any claims or actions concerning the Project or the Contract Documents except that hearing preparation and attendance at hearings shall be an additional service, subject to the provisions of 4.2.4.

§ 3.1.10 The Architect shall advise the Owner of the need or advisability of the Owner securing any test, analysis, study, report, or other consultant service in connection with the design and construction of the Project. Upon request of the Owner, the Architect shall obtain and provide the Owner with the names of firms qualified to provide the foregoing services, along with such firms' insurance information; however, the selection of such consultants is up to the Owner, and the Architect shall not assume any liability for services performed by such consultants engaged by the Owner. The Architect shall cooperate and communicate with the Owner's other consultants to ensure the services of the Architect are coordinated with such other services.

**§3.1.11 The Architect shall not be responsible for any increases in the cost of the Project that arise from or are related to changes to the Construction Documents or the Project when those changes are required by any governmental authority or other entity providing utilities or other regulated services and such changes are required after the governmental authority or other entity approved the Construction Documents. This section shall not be construed to otherwise impose liability on Architect for other increases in the cost of the Project.**

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services. **However, the Architect shall not be required to attend municipal meetings or hearings relating to subdivision or land development approval, including without limitation, zoning hearings. Attendance at all such meetings and hearings by the Architect shall be considered Additional Services.**

§ 3.2.2 The Architect shall evaluate the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, including if the Owner's budget for the Cost of the Work is inadequate for the Project and (2) other information or consulting services that may be reasonably needed for the Project. **The Architect shall not be liable for undiscovered inconsistencies.**

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project. The Architect shall notify the Owner in writing of any material concerns of the Architect relating to Project requirements.

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other



documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

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

§ 3.2.6 The Architect shall submit to the Owner for approval a written estimate of the Cost of the Work prepared in accordance with Section 6.3. The Architect's estimated Cost of the Work shall identify any discrepancy between such estimate and the Owner's budget for the Cost of the Work. The Architect shall also take any remedial action required under Section 6.5 of this Agreement.

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

### § 3.3 Design Development Phase Services

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit to the Owner for approval the Design Development Documents and an updated estimate of the Cost of the Work. The Architect's updated estimated Cost of the Work shall identify any discrepancy between such estimate and the Owner's budget for the Cost of the Work, and the Architect shall take any remedial action required under Section 6.5. .

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall prepare for the Owner's review and approval the following: (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may

include bidding requirements and sample forms. Approval of such documents by the Owner shall be based on the Owner's expectation that the Architect's design is in compliance with all requirements of this Agreement.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit to the Owner for approval the Construction Documents and an updated estimate of the Cost of the Work. The Architect's updated estimate for the Cost of the Work shall identify any discrepancy between such estimate and the Owner's budget for the Cost of the Work, and the Architect shall take any remedial action required under Section 6.5.

## § 3.5 Procurement Phase Services

### § 3.5.1 General

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

### § 3.5.2 Competitive Bidding

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

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

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

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions.

§ 3.5.2.4 If the aggregate lowest responsible bids exceed the Cost of the Work in the Owner's budget, and the Owner decides to rebid the Project pursuant to Section 6.6.4, the Architect, as part of Basic Services, in consultation with and at the direction of the Owner, shall provide such design modifications as are necessary to bring such costs within the Owner's budget.

## § 3.6 Construction Phase Services

### § 3.6.1 General

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

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for negligent actions or omissions by the Architect or its Consultants, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.



§ 3.6.1.3 Subject to Section 4.2 and except as provided in Sections 3.6.6.5 and 4.2.4, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 The Architect shall provide all Construction Phase services under Section 3.6 through Final Completion as part of the Architect's Basic Services. However, should a Contractor's violation of the Contract Documents cause the Architect to incur substantial extra time on the Project, the Architect shall be paid for such extra time as an Additional Service to the extent (a) the Contract Documents require the responsible Contractor to pay the Owner an amount equal to the Architect's Additional Services fee, and (b) such payment is actually received by the Owner.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall become familiar with the progress and quality of portions of the Work completed, endeavor to guard the Owner against defects, deficiencies and delays in the Work, and determine whether the Work observed appears to have been performed in accordance with the Contract Documents. As part of such duties, the Architect shall participate in all regularly-scheduled construction site conferences and in special Project meetings where the Owner requests its attendance. The Architect shall walk through the job site at least once every two weeks during construction, unless a different frequency is requested or approved by the Owner. However, the Architect's duties do not include making thorough, exhaustive or continuous on-site inspections of the Work. In contracts with its consultants, the Architect shall require that the basic fee services include a level of participation in Project meetings and site visits that is, at a minimum, appropriate and customary for such consultants. On the basis of its site visits, the Architect shall keep the Owner informed about the progress and quality of the Work, and promptly report to the Owner any observed deviations from the Contract Documents or the Project schedule. In addition, during construction the Architect shall respond promptly to address and provide input on any issues that may arise, including Contractor requests for information or direction, Contractor change order requests, Contractor failures to comply with the Contract Documents, or other issues that could cause project delay or deficiencies. In the event of such disputes among Contractors, the Architect will provide input to assist in resolution of such disputes, including participating in special meetings other communications and provide advice as needed to help resolve the problem. In all of the above steps, the Architect shall use reasonable care as an architect to guard the Owner against defects and deficiencies in the Work. **The duration of construction administration services is based upon the original construction schedule prepared by the Contractor and approved by the Owner. Services extending beyond this date shall be considered additional services, subject to the provisions of 4.2.4**

§ 3.6.2.2 The Architect shall reject Work that it believes does not conform to the Contract Documents, unless the Owner accepts in writing such non-conforming Work. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority, with the Owner's written approval, to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. This section is not intended to make Architect liable for failing to discover non-conforming Work despite using reasonable care.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and 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 rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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



### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) further evaluations of the Work for conformance with the Contract Documents, (2) results of subsequent tests and inspections, (3) required correction of deviations from the Contract Documents, or (4) specific qualifications expressed by the Architect, and (5) any later discovery of defective or deficient Work. The issuance of a Certificate for Payment shall not excuse a Contractor's nonperformance of its duties or waive a Contractor's liability for such nonconformance. Further, the Architect shall provide in the Contract Documents that the amount of payment certified by the Architect to a Contractor may take into account 150% of any potential cost or liability to the Owner arising from the Contractor's alleged violation of the Contract Documents. **The Architect shall not be responsible for securing any waivers or partial waivers of mechanics' lien claims from Contractor.**

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

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

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall timely review and respond to all Contractor submittals. In performing such review, the Architect shall check for conformance with the Contract Documents. However, review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall timely review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If



appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time, and shall provide prompt written notice to the Owner of any such minor change. Subject to Section 4.2, the Architect shall prepare proposed Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall include with any proposed Change Order or Construction Change Directive its recommendation on approval by the Owner, and support data and information regarding any associated change in the cost or time of the Project.

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

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall provide in the Contract Documents that when the Contractor believes it has achieved Substantial Completion, the Contractor shall provide written notice of such belief and a list it believes must be finally completed to the Architect and the Owner. Upon receipt of such notice and list, the Architect shall promptly inspect the Work and report in writing to the Contractor and the Owner the following: (1) whether Substantial Completion is achieved, and if not what must still be accomplished to achieve Substantial Completion; (2) any items on the Contractor's list that remain to be completed or corrected; (3) any items not on the Contractor's list that must be completed or corrected and (4) The Architect's estimate of the cost to complete or correct each remaining item. If Substantial Completion is not achieved at the time of such inspection, the Architect shall repeat the foregoing upon further notice by the Contractor that Substantial Completion has been achieved. Further, the Architect shall provide in the Contract Documents that when the Contractor believes it has achieved Final Completion, the Contractor shall provide written notice of such belief to the Architect and the Owner. Upon receipt of such notice, the Architect shall promptly inspect the Work and report in writing to the Contractor and the Owner the following: (1) whether Final Completion is achieved; and (2) if Final Completion has not been achieved, items that must be completed or corrected and the Architect's estimated cost to complete or correct each item. If Final Completion is not achieved at the time of such inspection the Architect shall repeat the foregoing upon further notice by the Contractor that Final Completion has been achieved. In addition, the Architect shall obtain from the Contractor and forward to the Owner, for the Owners review and records, written warranties and other documents required by the Contract Documents for Final Completion, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. The Architect shall provide in the Contract Documents that the Owner's retainage upon Substantial Completion shall be (a) 150% of the Architect's estimated cost to complete or correct Work at the time of Substantial Completion, plus (b) 150% of any potential additional cost or liability to the Owner arising from the Contractor's alleged violation of the Contract Documents.

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

§ 3.6.6.5 As part of Basic Services, the Architect shall (a) throughout the first year of the date of Substantial Completion, respond to any inquiries by the Owner and assist the Owner in addressing any concerns that may arise



with the Project or the Work of Contractors, and (b) prior to the expiration of one year from the date of Substantial Completion, take the initiative to schedule and conduct with the Owner a meeting at the Project site to review the facility operations and performance, and to inspect any conditions raised by the Owner regarding the Project or the Work of Contractors. Only if such services occur more than 90 days after Substantial Completion and are extensive shall the Architect be entitled to payment for an Additional Service pursuant to Section 4.3.2.6.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

**§ 4.1.1** The services listed below are not included in Basic Services but may be required for the Project. **To the extent the following services are the sole responsibility of the Owner, they shall be hereafter referred to as “Owner Requested Consultant.”** The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

**DEFINITIONS:**

- Basic Services** Services provided as part of Architect’s Basic Services and are included in the Architect’s Basic Fee (see §11.1)
- Supplemental Additional Services** Not part of Architect’s Basic Services. These services will be provided by the Architect and billed in accordance with §11.2 and 11.3
- Owner Requested Supplemental Additional Services** Not part of Architect’s Basic Service. These services will be billed in accordance with §11.3.
- Under Separate Contract** Not part of Architect’s Basic Services. These services will be provided under a separate contract and will be billed in accordance with the terms of that contract.

Service		Responsibility	Type of Services			
			Basic Services	Supplemental Services	Owner Requested Supplemental Services	Under Separate Contract
§4.1.1.1	Programming	Owner				
§4.1.1.2	Multiple preliminary designs	Architect	X			
§4.1.1.3	Measured drawings	Architect		X		
§4.1.1.4	As Built Existing Facilities Surveys	Architect		X		
§4.1.1.4.1	Visual Inspection of Existing Facilities	Architect	X			
§4.1.1.5	Site Evaluation and Planning (B203™–2007)	Not Provided				
§4.1.1.6	Building information modeling LOD 300 (see §12.5 and §12.6)	Architect	X			
§4.1.1.7	Space Schematic/Flow Diagrams	Architect	X			

§4.1.1.8	Economic Feasibility Survey	Owner				
§4.1.1.9	Owner Supplied Data Coordination	Owner				
§4.1.1.10	Schedule Development and Monitoring	Architect (Design Schedule Only)	X			
§4.1.1.11a	Civil engineering, Design and Municipal Approval	Owner			X	
§4.1.1.11b	Civil engineering Municipal As-built Survey Documentation and Recording	Architect	X			
§4.1.1.12	Landscape design	Owner			X	
§4.1.1.13	Architectural Interior Design	Architect	X			
§4.1.1.14	Bidding or Negotiation	Architect	X			
§4.1.1.15	Value Engineering	Owner/ Architect	X			
§4.1.1.16	Detailed cost estimating	Not Provided				
§4.1.1.17	On-site project representation	Owner				
§4.1.1.18	Conformed drawings	Architect		X		
§4.1.1.19	As-designed record drawings	Architect		X		
§4.1.1.20	As-constructed record drawings	Architect		X		
§4.1.1.21	Post occupancy evaluation	Not Provided				
§4.1.1.22	Facility Support Services (B210™-2007)	Owner				
§4.1.1.23	Tenant-related services	Not Provided				
§4.1.1.24	Coordination of Owner's Security and IT consultants	Architect	X			
§4.1.1.25a	Telecommunications/data raceway and cabling design	Architect	X			
§4.1.1.25b	Telecommunications/data equipment design and procurement	Owner				
§4.1.1.26	Security Evaluation and Planning	Owner				X
§4.1.1.27	Commissioning (B211™-2007)	Owner				X
§4.1.1.28	LEED® Certification (B214™-2012)	Owner				X
§4.1.1.29	Fast-track design services	Not Provided				
§4.1.1.30	Historic Preservation	Owner				

	(B205™–2007)					
§4.1.1.31	Furniture, Furnishings and Equipment Design	Architect		X		
§4.1.1.32	Food Service Consultants	Owner			X	
§4.1.1.33	Local and Regulatory Application	Architect	X			
§4.1.1.34	Environmental/Asbestos /Geotechnical Engineering	Owner			X	
§4.1.1.35	Codes Consultant	Owner			X	
§4.1.1.36	Testing and Inspection Services	Owner			X	
§4.1.1.37	All Plancon related services and approvals (applicable only to PA Educational Projects)	Owner/ Architect	X			
§4.1.1.38	Technical Lab, Equipment and Utility Layout	Owner			X	
§4.1.1.39	Assistance with Grants	Owner/ Architect		X		
§4.1.1.40	Public Hearings (Planning, Zoning, etc.)	Owner		X		
§4.1.1.41	Exhibit/Graphic Design	Architect		X		
§4.1.1.42	Property surveys as defined in §5.4	Owner			X	
§4.1.1.43	OCIP Coordination	Owner		X		
§4.1.1.44	ESCO Contract Coordination	Owner		X		
§4.1.1.45	Educational Environmental Coordination	Architect	X			

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 Intentionally deleted.

§ 4.1.2.2 Intentionally deleted.

§ 4.1.3 Intentionally deleted.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;



- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner, **within 3 business days of the Architect's explanation of the facts and circumstances giving rise to the need for Additional Services**, determines that all or parts of the services are not required, **and, within such time period gives notice to the Architect of the Owner's determination**, then the Owner shall have no further obligation to compensate the Architect for the following services:

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

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

- .1 « up to two » ( «2 » ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 « up to an average of two » ( «2 » ) visits to the site by the Architect during construction
- .3 « up to two » ( «2 » ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 « up to two » ( «2 » ) inspections for any portion of the Work to determine final completion.

The Architect shall provide in the Contract Documents that any Contractor creating the need for Additional Services by the Architect will pay all costs associated with such Additional Services, and the Architect shall prepare and present to the Owner for approval a Change Order or Construction Change Directive regarding such costs.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services.



§ 4.2.5 If the services covered by this Agreement for any project approved and assigned by the School Board have not been completed within «36» ( «thirty six » ) months of the date of the Owner's notice to proceed for a project, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall establish and periodically update its budget for the Project, including for the Cost of the Work as defined in Section 6.1. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. The Architect shall then provide a recommendation to the Owner on a corresponding change in the Project's scope and/or quality, and the Owner shall make a decision on such recommendation. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project, but only to the extent authorized in writing by the Board of School Directors. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Architect shall advise the Owner of the need for the Owner to furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Pursuant to Section 3.1.10, upon request of the Owner, the Architect shall obtain and provide the Owner with the names of firms qualified to provide the foregoing survey services, along with such firms' insurance information; however the selection of such consultants is up to the Owner, and the Architect shall not assume any liability for services performed by such consultants engaged by the Owner. The Architect shall cooperate and communicate with the Owner's other consultants to ensure the services of the Architect are coordinated with such other services. .

§ 5.5 The Architect shall advise the Owner of the need for the Owner to furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Pursuant to Section 3.1.10, upon request of the Owner, the Architect shall obtain and provide the Owner with the names of firms qualified to provide the foregoing geotechnical services, along with such firms' insurance information; however the selection of such consultants is up to the Owner, and the Architect shall not assume any liability for services performed by such consultants engaged by the Owner. The Architect shall cooperate and communicate with the Owner's other consultants to ensure the services of the Architect are coordinated with such other services.

§ 5.6 Pursuant to Section 3.1.10, upon request of the Owner, the Architect shall advise the Owner of any other Owner consultants reasonably required for the Project. Upon request of the Owner, the Architect shall obtain and provide the Owner with the names of firms qualified to provide the foregoing services, along with such firms' insurance information; however, the selection of such consultants it up to the Owner, and the Architect shall not assume any liability for services performed by such consultants engaged by the Owner. The Architect shall



cooperate and communicate with the Owner's other consultants to ensure the services of the Architect are coordinated with such other services.

**§ 5.7 Intentionally deleted.**

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

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

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

**§ 5.11** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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

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

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

**§ 5.15** Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

**ARTICLE 6 COST OF THE WORK**

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall **include the cost at the current market rates of labor and materials furnished by the Owner, and equipment designed, specified, selected, coordinated or specifically 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 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.** The Cost of the Work does not include the compensation of the Architect or the Architect's sub-consultants, the Owner's consultants, construction management costs incurred by the Owner; the costs of the land, rights-of-way, financing, contingencies for changes in the Work; or other costs that are the responsibility of the Owner. If the Architect's fee under this Agreement is based upon the Architect's estimate of the Cost of the Work, such estimate shall be approved by the Board of School Directors, and shall include an allowance for reasonable contingencies covering bidding and Change Orders.

**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information or as soon as practical, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is



recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project with written approval of the Owner; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

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

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

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the aggregate low responsible bids, the Owner shall

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

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

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2. The Architect and the Architect's Consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights except as stated herein.

§7.2.1 The Architect hereby assigns, transfers and conveys without reservation to the Owner an exclusive and irrevocable copyright to use all Instruments of Service including all preliminary studies, Construction Documents, special requirements, cost estimates, and all other data compiled by the Architect and the Architect's Consultants, under this Agreement. These Instruments of Service may be used for any purpose specifically relating to the Project or projects defined in the preliminary studies or designed under this Agreement, including constructing, using,



maintaining, altering and adding to the Project. The Architect shall obtain similar, exclusive licenses from the Architect's consultants, consistent with this Agreement. The copyright granted under this Agreement permits the Owner to authorize the Contractor, Sub-contractors, material and equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service.

§ 7.3. The Architect shall provide the Owner with copies of the Instruments of Service in electronic form upon execution of this Architect's Electronic Media Agreement.

§ 7.4 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultants from all claims and cause of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.4.

§ 7.5 Except for the licenses granted in this Article 7, 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. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.6 The provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law with the doctrine of nullum tempus applicable to any claims or causes of action by the Owner, subject, however, to Pennsylvania's twelve-year statute of repose for claims on construction projects which shall apply as to claims by the Owner against the Architect.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation only upon agreement of both parties. The Architect shall include this provision applicable to mediation in all contracts with its consultants and in the Contractors' specifications for the Project.

### § 8.3 Arbitration

§ 8.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to binding arbitration at the sole discretion and election of the Owner. The Owner must elect arbitration either prior to filing litigation or within 30 days of service of original process of litigation against the Owner. Where the Owner opts for arbitration, the Owner shall decide whether the parties will participate in the binding arbitration program available through the American Arbitration Association or through some other arbitration program. Any arbitration proceedings involving the Owner shall include, by joinder or consolidation, all parties to the underlying dispute regardless of whether they are parties to this Agreement. In the event the Owner does not opt for arbitration, the dispute shall be resolved through litigation in the Court of Common Pleas of Adams County, Pennsylvania, with all parties waiving their right to a jury trial. The Architect shall include these provisions applicable to arbitration and litigation in all contracts with its consultants and in the Contractors' specifications for the Project.

**§ 8.3.3.1 Notwithstanding any language herein to the contrary, no party hereto shall have the right to institute litigation for any claims, disputes or demand unless the principal claim, exclusive of interest, penalties and/or attorneys' fees, exceeds One Hundred Thousand Dollars (\$100,000.00). To the extent any claim, dispute, or demand, the principal of which, exclusive of interest, penalties and/or attorneys' fees, is less than or equal to One Hundred Thousand Dollars (\$100,000.00), the exclusive method for binding dispute resolution, after**

mediation as provided for herein, shall be decided by the mediation and arbitration provisions set forth herein. The parties hereto acknowledge that the purpose of limiting their rights to litigation as set forth here is to limit the costs and expenses associated with litigation.

#### § 8.3.4 Consolidation or Joinder

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

### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension **and all reimbursable expenses**. When the Project is resumed, the Architect shall be compensated for 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.

§ 9.4 Either party may terminate this Agreement upon not less than **seven-fourteen (14)** 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. **PROVIDED, however, that in the event the one party to this Agreement shall issue such written notice as set forth in this §9.4, the other party to the agreement shall have fourteen (14) days from the date of such notice to cure any specifically noticed failure to substantially perform. If the cure of such material failure to perform cannot be completed within the time period set forth in this §9.4, then so long as the party receiving such written notice shall have undertaken a good faith effort to effect such cure, and such cure will be completed within a reasonable time after the good faith effort has been undertaken, then the party issuing such written notice shall not have the right to terminate this Agreement.** Provided however, that the defaulting party shall have fourteen (14) days from the date of such notice to cure any specifically-noticed failure to substantially perform. If the cure of such material failure to perform cannot be completed within such fourteen-day period, then so long as the defaulting party shall have undertaken a good faith effort to effect such cure, and such cure will be completed within a reasonable time after the good faith effort has been undertaken, the other party shall not have the right to terminate this Agreement.

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

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

§ 9.8 Intentionally deleted.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by Pennsylvania law.

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

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests



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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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

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

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

**§10.10 Tax Credits.** The Project, or part or all of the Project or Work, may qualify for tax benefits arising from or related to the energy efficiency, energy efficiency rating, or energy efficiency score assigned to the Project or Work by the relevant taxing authority. These tax benefits include, without limitation, Internal Revenue Code §179.D and other federal, state or local tax benefits, as established by those authorities having jurisdiction over such benefits (hereinafter the "Tax Benefits."). These Tax Benefits may take various forms, including without limitation, accelerated depreciation for commercial, multifamily, and publically owned facilities. The Owner is unable to benefit from the Tax Benefits because it is a unit of local government and pays no taxes. However, the Owner is permitted to assign the Tax Benefits to the Architect as the designer of the features that result in increased energy efficiency and render the Tax Benefits available. The Owner agrees that because the Contractor is not the designer of the energy efficient features of the Project, the Owner shall not assign any Tax Benefit arising from or related to the Project, Work, or any part of the Project or Work to any Contractor or subcontractor.



**ARTICLE 11 COMPENSATION**

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

«Fee(s) for any project(s) will be negotiated at the time the Owner proceeds with a project.»

§ 11.2 For the Architect’s Supplemental Services designated in Article 4, and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows: Unless the Owner and Architect agree to a lump sum fee for particular Additional Work, the fee shall be based upon hourly billable rates for the Architect’s employees as identified in Section 11.7, and at 110% of the amount billed and approved by the Owner for the Architect’s consultants.

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

«A lump sum proposal as agreed to by the Owner and Architect, or for hourly additional services at the billable rates as identified in §11.7. Compensation for services rendered by Consultants shall be based on a multiple of one point two (1.2) time the amounts billed by Consultants. »

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

Schematic Design Phase	« Twenty Five »	percent (	«25»	%)
Design Development Phase	« Thirty Five »	percent (	«35»	%)
Construction Documents Phase	« Twenty »	percent (	«20»	%)
Procurement Phase	« Five »	percent (	« 5»	%)
Construction Phase	« Fifteen »	percent (	«15»	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

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

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted prior to the submission of PlanCon F (or for non-reimbursable projects prior to bid date), compensation to the Architect for such deleted portions of the Project shall be based on the extent of work completed under 11.5 and the most recent School Board approved estimate of the Cost of the Work for such portions of the Project. or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect are set forth below. The rates shall be adjusted in accordance with the Architect’s normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« »

Employee or Category	Rate (\$0.00)
Principal	\$280
Director	\$240
Senior Project Manager	\$160
Project Manager	\$140
Construction Administration Representative	\$140
Senior Project Manager-Interior Design	\$135
Project Architect	\$130



<b>Project Architectural Coordinator</b>	<b>\$120</b>
<b>Intern Architect</b>	<b>\$105</b>
<b>Interior Designer</b>	<b>\$105</b>
<b>Architectural Staff</b>	<b>\$ 65</b>
<b>Administration</b>	<b>\$ 75</b>

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursement of expenses and costs incurred by the Architect and the Architect’s consultants shall be limited to 100% of the following: (a) overnight travel expenses expressly authorized by the Owner; (b) fees for securing governmental approvals required for the Project; and (c) costs to print and/or reproduce bid documents for prospective bidders.

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 **Intentionally omitted;**
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 **Intentionally omitted;**
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner’s prior written approval, the Architect’s and Architect’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect and Architect’s consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 **Intentionally omitted;**
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective;
- .12 **Project subscription to web-based construction administration service; and,**
- .13 Other similar Project-related expenditures.

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**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

§ 11.10.1.1 An initial payment of **«Zero »** (\$ **«0.00 »**) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of **« »** (\$ **« »**) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect’s payments to the Certifying Authority shall be credited to the Owner’s account at the time the expense is incurred.

**§ 11.10.2 Progress Payments**

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect’s invoice. Amounts 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 and approval by the School Board.

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

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

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

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§12.1 The Architect shall perform the services under this Agreement with the care and skill ordinarily used by members of the Architect's profession practicing under similar conditions at the same time and in the same locality. The Architect's total liability shall not exceed the professional liability insurance coverage limits as set forth in 2.5.6.

§12.2 If the Owner for any reason fails to pay the undisputed portion of the Architect's invoice within 60 days of presentation, Architect shall have the right to cease work on the project and Owner shall waive any claim against Architect, and shall defend and indemnify Architect from and against any claims for injury or loss stemming from Architect's cessation of service. Owner shall also pay Architect the cost associated with premature project demobilization. In the event the project is remobilized, the Owner shall also pay the cost of remobilization, and shall renegotiate appropriate contract terms and conditions, such as those associated with budget, schedule, or scope of service.

In the event any bill or portion thereof is disputed by the Owner, the Owner shall notify the Architect within twenty (20) days of receipt of the bill in questions, and Owner and Architect shall work together to resolve the matter within sixty (60) days of it being called to the Architect's attention. If resolution of the matter is not attained within 60 days, either party may terminate this Agreement in accordance with the conditions indicated in the Termination clause.

§12.3 In order to complete the Owner's Requested Additional Services as identified in §4.1 of this Agreement, the Owner recognizes the Architect must retain the services of consultants (hereinafter the "Owner's Consultants") who will provide the Owner Requested Additional Services.

The Owner agrees to pay for the Owner Requested Additional Services at the rates set forth in §11.2 hereof.

- .1 The Owner expressly acknowledges that the Architect assumes no liability whatsoever for any work or service performed by the Owner's Consultants, including any and all general, special or consequential damages caused by or resulting directly or indirectly from any act or omission of whatever nature by the Owner's Consultant.
- .2 As additional consideration for providing the Owner Requested Additional Services, Owner expressly agrees to release the Architect from any and all damages of whatever nature or kind directly or indirectly resulting from any act or omission of whatever nature by the Owner's Consultant. Owner further agrees not to seek reimbursement from the Architect for any damages or costs Owner incurs as a result of any act or omission by the Owner's Consultant.
- .3 The Architect hereby assigns to Owner any and all rights and claims of any nature whatsoever against each and every Owner's Consultant that may arise out of, from, or as a result of any services provided by any such Owner's Consultant in connection with the above referenced project. Provided, however, that the Architect reserves the right to participate in any action against an Owner's Consultant to the extent that the Architect suffers any actual harm as a result of any act or omission on the part of any Owner's Consultant.
- .4 Owner agrees that no arbitration or litigation will be instituted against the Architect to recover any damages of whatever nature or kind directly or indirectly resulting from any act or omission of whatever nature by the Owner's Consultant. To the extent that the Owner should seek to join the Architect in any such proceeding, the Architect shall be entitled to be immediately released from such proceeding, and the Owner shall pay all of the Architect's costs, including reasonable attorney's fees, incurred in enforcing this provision.



- .5 Notwithstanding any other language contained herein, Architect reserves the right to decline to retain any Owner's Consultant if, in the Architect's sole discretion, the Architect's retention of any such Consultant will expose the Architect to any potential liability whatsoever. Should the Architect make such a determination regarding any such Owner's Consultant, the Architect will nevertheless retain such Owner's Consultant if the Owner agrees in writing to fully indemnify the Architect from and against any and all claims or damages that may arise against the Architect as a result of the retention of the Owner's Consultant.

«§12.4 Change Orders can be expected during the construction process. The Architect's Lump Sum fee is based upon the Total Cost of the Work as defined in Article 6, and such Cost of the Work includes a contingency for change orders. Therefore, there shall be no additional payment to the Architect for its work on change orders, except to the extent an "Owner Requested Change Order" or an "Unforeseen or Concealed Condition Change Order" involves a substantial alteration to the Project and requires time by the Architect that is disproportionate to the Architect's fee on the change order contingency.

Subject to the above, the following categories define the Owner's and Architect's responsibilities as to change orders:

- .1 **Owner Requested Change Order.** Owner Requested Change Orders are for additional work requested by the Owner. The Owner shall pay the Contractors' cost for performing such change orders as provided in the Contract Documents. There will be no additional fee to the Architect, unless an Owner Requested Change Order involves a substantial alteration to the Project and requires time by the Architect that is disproportionate to the Architect's fee based on the change order contingency included in the Lump Sum fee.
- .2 **Unforeseen or Concealed Conditions Change Order.** When the Architect has used reasonable care in evaluating existing drawings and field conditions, but during construction discovers that existing conditions are not in accordance with the Construction Documents and therefore require additional work or cost by the Contractors, the cost of performing such additional work shall be paid by the Owner as provided in the Contract Documents. There will be no additional fee to the Architect, unless an Unforeseen or Concealed Condition Change Order involves a substantial alteration to the Project and requires time by the Architect that is disproportionate to the Architect's fee based on the change order contingency included in the Lump Sum fee.
- .3 **Value Added Change Orders.** When the Architect does not include an item, or omits items which were documented to be included in the Project, thereby creating a Value-Added Change Order, the cost of performing such additional work shall be paid by the Owner. There will be no additional fee to the Architect.
- .4 **No Value Change Orders.** Occur when the Architect incorrectly designs or specifies an item in the Construction Documents or negligently omits an item from its design or specifications, where the correct design or specification would have added no additional value to the Project and where there are costs associated with correcting the Architect's error. The Architect will receive no compensation for its services associated with No Value Change Orders. Liability of the Architect for costs associated with replacement or correction of the defective item shall be determined in accordance with the Agreement's Dispute Resolution procedures.

## §12.5 BUILDING INFORMATION MODEL (BIM)

**§12.5.1 Definition:** A Building Information Model(s) is a digital representation of the physical and functional characteristics of the Project. "Building Information Modeling" means the process and technology used to create the Model.

**§12.5.2 Level of Development:** The Level(s) of Development (LOD) describes the level of completeness to which the Model is developed.

**§12.5.3 Coordination and Conflicts:** Where conflicts are found in the Model, regardless of the phase of the Project or LOD, the discovering party shall promptly notify the Model Author(s). Upon such notification, the Model Author(s) shall act promptly to mitigate the conflict.

**§12.5.4 Model Ownership:** In contributing content to the Model, the Model Author does not convey any ownership right in the content provided or in the software used to generate the content. Unless otherwise granted in a separate license, any subsequent Model Author's and Model User's right to use, modify, or further transmit the Model is specifically limited to the design and construction of the Project, and nothing contained in this Exhibit conveys any other right to use the Model for another purpose.

**§12.5.5 Model Management:** The Architect will manage the Model from the inception of the Project.

## **§12.6 BUILDING INFORMATION MODEL (BIM) – LEVELS OF DEVELOPMENT (LOD)**

### **§12.6.1 LOD 100**

**§12.6.1.1 Model Content Requirements.** Overall building massing indicative of area, height, volume, location, and orientation may be modeled in three dimensions or represented by other data.

### **§12.6.2 LOD 200**

**§12.6.2.1 Model Content Requirements.** Model Elements are modeled as generalized systems or assemblies with approximate quantities, size, shape, location, and orientation. Non-geometric information may also be attached to Model Elements.

### **§12.6.3. LOD 300**

**§12.6.3.1 Model Content Requirements.** Model Elements are modeled as specific assemblies accurate in terms of quantity, size, shape, location, and orientation. Non-geometric information may also be attached to Model Elements.

### **§12.6.3.2 Authorized Uses**

**§12.6.3.2.1 Analysis.** The purpose of the Model to be generated for this Project is to assist in identifying and resolving building element conflicts and during the design phase.

**§12.6.3.2.2. Authorized Uses.** Upon Project delivery to the Owner, the Model will be provided to, and may be used by the Owner for their purposes in using, maintaining, altering or adding to the Project in the future. The Model is not intended and shall not be used for estimating, bidding or shop drawing and other construction-related purposes.

## **§12.7 GRANT APPLICATIONS – DISCLAIMER OF LIABILITY AND INDEMNITY AGAINST COSTS**

**§12.7.1** In the event the Owner intends, as a part of the Project, to apply for one or more grants from one or more governmental or private entities in an effort to secure all or a portion of the funding necessary to complete the Project, Owner has requested that Architect cooperate with and assist the Owner or Owner's agents as the Owner applies for such grants. Architect has agreed to cooperate with and assist the Owner in such processes.

**§12.7.2** Owner acknowledges that whether the Owner qualifies for any grant is not dependent on the skill, knowledge, or expertise of the Architect or the professional services Architect provides to Owner. Owner also acknowledges that the Architect's scope of work and professional services provided to Owner do not include any representations regarding whether Owner qualifies for any grant. Owner acknowledges that Architect has made no representations or warranties whatsoever regarding Owner's ability to secure any grant from any entity whatsoever.

**§12.7.3** Owner acknowledges that Architect assumes no liability whatsoever that may arise from or be related to the award or denial of any grant for which the owner applies. Architect hereby disclaims any liability, and any and all warranties, express or implied, regarding owner's qualification for any grant whatsoever. Owner agrees to indemnify and hold architect harmless from and against all damages, including without limitation,



attorneys' fees and costs, arising out of or related to any claim based on owner's application for, or receipt or denial of, any grant. Should owner or any agent of owner name architect as a defendant or respondent in any litigation, arbitration or mediation relative to the owner's receipt of or failure to receive any grant, owner shall pay all architect's costs incurred in defending such action, including without limitation, all architect's attorneys' fees. »

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**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect **as modified**
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this agreement.)

«Not applicable »

- .3 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[ « » ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this agreement.)

«Not applicable »

[ « » ] Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

« »

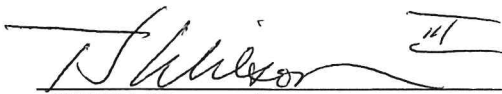
- .4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

« »

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

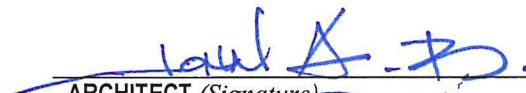
**UPPER ADAMS SCHOOL DISTRICT**

**CRABTREE, ROHRBAUGH & ASSOCIATES**


  
OWNER (Signature)

« » « »  
(Printed name and title)

THOMAS WILSON III  
PRESIDENT, UPPER ADAMS  
SCHOOL DISTRICT

  
ARCHITECT (Signature)

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

Attest:  
  
G. Douglas Rohrbaugh, Secretary