

**ABHA Architects, Inc.**



**AIA®**

# Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Eighteenth day of October in the year Two Thousand and Sixteen  
(In words, indicate day, month and year.)

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

Brandywine School District  
3305 Green Street  
Claymont, DE 19703

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

ABHA Architects, Inc.  
1621 N. Lincoln Street  
Wilmington, DE 19806

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

Brandywine School District  
Renovations to:  
Brandywine High School  
1400 Foulk Road  
Wilmington, DE 19803

The Owner and Architect agree as follows.

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

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### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project

The services provided under this Agreement are those described in this Agreement and in "Exhibits A – B."

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

Summer 2017, 2018 and 2019.

.2 Substantial Completion date:

Phased summer construction through 2019.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

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## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 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.

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

§ 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 to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:~~  
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

### .1 General Liability

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Professional Liability: \$1,000,000/\$3,000,000

~~2.5.3 Automobile Liability~~ 2.5.3 Per applicable statutory requirements of the State of Delaware.

2.6 Notwithstanding the information contained above, the Architect shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Architect's negligent performance under this Contract, and any other liability for damages for which the Architect is required to indemnify the State, the Department and the Division under any provisions of this Contract.

### ~~.3 Workers' Compensation~~

~~4 Professional Liability~~ 2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information

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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.

§ 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~~, 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 made without the Architect's ~~approval providing prior notice to the Architect.~~

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## § 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.

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

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner ~~alternative approaches to design and construction of the Project, including the feasibility of incorporating~~ environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's 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 mutually agreed-upon program, schedule and construction budget requirements as well as 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-drawings, outline specifications 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 modeling. 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 environmentally responsible 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 other environmentally responsible design services under Article 4.

§ 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. The Architect shall perform life cycle cost analysis as required by 29 Del. C §6909A.

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§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3- Work.

§ 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 such other elements as may be appropriate. 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.

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

### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct 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 into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and 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~~ provide specifications for the project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The construction documents for the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located.

§ 3.4.4 The Architect shall ~~update the estimate for the Cost of the Work, prepare a construction cost estimate using unit-in-place methods with breakdowns including costs of labor, material, overhead and profit.~~

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into final construction documents.

### § 3.5 BIDDING OR NEGOTIATION 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, if requested 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~~

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successful bid or proposal, if any; and, (4) awarding and preparing ~~contracts for construction.~~ contracts for construction in accordance with the laws of the State of Delaware. (5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment.

### § 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 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

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

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

- ~~.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

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### § 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™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this ~~Agreement~~ Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

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

~~§ 3.6.1.3 Subject to Section 4.3, 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.~~

**§ 3.6.13.** The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment.

### **§ 3.6.2 EVALUATIONS OF THE WORK**

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

**§ 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. The Architect's decisions on claims, disputes or other matters in questions between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

**§ 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 A201-2007, 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, act upon certificates for payment submitted by the Contractor.~~ 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 and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

**§ 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 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. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents. 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~~ review but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner.

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

§ 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.~~

§ 3.6.4.4 ~~Subject to the provisions of Section 4.3, the~~ The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the ~~clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.~~ promptness as to cause no delay in the work. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to 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 authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to the provisions of Section 4.3, the~~ The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

#### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and 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 list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional 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.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)		
§ 4.1.2 Multiple preliminary designs <u>are provided as a Basic Service.</u>		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
<del>§ 4.1.5 Site Evaluation and Planning (B203™-2007)</del>		
§ 4.1.6 Building Information Modeling (E202™-2008) <u>information modeling</u>		
§ 4.1.7 Civil engineering <u>is provided as a Basic Service.</u>		
§ 4.1.8 Landscape design <u>is provided as a Basic Service.</u>		
§ 4.1.9 Architectural Interior Design (B252™-2007)		
§ 4.1.10 Value Analysis (B204™-2007), A Life Cycle Analysis <u>is provided as a Basic Service, as required pursuant to 29 Del. C. §6909A.</u>		
<del>§ 4.1.10 Value Analysis (B204™-2007)</del>		
§ 4.1.11 Detailed cost estimating <u>is provided as a Basic Service.</u>		
§ 4.1.12 On-site Project Representation (B207™-2008) <u>project representation</u>		
§ 4.1.13 Conformed construction documents <u>are provided as a Basic Service.</u>		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record drawings. Section 507, Chapter 5, Title 29 of the Delaware Code requires electronic copies of "as-built" drawings to be deposited in		

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the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-ROM. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawings files, the Architect shall provide to the Owner the pen files(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™-2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants is provided as a Basic Service.		
§ 4.1.20 Telecommunications/data design is provided as a Basic Service, design will comply with the State of Delaware's Department of Technology and Information's Standards.		
§ 4.1.21 Security Evaluation and Planning (B206™-2007)		
§ 4.1.22 Commissioning (B211™-2007). Architect will incorporate Design and Review comments from Owner's commissioning agent.		
§ 4.1.22 Commissioning (B211™-2007)		
§ 4.1.23 Extensive environmentally responsible design will be provided as a Basic Service.		
§ 4.1.24 LEED® Certification (B214™-2012) (B214™-2007)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™-2007), if required by local governments including municipalities, Historic Preservation services will be considered Basic Services.		
§ 4.1.26 Historic Preservation (B205™-2007)		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

See Exhibit B for details of all additional services.

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 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 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. Making revisions in drawings, specifications or other documents, when such revisions are:~~
  - ~~1. Inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget. Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method; schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7.~~
  - ~~2. Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification; (except for Life Cycle Cost Analysis).~~
  - ~~3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;~~
  - ~~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; Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner's failure to render decisions in a timely manner. Providing services made necessary but the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.~~
- ~~5. Preparing digital data 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 proposed by the Owner;~~
- ~~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 bidders or persons providing 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.

§ 4.3.2 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 subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- ~~1. Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to 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; as outlined in Article 12 E & O policy.~~
- ~~4. Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- ~~5. Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- ~~6. To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) Providing services after issuance to the Owner of the final Certificate for Payment or, in~~

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~~the absence of a final Certificate for Payment more than 60 days after the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.~~ Work.

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

1. ~~(Two (2))~~ reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
2. ~~(visits)~~ The equivalent of two (2) visits per month to the site by the Architect ~~over~~ for the duration of the Project during construction
3. Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
4. ~~(Two (2))~~ inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Thirty-six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time ~~shall~~ may 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. 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.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect ~~shall~~ may 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. ~~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 Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall 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 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, reviewed and approved by the Owner.~~ The Owner shall require that its consultants maintain professional liability insurance as appropriate

to the services provided. The Owner may elect to transfer the responsibility to the Architect as an Additional Service in Article 3 of this Agreement.

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

§ 5.8 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. These services are not provided directly to the Architect.

§ 5.9 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.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project.

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

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

## ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may 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, 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 best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. 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 requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4, a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner.

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

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

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

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

§ 6.7 If the Owner chooses to ~~proceed under Section 6.6.4, cooperate in revising the Project scope and quality as required to reduce the Construction Cost,~~ the Architect, without additional compensation, 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. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6. ~~documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications.~~

## 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for those in the execution of their Work under the Contract Documents. They are not to be used by the Contractor any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the architect from the reuse of all instruments of service noted above for any other projects or clients.

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment

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of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

~~§ 7.3.1 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 consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

~~§ 7.4 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.~~

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

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

~~§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~

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

~~§~~

### § 8.2 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 as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A otherwise. In accordance with Delaware Law a request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by~~

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agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other (Specify) The choice is left to both parties.

### **§ 8.3 ARBITRATION**

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

### **§ 8.3.4 CONSOLIDATION OR JOINDER**

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration; provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

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~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~compensated.

~~§ 9.8 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 11.9.~~

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, ~~except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8.3 located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for ~~Construction~~ Construction as amended by the Owner's General Requirements and the Owner's Supplemental 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.

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

§ 10.8 ~~Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100. If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary,"~~ the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 11 COMPENSATION

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

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

### Compensation:

Basic Services:	\$1,065,100	
Educational Specifications:	\$6,500	
Environmental Allowance:	\$15,000	(Excludes Air Monitoring)
Site Improvements:	\$75,500	
FF&E Allowance:	\$40,000	
Exterior Signage / Graphics:	\$3,500	

§ 11.2 For Additional Services designated in Section ~~4.1, 4.1~~ as amended by Owner's Attachment A, the Owner shall compensate the Architect as follows:

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

See attached Exhibit B.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section ~~4.3, 4.3~~ as amended by Owner's Attachment A, the Owner shall compensate the Architect as follows:

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

See attached rate sheet labeled Exhibit C.

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

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

Schematic Design Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Thirty-Five</u>	percent (	<u>35</u>	%)
Bidding or Negotiation Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design Work for Alternates may be included for consideration in the cost of work.

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

<b>Employee or Category</b>	<b>Rate</b>
<u>See attached Rate Sheet labeled Exhibit C.</u>	

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- .1 Transportation and authorized ~~out-of-town travel and subsistence; out-of-state travel and subsistence; based on Delaware's Office of Management and Budget's policy regarding such reimbursement.~~
- .2 ~~Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 ~~Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
- .9 ~~All taxes levied on professional services and on reimbursable expenses;~~
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~percent (—ten percent (10 %)~~ of the expenses incurred.



#### **§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

#### **§ 11.10 PAYMENTS TO THE ARCHITECT**

**§ 11.10.1** An initial payment of ~~(\$ )~~ 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 PAYMENTS TO THE ARCHITECT**

**§ 11.10.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~upon presentation within 30 days after Owner's receipt~~ of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. ~~(Insert rate of monthly or annual interest agreed upon.)~~ after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum.

%

~~**§ 11.10.3** 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.~~

**§ 11.10.4** Records of Reimbursable Expenses, expenses pertaining to 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:

**12.1** Refer to the Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy.

**12.2** By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual or firm offering professional services, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this agreement.

**12.3** The professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

## 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 Owner and Architect.

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

.1 ~~AIA Document B101™ 2007, Standard Form Agreement Between Owner and Architect~~

.1 Owner's Exhibit A and all related exhibits (included for reference – changes have been incorporated in this document).

~~.2 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:~~

~~.3 Other documents:~~

~~(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)~~Exhibit B – Background and Scope of Work.

.3 Exhibit C – Rate Sheets.

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

**OWNER**

BRANDYWINE SCHOOL DISTRICT

Signature on File

(Signature)

Mark A. Holodick, Superintendent

(Printed name and title)

**ARCHITECT**

ABHA ARCHITECTS, INC.

Signature on File

(Signature)

Chandra Nilekani, President

(Printed name and title)

Init.

**ATTACHMENT "A"**

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

"EXHIBIT A"

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

---

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

---

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.



"EXHIBIT A"

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A.
13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

"EXHIBIT A"

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."
23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: " , but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."
25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".
27. Amend Article 3.6.6.5 by changing "one year" to "two years".
28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

"EXHIBIT A"

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

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

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

"EXHIBIT A"

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

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

32. Strike Article 4.3.1.5 in its entirety.

33. Strike Article 4.3.1.6 in its entirety.

34. Strike Article 4.3.1.7 in its entirety.

35. Strike Article 4.3.1.9 in its entirety.

36. Strike Article 4.3.2.1 in its entirety.

37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”

38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”

39. Amend Article 4.3.3.1 by adding the number two before “reviews”.

40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”

41. Amend Article 4.3.3.3 by adding the number two before “inspections”.

42. Amend Article 4.3.3.4 by adding the number two before “inspections”.

43. Amend Article 4.3.4 by changing “shall” to “may”.

44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.

45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”



"EXHIBIT A"

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."

51. Amend Article 7 by striking it in its entirety and replacing it with the following: "All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

"EXHIBIT A"

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

"EXHIBIT A"

- 67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
- 68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
- 69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

- 70. Amend Article 11.8.1.2 by striking it in its entirety.
- 71. Amend Article 11.8.1.8 by striking it in its entirety.
- 72. Amend Article 11.8.1.9 by striking it in its entirety.
- 73. Amend Article 11.9 by striking it in its entirety.
- 74. Amend Article 11.10.1 by striking it in its entirety.
- 75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
- 76. Amend Article 11.10.3 by striking it in its entirety.
- 77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
- 78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

## "EXHIBIT B"

### Appendix B Brandywine High School

#### **Background and Scope of work**

Renovation for Brandywine High School was approved by the Referendum of 2016 for improvements to the mechanical and electrical systems, building envelope and entrance areas, and ADA compliance upgrades.

The building will remain occupied during the school year. Work will be phased for summer work only, with contracts closing out at the end of each summer.

#### **Scope of work includes:**

Work of Phase 1 (2017 summer) is prioritized as

1. Chiller replacement
2. Paving improvements
3. Building entrances upgrades, including monument sign upgrade.
4. Building front window upgrades/repair

Other work includes

1. ADA upgrades at small gym
2. ADA access to locker rooms
3. Field house near gym
4. Site improvements
5. Building-wide HVAC and electrical upgrades
6. Finish upgrades
7. Gym connector security and associated grade changes
8. Building envelope upgrades
9. STEM fenced outdoor garden/ equipment yard

The remainder of the work will be re-prioritized each year, depending on available funds.

Associated work that may be required is:

1. Environmental Survey and monitoring
2. Solar panels
3. Athletic area upgrades

#### **Proposed services**

1. Education Specifications
2. Phasing and coordination
3. Environmental Survey / AHJ review, bid package, construction contract administration and monitoring
4. Building envelope and frontage upgrades
5. MEP upgrades and commissioning
6. Breezeway security upgrades
7. ADA compliance renovations
8. Finishes and furniture updates
9. Site Improvements design and bid packages/ construction contract administration
10. Site visits as required; Punch list and closeout

## "EXHIBIT B"

### **Schedule**

Bidding - Spring 2017, 2018 and 2019

Construction – Summer 2017, 2018, 2019

Commissioning – on going until 2020

### **Design Team**

Architects - ABHA Architects - Principal in Charge & Project Manager: Chandra Nilekani

MEP & other Building systems- Furlow Associates: Rob Jordan

HVAC Commissioning: Herb Duffield Inc.

Structural Engineers: Macintosh Engineering

Environmental Engineering – Brightfields Inc – Monty Krough

Civil Engineering – Vandemark & Lynch – Steve Rosenfeld

"EXHIBIT C"

**SCHEDULE OF HOURLY BILLING RATES**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$174.00
Project Manager 1	\$163.00
Project Manager 2	\$159.00
Project Manager 3	\$155.00
Architect	\$135.00
Senior Designer	\$112.00
Designer	\$92.00
Technical/Administrative	\$79.00

January 2016 – December 2016



1621 N. Lincoln Street  
Wilmington, DE 19806  
(P) 302.658.6426  
(F) 302.658.8431

abhagen@ABHA.com  
www.ABHA.com



## HOURLY BILLING RATES

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Principal	\$155.00
Senior Engineer	\$110.00
Senior Designer	\$95.00
Engineer	\$95.00
Designer	\$85.00
Word Processor	\$70.00
CAD Operator	\$60.00



"EXHIBIT C"

**MACINTOSH ENGINEERING**

**RATE SCHEDULE**

**EFFECTIVE JANUARY 1, 2016**

<b>ENGINEERING</b>	
SENIOR PROJECT ENGINEER II/DESIGNER II	\$175.00/HOUR
SENIOR PROJECT ENGINEER I/DESIGNER I	\$155.00/HOUR
PROJECT ENGINEER	\$140.00/HOUR
DESIGNER II	\$130.00/HOUR
DESIGNER I	\$120.00/HOUR
<b>ENGINEERING DRAWING PRODUCTION</b>	
CHIEF DRAFTSPERSON	\$155.00/HOUR
SENIOR PROJECT DRAFTSPERSON	\$130.00/HOUR
PROJECT DRAFTSPERSON	\$115.00/HOUR
JUNIOR DRAFTSPERSON	\$75.00/HOUR
<b>SUPPORT STAFF</b>	
TECHNICAL	\$100.00/HOUR
SECRETARIAL	\$100.00/HOUR
CLERICAL	\$100.00/HOUR
<b>MANAGEMENT</b>	
PRINCIPAL / ASSOCIATE	\$210.00/HOUR

**THE ABOVE RATES SHALL BE EFFECTIVE ON JANUARY 1, 2016, AND ARE EXPECTED TO REMAIN AS STATED THROUGH DECEMBER 31, 2016. SHOULD CIRCUMSTANCES REQUIRE ADJUSTMENT TO THESE RATES PRIOR TO DECEMBER 31, 2016, 30 DAY WRITTEN NOTIFICATION SHALL BE SUBMITTED IN ADVANCE OF THE EFFECTIVE DATE OF CHANGE.**



"EXHIBIT C"

**TABLE 1**  
**BILLING RATES**

<u>CLASSIFICATION</u>	<u>BILLING RATE</u>
Technician I.....	\$39.00
Technician II.....	\$49.00
Technician III .....	\$69.00
Technician IV .....	\$87.00
Environmental Analyst I.....	\$69.00
Environmental Analyst II .....	\$87.00
Environmental Analyst III/Project Manager I .....	\$107.00
Environmental Analyst IV/Project Manager II .....	\$123.00
GIS Analyst I.....	\$69.00
GIS Analyst II.....	\$87.00
GIS Analyst III/Project Manager I.....	\$107.00
GIS Analyst IV/Project Manager II .....	\$123.00
Program Manager .....	\$133.00
Engineering Manager .....	\$148.00
Senior Program Manager.....	\$148.00
Technical Director .....	\$148.00
Principal.....	\$185.00
Junior Administrative Assistant.....	\$40.00
Technical Word Processor.....	\$51.00
Administrative Assistant.....	\$51.00
Senior Administrative Assistant .....	\$63.00
Accounting Assistant.....	\$63.00
Financial Manager .....	\$107.00
Operations Manager .....	\$107.00
Chief Financial Officer.....	\$185.00

Rates are shown as fully burdened amounts including all applicable taxes, markups, profit, and overhead factors. These rates do not apply to expert witness services.



"EXHIBIT C"

**VANDEMARK  
& LYNCH, INC.**  
ENGINEERS • PLANNERS • SURVEYORS

4305 MILLER ROAD  
WILMINGTON, DE 19802-1901  
(302) 764-7635 FAX (302) 764-4170  
www.vandemarklynch.com

**FEE SCHEDULE**

**EFFECTIVE JANUARY 1, 2016**

Principal.....	\$185.00/Hour
Associate.....	\$155.00/Hour
Professional Engineer / Project Manager.....	\$148.00/Hour
Professional Land Surveyor / Chief of Surveys.....	\$148.00/Hour
Registered Landscape Architect .....	\$130.00/Hour
Designer / Computations.....	\$110.00/Hour
Computer Aided Design (CAD) Technician.....	\$ 91.00/Hour
Construction Reviewer.....	\$ 88.00/Hour
Survey Crew Chief <sup>1</sup> .....	\$ 96.00/Hour
Survey Field Technician <sup>1</sup> .....	\$ 59.00/Hour
Survey Crew Chief, Hazardous Site / Confined Space Certified <sup>2</sup> .....	\$ 120.00/Hour
Survey Field Technician, Hazardous Site / Confined Space Certified <sup>2</sup> .....	\$ 68.00/Hour
One Person Robotic Survey Crew.....	\$155.00/Hour
Hydrographic Survey Crew Chief (Includes boat with equipment) <sup>3</sup> .....	\$235.00/Hour
Hydrographic Survey Technician <sup>3</sup> .....	\$ 68.00/Hour
GPS Survey Crew Chief .....	\$155.00/Hour
Laser Scan Survey Crew Chief .....	\$ 155.00/Hour
Administrative Assistant.....	\$ 60.00/Hour

(Depositions, court appearances, standby, testimony, etc. will be billed at 1.5 times the above rates.)

- 1 Survey Crew requires Survey Crew Chief and a minimum of one Survey Field Technician
- 2 Hazardous Site/Confined Space Survey Crew requires Certified Survey Crew Chief and a minimum of one Certified Survey Field Technician
- 3 Hydrographic Survey Crew requires Hydrographic Survey Crew Chief and a minimum of two Hydrographic Survey Technicians

**IN-HOUSE REPRODUCTION CHARGES**

Prints: \$0.45 / sq.ft.

Color Prints: \$2.50 / sq. ft.

Mylars: \$2.50 / sq. ft.

Fees for prints or electronic files of old or inactive projects will be \$25.00 per plan sheet, plus a minimum \$250.00 for research, preparation, and handling.

**ADDITIONAL CHARGES**

Subconsultants (+15%).....	(Charged to Project)
Regulatory Filing and Review Fees.....	(Charged to Project)
Special Delivery Services (+15%).....	(Charged to Project)
Special Equipment and Materials (+15%).....	(Charged to Project)
Outside Reproduction Costs (+15%).....	(Charged to Project)
Per Diem (over 50 miles - dependent upon location).....	(Charged to Project)

**NOTES:**

- 1 All hourly rates will be billed at minimum half-hour increments unless otherwise contracted
- 2 All hourly rates are from our Miller Road office unless otherwise contracted.
- 3 All rates subject to change every January 1 in accordance with our annual review.



# Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Eighteenth day of October in the year Two Thousand and Sixteen  
(In words, indicate day, month and year.)

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

Brandywine School District  
3305 Green Street  
Claymont, DE 19703

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

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

ABHA Architects, Inc.  
1621 N. Lincoln Street  
Wilmington, DE 19806

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

Brandywine School District  
Renovations to:

Claymont Elementary School

The Owner and Architect agree as follows.

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project.

The services provided under this Agreement are those described in this Agreement and in "Exhibits A through C. Services include:

Minor Upgrades/Preparation of Darley Road School to receive Claymont students + multi-year move plan. Claymont Elementary will involve major renovation of entire school and all systems, land use process, site preparation, programming and phasing coordination, reviewing and establishing LEED plan. Work will be done in coordination with the District's selected Construction Manager Advisor, CMa.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

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April, 2018.

.2 Substantial Completion date:

September, 2020.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 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.~~

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

§ 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 to compromise the Architect's professional~~ judgment with respect to this Project.

§ 2.5 ~~The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.~~ Agreement  
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

### .1 General Liability

2.5.1 Comprehensive General Liability: \$1,000,000 and

~~2 Automobile Liability~~ 2.5.2 Professional Liability: \$1,000,000/\$3,000,000

2.5.3 Per applicable statutory requirements of the State of Delaware.

2.6 Notwithstanding the information contained above, the Architect shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Architect's negligent performance under this Contract, and any other liability for damages for which the Architect is required to indemnify the State, the Department and the Division under any provisions of this Contract.

### ~~.3 Workers' Compensation~~

2.7 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

### ~~.4 Professional Liability~~

2.8 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.



## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's ~~consultants~~, consultants and the Construction Manager. The Architect shall be entitled to rely on the accuracy and completeness 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.

§ 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~~, consultants and the Construction Manager, 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 and Construction Manager's approval, the Architect shall adjust the schedule, if necessary, 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 made without ~~the Architect's approval~~, providing prior notice to the Architect.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner and Construction Manager in connection with the Owner's ~~responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the~~ Project.

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the ~~Owner~~, Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

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

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner and Construction Manager, alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's 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 mutually agreed-upon program, schedule and construction budget requirements as well as 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~~ drawings, outline specifications 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 modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. A copy of these documents shall be provided to the Construction Manager.

§ 3.2.5.1 The Architect shall consider environmentally responsible 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 other environmentally responsible design services under Article 4.

§ 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. The Architect shall perform life cycle cost analysis as required by 29 Del. C §6909A.

§ 3.2.6 The Architect shall ~~submit to review with the Owner~~ submit to review with the Owner an estimate of the Cost of the Work ~~prepared in accordance with Section 6.3.~~ as prepared by the Construction Manager.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the ~~Owner,~~ Owner and Construction Manager, 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 Owner-approved budget for the Cost of ~~the Work,~~ the Work prepared by the Construction Manager, 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 such other elements as may be appropriate. 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.~~ review the Construction Manager's Design Development Estimate for Scope of Work covered.

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

### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the Owner-approved budget for the Cost of the ~~Work,~~ Work as prepared by the Construction Manager, 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 construct 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 into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) bidding and 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~~ provide technical specifications for the project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms—forms prepared by the Construction Manager. The construction documents for the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located.

§ 3.4.4 The Architect shall ~~update the estimate for the Cost of the Work, review the Construction Administration Estimate, prepared by the Construction Manager, for Scope of Work covered.~~

§ 3.4.5 The Architect shall submit the Construction Documents to the ~~Owner, Owner and Construction Manager, advise the Owner of any adjustments to the estimate of the Cost of the Work, Work prepared by Construction Manager, take any action required under Section 6.5, and request the Owner's approval. After Owner's review, incorporate Owner's comments into final construction documents.~~

### § 3.5 BIDDING OR NEGOTIATION 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, if requested, the Architect shall assist the Owner and Construction Manager 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 in accordance with the laws of the State of Delaware. (5) The Construction Manager shall prepare contracts for construction. The Architect will forward documentation within 48 hours of receipt from Construction Manager. If mailed, documents shall be sent using a delivery service that can track the shipment.~~

#### § 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 coordinating with the Construction Manager who will be:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion ~~of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of~~ deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### ~~§ 3.5.3 NEGOTIATED PROPOSALS~~

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

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

- ~~.1 — procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 — organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~



§

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall ~~provide review information provided by the Construction Manager for~~ administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this ~~Agreement~~ Agreement as well as the Owner's Supplementary General Conditions and the Owner's General Requirements.

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

~~§ 3.6.1.3 Subject to Section 4.3, 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.~~

§ 3.6.13. The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not ~~be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.~~ On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

§ 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-Owner, Construction Manager~~ 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. The Architect's decisions on claims, disputes or other matters in questions between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity.

§ 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 A201–2007, 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, act upon certificates for payment submitted by the Construction Manager.~~ 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 and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 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. The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents. 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. ~~review but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner.~~

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

§ 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.



§ 3.6.4.4 Subject to the provisions of Section 4.3, the ~~The~~ Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable ~~promptness~~ promptness as to cause no delay in the work. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to 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~~ Documents, if they are not maintained in Building Blok by the Construction Manager.

#### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to the provisions of Section 4.3, the~~ The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

#### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall ~~conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor review and forward to the Owner, for the Owner's review and records, records, the following documents prepared by the Construction Manager (1) Certificates of Substantial Completion; (2) written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment Documents; (3) final Certificate for Payment; (4) All other close-out requirements, based upon a final inspection indicating that the Work complies with the requirements of the Contract Documents.~~

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

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall ~~inform the Owner about review with the Owner and the Construction Manager, the balance of the Contract Sum remaining to be paid the Contractor, to the Contractors,~~ including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of ~~one year~~ two years from the date of Substantial Completion, the Architect shall, ~~without additional compensation, per Article 4.1.16,~~ conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional 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. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)		
§ 4.1.2 Multiple preliminary designs <u>are provided as a Basic Service.</u>		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™-2007)		
§ 4.1.6 Building Information Modeling (B202™-2008) information modeling		
§ 4.1.7 Civil engineering <u>is provided as a Basic Service.</u>		
§ 4.1.8 Landscape design <u>is provided as a Basic Service.</u>		
§ 4.1.9 Architectural Interior Design (B252™-2007)		
§ 4.1.10 Value Analysis (B204™-2007), A Life Cycle Analysis <u>is provided as a Basic Service</u>		
§ 4.1.10 Value Analysis (B204™-2007)		
§ 4.1.11 Detailed cost estimating <u>is provided as a Basic Service.</u>		
§ 4.1.12 On-site Project Representation (B207™-2008) <u>project representation</u>		
§ 4.1.13 Conformed construction documents <u>are provided as a Basic Service.</u>		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record <u>drawings. Section 507, Chapter 5, Title 29 of the Delaware Code requires electronic copies of "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by AutoCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawings files, the Architect shall provide to the Owner the pen files(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.</u>		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™-2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants <u>is provided as a Basic Service.</u>		
§ 4.1.20 Telecommunications/data design <u>is provided as a Basic Service, design will comply with the State of Delaware's Department of Technology and Information's Standards.</u>		
§ 4.1.21 Security Evaluation and Planning (B206™-2007)		

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§ 4.1.22 Commissioning (B211™-2007). Architect will incorporate Design and Review comments from Owner's commissioning agent.		
<del>§ 4.1.22 Commissioning (B211™ 2007)</del>		
§ 4.1.23 Extensive environmentally responsible design will be provided as a Basic Service.		
§ 4.1.24 LEED® Certification (B214™ 2012) (B214™-2007)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™-2007), if required by local governments including municipalities, Historic Preservation services will be considered Basic Services.		
<del>§ 4.1.26 Historic Preservation (B205™ 2007)</del>		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

See Exhibit B for details.

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 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 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.~~ Making revisions in drawings, specifications or other documents, when such revisions are:

1 Inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method; schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7.

2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification; (except for Life Cycle Cost Analysis).

3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

~~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;~~ Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner's failure to render decisions in a timely manner.

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

- ~~.5 Preparing digital data 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 proposed by the Owner;~~
- ~~.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 bidders or persons providing 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.

§ 4.3.2 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 subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- ~~.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to 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; as outlined in Article 12 E & O policy.
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- ~~.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment more than 60 days after the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier. Work.~~

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

- .1 ~~(—Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~
- .2 ~~(—) visits~~ The equivalent of two (2) visits per month to the site by the Architect ~~over~~ for the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~(—Two (2) inspections for any portion of the Work to determine final completion~~

§ 4.3.4 If the services covered by this Agreement have not been completed within Forty-eight ( 48 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time ~~shall~~ may 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. 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.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect ~~shall~~may 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. 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 Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall 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 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 reviewed and approved by the Owner.~~ The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer the responsibility to the Architect as an Additional Service in Article 3 of this Agreement.

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

§ 5.8 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. These services are not provided directly to the Architect.

§ 5.9 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.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Architect shall prepare and distribute meeting minutes during the design phases of the Project.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's and Construction Manager'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, Contractors,~~ including the General Conditions of the Contract for Construction.

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, 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.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may 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, 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. Construction Manager, represent the Architect's best judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect and Construction Manager shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's Construction Manager's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4, a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, 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 Construction Manager'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 and Construction Manager to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, cooperate in revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, 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. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.



documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications.

## **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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for those in the execution of their Work under the Contract Documents. They are not to be used by the Contractor any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the architect from the reuse of all instruments of service noted above for any other projects or clients.

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 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 consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 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.

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## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

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

~~§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~

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

§

### § 8.2 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 as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A~~ otherwise. In accordance with Delaware Law a request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which ~~shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other (Specify) The choice is left to both parties.



### **§ 8.3 ARBITRATION**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

**§ 8.3.2** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 8.3.4 CONSOLIDATION OR JOINDER**

**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration; provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect compensated.

§ 9.8 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 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3 located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as amended by the Owner's General Requirements and the Owner's Supplemental 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.

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

§ 10.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100. If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary,"

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the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 11 COMPENSATION

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

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

### Compensation:

Basic Services, including Phasing:	\$1,588,100
Additional Services:	
Environmental (Allowance):	\$10,000
Land Use Process:	\$103,500
Holding School – Small Contract:	\$10,000
Educational Specifications:	\$6,000
FF&E / Interior Signage:	\$70,000
LEED Related Services (Allowance)	\$216,000
Food Services (Allowance)	\$30,000
Acoustics (Allowance)	\$10,000
<b>Total:</b>	<b>\$2,047,600</b>

### Other Possible Allowances:

Demolition Related Tasks:	\$15,000
(For Maintenance Building)	
Technology Consultant:	\$10,000

§ 11.2 For Additional Services designated in Section 4.1, 4.1 as amended by Owner's Exhibit A, the Owner shall compensate the Architect as follows:

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

See attached Exhibit B.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, 4.3 as amended by Owner's Exhibit A, the Owner shall compensate the Architect as follows:

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

See attached rate sheet labeled Exhibit C.

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

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

Schematic Design Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Thirty-Five</u>	percent (	<u>35</u>	%)
Bidding or Negotiation Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Five</u>	percent (	<u>20</u>	%)

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Total Basic Compensation one hundred percent ( 100 %)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Design Work for Alternates may be included for consideration in the cost of work.

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

Employee or Category	Rate
<u>See attached Rate Sheet labeled Exhibit C.</u>	

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- ~~.1 Transportation and authorized out-of-town travel and subsistence; out-of-state travel and subsistence; based on Delaware's Office of Management and Budget's policy regarding such reimbursement.~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
- ~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project;~~
- ~~.4 Printing, reproductions, plots, standard form documents;~~
- ~~.5 Postage, handling and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;~~
- ~~.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
- ~~.9 All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 Site office expenses; and~~
- ~~.11 Other similar Project-related expenditures.~~

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent ( ~~ten percent (10 %)~~ ) of the expenses incurred.

#### ~~§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE~~

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of ( \$ ) 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.

Init.

§

#### 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~upon presentation within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid (—) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)~~ after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum.

%

§ 11.10.3 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.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to 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:

12.1. Refer to the Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy.

12.2 By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay and person, company, corporation, individual or firm offering professional services, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this agreement.

12.3 The professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

#### **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 Owner and Architect.

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

.1 AIA Document B101™ 2007, Standard Form Agreement Between Owner and Architect

.1 Owner's Exhibit A and all of its exhibits (included for reference – changes have been incorporated in this document).

.2 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following: Exhibit B – Background and Scope of Work.

.3 Exhibit C – Rate Sheets.



~~3~~ Other documents:

~~(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)~~

4 Reimbursable Expenses are Estimated to be in the Range of: \$25,000.

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

OWNER

BRANDYWINE SCHOOL DISTRICT

Signature on File

(Signature)

Mark A. Holodick, Superintendent

*(Printed name and title)*

ARCHITECT

ABHA ARCHITECTS, INC.

Signature on File

(Signature)

Chandra Nilekani, President

*(Printed name and title)*

Init.

**ATTACHMENT "A"**

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."



"EXHIBIT A"

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

"EXHIBIT A"

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A.
13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

"EXHIBIT A"

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph:  
"The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."
23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following:  
"; but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."
25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence:  
"Subject to the provision of Section 4.3" and starting the sentence with "The".
27. Amend Article 3.6.6.5 by changing "one year" to "two years".
28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

"EXHIBIT A"

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

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

~~.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;~~

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

"EXHIBIT A"

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

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

32. ~~Strike Article 4.3.1.5 in its entirety.~~

33. Strike Article 4.3.1.6 in its entirety.

34. Strike Article 4.3.1.7 in its entirety.

35. Strike Article 4.3.1.9 in its entirety.

36. ~~Strike Article 4.3.2.1 in its entirety.~~

37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”

38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”

39. Amend Article 4.3.3.1 by adding the number two before “reviews”.

40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”

41. Amend Article 4.3.3.3 by adding the number two before “inspections”.

42. Amend Article 4.3.3.4 by adding the number two before “inspections”.

43. Amend Article 4.3.4 by changing “shall” to “may”.

44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.

45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”



"EXHIBIT A"

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

"EXHIBIT A"

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. ~~Amend Article 8.1.3 by striking it in its entirety.~~
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

"EXHIBIT A"

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

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Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

70. Amend Article 11.8.1.2 by striking it in its entirety.
  71. Amend Article 11.8.1.8 by striking it in its entirety.
- 
72. Amend Article 11.8.1.9 by striking it in its entirety.
  73. Amend Article 11.9 by striking it in its entirety.
  74. Amend Article 11.10.1 by striking it in its entirety.
  75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
- 
76. Amend Article 11.10.3 by striking it in its entirety.
  77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
- 
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

## "EXHIBIT B"

### Appendix B Claymont Elementary School

#### **Background and Scope of work**

The Claymont Elementary School building, formerly a High School, has been serving 800 to 900 kindergarten and elementary students for over 30 years. Phased renovations, as approved by the 2016 Referendum, are expected to occur over 3 years. During renovations, a limited area of Darley Road School will be available as a holding school for up to 16 classrooms. BSD plans to relocate 4<sup>th</sup> and 5<sup>th</sup> graders at Darley.

Prior to start of construction, the property will be subdivided, recorded and usage agreements made with the neighboring community center.

BSD plans to use Construction Management services. Project delivery is expected to be a combination of bid packages with multiple contracts and Owner-managed small contracts.

#### **Scope of work includes:**

Darley Road upgrades package

Environmental Survey/monitoring as needed

Site re-design for improved traffic flow and parking

Site improvements and associated landscaping

3 phases of renovations, including new building systems

Demolition of old maintenance building

LEED certification

#### **Proposed services**

1. Basic services (as defined by DFM) for proposed scope of school renovations
2. Additional services for
  - a. Darley Road upgrades
  - b. Environmental Survey, bidding, CA and air monitoring
  - c. Land use process / site improvements/ landscaping (as required)
  - d. Phasing requirements
  - e. Programming and Educational Specifications
  - f. FF&E & signage (interior and exterior)
  - g. Kitchen design
  - h. Demolition of former maintenance building
  - i. LEED Certification process and administration
  - j. Commissioning of HVAC systems
  - k. Acoustical design
3. Reimbursables as permitted by DFM

#### **Design Team**

Architects - ABHA Architects - Principal in Charge & Project Manager: Chandra Nilekani

Environmental Engineering – Brightfields Inc – Monty Krough

Civil Engineering – Vandemark & Lynch – Steve Rosenfeld

MEP Engineering – Furlow Associates – Rob Jordan

HVAC Commissioning – Herb Duffield



**"EXHIBIT B"**

LEED – Re:Vision- Scott Kelly

Food Services - Corsi & Associates - Adam Corsi

Acoustics – Acentec:

"EXHIBIT C"

**SCHEDULE OF HOURLY BILLING RATES**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$174.00
Project Manager 1	\$163.00
Project Manager 2	\$159.00
Project Manager 3	\$155.00
Architect	\$135.00
Senior Designer	\$112.00
Designer	\$92.00
Technical/Administrative	\$79.00

January 2016 – December 2016



1621 N. Lincoln Street  
Wilmington, DE 19806  
(P) 302.658.6426  
(F) 302.658.8131

abhagen@ABHA.com  
www.ABHA.com

"EXHIBIT C"

**TABLE 1**  
**BILLING RATES**

<u>CLASSIFICATION</u>	<u>BILLING RATE</u>
Technician I.....	\$39.00
Technician II.....	\$49.00
Technician III .....	\$69.00
Technician IV .....	\$87.00
Environmental Analyst I.....	\$69.00
Environmental Analyst II .....	\$87.00
Environmental Analyst III/Project Manager I .....	\$107.00
Environmental Analyst IV/Project Manager II .....	\$123.00
GIS Analyst I.....	\$69.00
GIS Analyst II.....	\$87.00
GIS Analyst III/Project Manager I.....	\$107.00
GIS Analyst IV/Project Manager II .....	\$123.00
Program Manager .....	\$133.00
Engineering Manager .....	\$148.00
Senior Program Manager.....	\$148.00
Technical Director .....	\$148.00
Principal.....	\$185.00
Junior Administrative Assistant.....	\$40.00
Technical Word Processor.....	\$51.00
Administrative Assistant.....	\$51.00
Senior Administrative Assistant .....	\$63.00
Accounting Assistant.....	\$63.00
Financial Manager .....	\$107.00
Operations Manager .....	\$107.00
Chief Financial Officer.....	\$185.00

Rates are shown as fully burdened amounts including all applicable taxes, markups, profit, and overhead factors. These rates do not apply to expert witness services.



"EXHIBIT C"

# VANDEMARK & LYNCH, INC.

ENGINEERS • PLANNERS • SURVEYORS

4305 MILLER ROAD  
WILMINGTON, DE 19802-1901  
(302) 764-7635 FAX (302) 764-4170  
www.vandemarklynch.com

## FEE SCHEDULE

**EFFECTIVE JANUARY 1, 2016**

Principal.....	\$185.00/Hour
Associate.....	\$155.00/Hour
Professional Engineer / Project Manager.....	\$148.00/Hour
Professional Land Surveyor / Chief of Surveys.....	\$148.00/Hour
Registered Landscape Architect .....	\$130.00/Hour
Designer / Computations.....	\$110.00/Hour
Computer Aided Design (CAD) Technician.....	\$ 91.00/Hour
Construction Reviewer.....	\$ 88.00/Hour
Survey Crew Chief <sup>1</sup> .....	\$ 96.00/Hour
Survey Field Technician <sup>1</sup> .....	\$ 59.00/Hour
Survey Crew Chief, Hazardous Site / Confined Space Certified <sup>2</sup> .....	\$120.00/Hour
Survey Field Technician, Hazardous Site / Confined Space Certified <sup>2</sup> .....	\$ 68.00/Hour
One Person Robotic Survey Crew.....	\$155.00/Hour
Hydrographic Survey Crew Chief (Includes boat with equipment) <sup>3</sup> .....	\$235.00/Hour
Hydrographic Survey Technician <sup>3</sup> .....	\$ 68.00/Hour
GPS Survey Crew Chief.....	\$155.00/Hour
Laser Scan Survey Crew Chief.....	\$155.00/Hour
Administrative Assistant.....	\$ 60.00/Hour

(Depositions, court appearances, standby, testimony, etc. will be billed at 1.5 times the above rates.)

- <sup>1</sup> Survey Crew requires Survey Crew Chief and a minimum of one Survey Field Technician
- <sup>2</sup> Hazardous Site/Confined Space Survey Crew requires Certified Survey Crew Chief and a minimum of one Certified Survey Field Technician
- <sup>3</sup> Hydrographic Survey Crew requires Hydrographic Survey Crew Chief and a minimum of two Hydrographic Survey Technicians

## IN-HOUSE REPRODUCTION CHARGES

Prints: \$0.45 / sq.ft.

Color Prints: \$2.50 / sq. ft.

Mylars: \$2.50 / sq. ft.

Fees for prints or electronic files of old or inactive projects will be \$25.00 per plan sheet, plus a minimum \$250.00 for research, preparation, and handling.

## ADDITIONAL CHARGES

Subconsultants (+15%).....	(Charged to Project)
Regulatory Filing and Review Fees.....	(Charged to Project)
Special Delivery Services (+15%).....	(Charged to Project)
Special Equipment and Materials (+15%).....	(Charged to Project)
Outside Reproduction Costs (+15%).....	(Charged to Project)
Per Diem (over 50 miles - dependent upon location).....	(Charged to Project)

### NOTES:

- <sup>1</sup> All hourly rates will be billed at minimum half-hour increments unless otherwise contracted
- <sup>2</sup> All hourly rates are from our Miller Road office unless otherwise contracted.
- <sup>3</sup> All rates subject to change every January 1 in accordance with our annual review.





## HOURLY BILLING RATES

---

Principal	\$155.00
Senior Engineer	\$110.00
Senior Designer	\$95.00
Engineer	\$95.00
Designer	\$85.00
Word Processor	\$70.00
CAD Operator	\$60.00



"EXHIBIT C"

**Standard Billing Rates**  
**Brandywine School District**  
September 21, 2016

**Our hourly rates for 2016 follow:**

- Principal Time (LEED Fellow): \$195/hour
- Senior Project Manager Time (LEED AP): \$175/hour
- Project Manager Time (LEED AP): \$150/hour
- Project Coordinator Time (LEED AP): \$135/hour
- Administrator and Graphic support (LEED GA): \$115/hour



"EXHIBIT C"

**2016 Corsi Associates Project Fee:**

Project fees are calculated based on an estimated total equipment cost per square foot of designed space, with 5% being allotted to design costs. Unless the project or Client dictates otherwise, costs are generally split over phases as listed below. Other design scenarios with modified scope are negotiable as the project requires.

Phase One	Schematic Design	35% of total
Phase Two	Design Development	30% of total
Phase Three	Construction Documents, Bidding & Negotiation	25% of total
Phase Four	Construction Administration	10% of total

**2016 Corsi Associates Hourly Rates:**

For projects worked outside of a phased proposal, time and material charges will apply. Charges will be billed at the current governing rates listed below:

Design Consultant	\$150.00 per hour
Project Manager	\$125.00 per hour
Senior Draftsman/REVIT	\$125.00 per hour
Draftsman	\$ 85.00 per hour
Admin Support	\$ 70.00 per hour



# ACENTECH

## 2016 COMMERCIAL RATES

CONSULTANT CATEGORY	RATE
Chief Scientist	\$275
Senior Staff Scientist	\$200
Staff Scientist	\$175
Principal Consultant	\$180 – \$230
Senior Consultant	\$130 – \$195
Consultant	\$115 – \$155
CAD Specialist	\$100 – \$110
Support	\$75



"EXHIBIT C"

**TABLE 1**  
**BILLING RATES**

<u>CLASSIFICATION</u>	<u>BILLING RATE</u>
Technician I.....	\$39.00
Technician II.....	\$49.00
Technician III .....	\$69.00
Technician IV .....	\$87.00
Environmental Analyst I.....	\$69.00
Environmental Analyst II .....	\$87.00
Environmental Analyst III/Project Manager I .....	\$107.00
Environmental Analyst IV/Project Manager II.....	\$123.00
GIS Analyst I.....	\$69.00
GIS Analyst II.....	\$87.00
GIS Analyst III/Project Manager I.....	\$107.00
GIS Analyst IV/Project Manager II .....	\$123.00
Program Manager .....	\$133.00
Engineering Manager .....	\$148.00
Senior Program Manager.....	\$148.00
Technical Director .....	\$148.00
Principal.....	\$185.00
Junior Administrative Assistant.....	\$40.00
Technical Word Processor.....	\$51.00
Administrative Assistant.....	\$51.00
Senior Administrative Assistant .....	\$63.00
Accounting Assistant.....	\$63.00
Financial Manager .....	\$107.00
Operations Manager .....	\$107.00
Chief Financial Officer.....	\$185.00

Rates are shown as fully burdened amounts including all applicable taxes, markups, profit, and overhead factors. These rates do not apply to expert witness services.



# Document B102™ – 2007

## Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the Eighteenth day of October in the year Two Thousand and Sixteen.  
(In words, indicate day, month and year.)

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

Brandywine School District  
3305 Green Street  
Claymont, DE 19703

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

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

ABHA Architects, Inc.  
1621 N. Lincoln Street  
Wilmington, DE 19806

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

–Brandywine School District  
Demolition of:  
Burnett School  
720 West 37<sup>th</sup> Street  
Wilmington, DE 19802

The Owner and Architect agree as follows.

## TABLE OF ARTICLES

1	ARCHITECT'S RESPONSIBILITIES
2	OWNER'S RESPONSIBILITIES
3	COPYRIGHTS AND LICENSES
4	CLAIMS AND DISPUTES
5	TERMINATION OR SUSPENSION
6	COMPENSATION
7	MISCELLANEOUS PROVISIONS
8	SPECIAL TERMS AND CONDITIONS

## 9 SCOPE OF THE AGREEMENT

### ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

*(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2)*

At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project.

The services provided under this Agreement are those described in this Agreement and in "Exhibits A through C. Scope: Demolition of formerly decommissioned Burnett School and restoration of site. See Exhibit B for description of services.

§ 1.2 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.

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

§ 1.4 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 to compromise the Architect's professional judgment with respect to this Project.

§ 1.5 The Architect shall maintain the following insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.~~

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 ~~General Liability~~ Comprehensive General Liability: \$1,000,000 and Professional Liability: \$1,000,000/\$3,000,000  
Per applicable statutory requirements of the State of Delaware.

.2 ~~Automobile Liability~~

Notwithstanding the information contained above, the Architect shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of

bodily injury, including death, that may result from the Architect's negligent performance under this Contract, and any other liability for damages for which the Architect is required to indemnify the State, the Department and the Division under any provisions of this Contract.

~~.3 — Workers' Compensation~~

- ~~.3 The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.~~

~~.4 — Professional Liability~~

- ~~.4 The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.~~

## ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 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. 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.

§ 2.2 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. 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.

§ 2.3 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 consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated 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 maintain professional liability insurance as appropriate to the services provided. The Owner may elect to transfer the responsibility to the Architect as an Additional Service in Article 3 of this Agreement.

§ 2.4 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. These services are not provided directly to the Architect.

§ 2.5 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.

## ARTICLE 3 COPYRIGHTS AND LICENSES

~~§ 3.1 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized~~



to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for those in the execution of their Work under the Contract Documents. They are not to be used by the Contractor any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the architect from the reuse of all instruments of service noted above for any other projects or clients.

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp.

~~§ 3.2 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. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~

~~§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.~~

~~§ 3.3.1 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 consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.~~

~~§ 3.4 Except for the licenses granted in this Article 3, 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.~~

## **ARTICLE 4 CLAIMS AND DISPUTES**

### **§ 4.1 GENERAL**

~~§ 4.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.~~

~~§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, if applicable. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~

~~§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.~~

## § 4.2 MEDIATION

~~§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

### § 4.2.

~~§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A otherwise. In accordance with Delaware Law a request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- ☐ Arbitration pursuant to Section 4.3 of this Agreement
- ☐ Litigation in a court of competent jurisdiction
- ☐ ~~Other (Specify)~~ ☒ Other (Specify) The choice is left to both parties.

## § 4.3 ARBITRATION

~~§ 4.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 4.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

#### ~~§ 4.3.4 CONSOLIDATION OR JOINDER~~

~~§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration; provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

### ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 5.5 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.

§ 5.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.

§ 5.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect compensated.

~~§ 5.8 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 3 and Section 6.3.~~

## ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

*(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)*

### Compensation:

Fixed Fee for Demolition and Site Services:	\$142,800
Fixed Fee for Environmental Engineering:	\$ 10,241 (excludes are monitoring)
Total:	\$153,041

## § 6.2 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 6.2.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 6.2.2 For Reimbursable Expenses, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of percent (~~—~~ ten percent (10 %) of the expenses incurred.

Estimate for Reimbursables: \$2,500

## § 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:

## § 6.4 PAYMENTS TO THE ARCHITECT

§ 6.4.1 An initial payment of ~~(\$ )~~ 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.

§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~upon presentation~~ within 30 days after Owner's receipt of the Architect's invoice.

Init.

Amounts unpaid (—) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

—%—after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum.

~~§ 6.4.3 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.~~

§ 6.4.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, ~~except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3; located.~~

§ 7.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for ~~Construction~~ Construction as amended by the Owner's General Requirements and the Owner's Supplemental Conditions.

§ 7.3 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.

§ 7.4 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.

§ 7.5 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.

§ 7.6 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.

§ 7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.8 Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100. If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 8 SPECIAL TERMS AND CONDITIONS

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

AIA Document B102™ – 2007 (formerly B141™ – 1997 Part 1). Copyright © 1917, 1926, 1948, 1951, 1953, 1958, 1961, 1963, 1966, 1967, 1970, 1974, 1977, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 08:51:28 on 10/20/2016 under Order No.8275457857\_1 which expires on 05/25/2017, and is not for resale.

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12.1 Refer to the Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy.

12.2 By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay and person, company, corporation, individual or firm offering professional services, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this agreement.

12.3 The professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

#### ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 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 Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents listed below:

- 1 AIA Document B102-2007, Standard Form Agreement Between Owner and Architect.
- 2 AIA Document E201-2007, Digital Data Protocol Exhibit, if completed, or the following:  
Owner's Exhibit A and all related exhibits (included for reference, changes relevant to this project have been incorporated in this document.

- 3 Other documents:  
*(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)*

Exhibit B – Scope of Services.

Exhibit C – Rate Sheets.

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

**OWNER**

**BRANDYWINE SCHOOL DISTRICT**

**ARCHITECT**

**ABHA ARCHITECTS, INC.**

Signature on File

Signature on File

*(Signature)*

Mark A. Holodick, Superintendent

*(Printed name and title)*

*(Signature)*

Chandra Nilekani, President

*(Printed name and title)*

"EXHIBIT A"

**ATTACHMENT "A"**

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

"EXHIBIT A"

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

**"EXHIBIT A"**

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article:  
"The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."

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13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article:  
"The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following:  
"The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

"EXHIBIT A"

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph:  
"The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."
23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following:  
"but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

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24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."
  25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".
27. Amend Article 3.6.6.5 by changing "one year" to "two years".
28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating



"EXHIBIT A"

4.1.13 - Conformed Construction Documents

4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.

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4.1.19 - Coordination of Owner's consultants

4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.

4.1.22 - Incorporate design and review comments from Owner's commissioning agent.

4.1.23 - Is a Basic Service as required in Article 3.2.5.1

4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.

29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:

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

.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;

Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."

30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".

"EXHIBIT A"

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

“Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner’s failure to render decisions in a timely manner.

Providing services made necessary by the default of the Contract, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.”
32. Strike Article 4.3.1.5 in its entirety.
33. Strike Article 4.3.1.6 in its entirety.

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34. Strike Article 4.3.1.7 in its entirety.
35. Strike Article 4.3.1.9 in its entirety.
36. Strike Article 4.3.2.1 in its entirety.
37. Amend Article 4.3.2.3 to add at the end “as outlined in Article 12 E & O policy.”
38. Strike Article 4.3.2.6 in its entirety and replace with the following: “Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work.”
39. Amend Article 4.3.3.1 by adding the number two before “reviews”.
40. Amend Article 4.3.3.2 by adding “the equivalent of 2 visits per month for the duration of the project.”
41. Amend Article 4.3.3.3 by adding the number two before “inspections”.
42. Amend Article 4.3.3.4 by adding the number two before “inspections”.
43. Amend Article 4.3.4 by changing “shall” to “may”.
44. Amend Article 5.2 by striking the word “shall” in the last sentence and replacing it with “may”.
45. Amend Article 5.6 by striking the last portion of the third sentence that reads “the Architect requests such services...scope of the Project” and replace with “reviewed and approved by the Owner.”

"EXHIBIT A"

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
  47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
  48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
- 
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
  50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications."
  51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

"EXHIBIT A"

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
  53. Amend Article 8.1.2 by striking it in its entirety.
  54. Amend Article 8.1.3 by striking it in its entirety.
  55. Amend Article 8.2.1 by striking it in its entirety.
- 
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
  57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
  58. Amend Article 8.3 by striking it in its entirety.
  59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
  60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
  61. Amend Article 9.8 by striking it in its entirety.
  62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
  63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
  64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
  65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
  66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

"EXHIBIT A"

- 67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
- 68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
- 69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

- 
- 70. Amend Article 11.8.1.2 by striking it in its entirety.
  - 71. Amend Article 11.8.1.8 by striking it in its entirety.
  - 72. Amend Article 11.8.1.9 by striking it in its entirety.
  - 73. Amend Article 11.9 by striking it in its entirety.
  - 74. Amend Article 11.10.1 by striking it in its entirety.
  - 75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
  - 76. Amend Article 11.10.3 by striking it in its entirety.
  - 77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
  - 78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013



## **"EXHIBIT B"**

### **Background and Scope of work**

The Burnett Building has been decommissioned since 2011 and was approved in the referendum of 2016 for demolition.

The building has been abated over several years. It is anticipated that the only remaining abatement may be in the VAT in the stair towers and some transite in the electrical room.

### **Scope of work includes:**

Environmental Survey and monitoring.

Building demolition.

Site Improvements to include baseball field.

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### **Proposed services**

1. Environmental Survey / AHJ review, bid package, construction contract administration and monitoring.
2. Building demolition/ AHJ review/ bid package/construction contract administration.
3. Site Improvements design and bid package/ construction contract administration.
4. Site visits as required; punch list and closeout.

### **Schedule**

Abatement survey / approval and bidding –complete by November 21, 2017

Building demolition – bid and award by December 31, 2016

Site work – bid and award by spring 2017

Complete construction- summer 2017

### **Deliverables**

1. 3 Bid packages - Abatement, Demolition, Site work.
2. Construction Contract Administration.

### **Design Team**

Architects -	- ABHA Architects - Principal in Charge & Project Mgr. Chandra Nilekani
Environmental Engineering	- Brightfields, Inc. – Monty Krough
Civil Engineering	- Vandemark & Lynch – Steve Rosenfeld



1621 N. Lincoln Street  
Wilmington, DE 19806  
(P) 302.658.6426  
(F) 302.658.8431

abhagen@ABHA.com  
www.ABHA.com

"EXHIBIT C"

**SCHEDULE OF HOURLY BILLING RATES**

<u>Classification</u>	<u>Hourly Rate</u>
Principal	\$174.00
Project Manager 1	\$163.00
Project Manager 2	\$159.00
Project Manager 3	\$155.00
Architect	\$135.00
Senior Designer	\$112.00
Designer	\$92.00
Technical/Administrative	\$79.00

January 2016 – December 2016



1621 N Lincoln Street  
Wilmington, DE 19806  
(P) 302.658.6426  
(F) 302.658.8431

abhagenae@ABHA.com  
www.ABHA.com



"EXHIBIT C"

# VANDEMARK & LYNCH, INC.

ENGINEERS • PLANNERS • SURVEYORS

4305 MILLER ROAD  
WILMINGTON, DE 19802-1901  
(302) 764-7635 FAX (302) 764-4170  
www.vandemarklynch.com

## FEE SCHEDULE

EFFECTIVE JANUARY 1, 2016

Principal.....	\$185.00/Hour
Associate.....	\$155.00/Hour
Professional Engineer / Project Manager.....	\$148.00/Hour
Professional Land Surveyor / Chief of Surveys.....	\$148.00/Hour
Registered Landscape Architect .....	\$130.00/Hour
Designer / Computations.....	\$110.00/Hour
Computer Aided Design (CAD) Technician.....	\$ 91.00/Hour
Construction Reviewer.....	\$ 88.00/Hour
Survey Crew Chief <sup>1</sup> .....	\$ 96.00/Hour
Survey Field Technician <sup>1</sup> .....	\$ 59.00/Hour
Survey Crew Chief, Hazardous Site / Confined Space Certified <sup>2</sup> .....	\$120.00/Hour
Survey Field Technician, Hazardous Site / Confined Space Certified <sup>2</sup> .....	\$ 68.00/Hour
One Person Robotic Survey Crew.....	\$155.00/Hour
Hydrographic Survey Crew Chief (Includes boat with equipment) <sup>3</sup> .....	\$235.00/Hour
Hydrographic Survey Technician <sup>3</sup> .....	\$ 68.00/Hour
GPS Survey Crew Chief .....	\$155.00/Hour
Laser Scan Survey Crew Chief .....	\$155.00/Hour
Administrative Assistant.....	\$ 60.00/Hour

(Depositions, court appearances, standby, testimony, etc. will be billed at 1.5 times the above rates.)

- 1 Survey Crew requires Survey Crew Chief and a minimum of one Survey Field Technician
- 2 Hazardous Site/Confined Space Survey Crew requires Certified Survey Crew Chief and a minimum of one Certified Survey Field Technician
- 3 Hydrographic Survey Crew requires Hydrographic Survey Crew Chief and a minimum of two Hydrographic Survey Technicians

## IN-HOUSE REPRODUCTION CHARGES

Prints: \$0.45 / sq.ft.

Color Prints: \$2.50 / sq. ft.

Mylars: \$2.50 / sq. ft.

Fees for prints or electronic files of old or inactive projects will be \$25.00 per plan sheet, plus a minimum \$250.00 for research, preparation, and handling.

## ADDITIONAL CHARGES

Subconsultants (+15%).....	(Charged to Project)
Regulatory Filing and Review Fees.....	(Charged to Project)
Special Delivery Services (+15%).....	(Charged to Project)
Special Equipment and Materials (+15%).....	(Charged to Project)
Outside Reproduction Costs (+15%).....	(Charged to Project)
Per Diem (over 50 miles - dependent upon location).....	(Charged to Project)

### NOTES:

- 1 All hourly rates will be billed at minimum half-hour increments unless otherwise contracted
- 2 All hourly rates are from our Miller Road office unless otherwise contracted.
- 3 All rates subject to change every January 1 in accordance with our annual review.

"EXHIBIT C"

**TABLE 1**  
**BILLING RATES**

<u>CLASSIFICATION</u>	<u>BILLING RATE</u>
Technician I.....	\$39.00
Technician II.....	\$49.00
Technician III .....	\$69.00
Technician IV .....	\$87.00
Environmental Analyst I.....	\$69.00
Environmental Analyst II .....	\$87.00
Environmental Analyst III/Project Manager I .....	\$107.00
Environmental Analyst IV/Project Manager II.....	\$123.00
GIS Analyst I.....	\$69.00
GIS Analyst II.....	\$87.00
GIS Analyst III/Project Manager I.....	\$107.00
GIS Analyst IV/Project Manager II.....	\$123.00
Program Manager .....	\$133.00
Engineering Manager .....	\$148.00
Senior Program Manager.....	\$148.00
Technical Director .....	\$148.00
Principal.....	\$185.00
Junior Administrative Assistant.....	\$40.00
Technical Word Processor.....	\$51.00
Administrative Assistant.....	\$51.00
Senior Administrative Assistant .....	\$63.00
Accounting Assistant.....	\$63.00
Financial Manager .....	\$107.00
Operations Manager .....	\$107.00
Chief Financial Officer.....	\$185.00

Rates are shown as fully burdened amounts including all applicable taxes, markups, profit, and overhead factors. These rates do not apply to expert witness services.

**Tetra Tech, Inc.**





# Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the October day of 19 in the year 2016  
(In words, indicate day, month and year.)

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

Brandywine School District  
1311 Brandywine Boulevard  
Wilmington, DE 19809-2306

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

Tetra Tech, Inc.  
240 Continental Drive, Suite 240  
Newark, DE 19713  
Telephone Number: 302.738.7551  
Fax Number: 302.454.5989

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

District Facilities Department Relocation  
1000 Pennsylvania Avenue  
Claymont, DE 19703

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

## TABLE OF ARTICLES

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

## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

See Attachment "B", Letter Proposal

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

Summer 2017

.2 Substantial Completion date:

Summer 2018

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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User Notes:

(1632650583)

§ 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.

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

§ 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 to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

As modified by Attachment A

.2 Automobile Liability

As modified by Attachment A

.3 Workers' Compensation

As modified by Attachment A

.4 Professional Liability

As modified by Attachment A

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

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness 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.

§ 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.

Init.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## § 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.

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

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

§ 3.2.4 Based on the Project's 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 modeling. 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 environmentally responsible 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 other environmentally responsible design services under Article 4.

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 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

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electrical systems, and such other elements as may be appropriate. 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.

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

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct 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 into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and 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.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

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

#### § 3.5 BIDDING OR NEGOTIATION 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 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

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### § 3.5.3 NEGOTIATED PROPOSALS

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

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

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 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™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

§ 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.

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§ 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 A201–2007, 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 and that the quality of the Work is in accordance with the Contract Documents. ~~The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.~~

§ 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 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. 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 review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests

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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 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 authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

#### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and 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 list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional 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.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		Additional Services
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Architect	Additional Services

§ 4.1.5	Site Evaluation and Planning (B203™–2007)	Architect	Basic Services
§ 4.1.6	Building Information Modeling (E202™–2008)	Not Provided	
§ 4.1.7	Civil engineering	Architect	Basic Services
§ 4.1.8	Landscape design	Architect	Additional Services
§ 4.1.9	Architectural Interior Design (B252™–2007)	Architect	Basic Services
§ 4.1.10	Value Analysis (B204™–2007)	Architect	Basic Services
§ 4.1.11	Detailed cost estimating	Architect	Basic Services
§ 4.1.12	On-site Project Representation (B207™–2008)	Not Provided	
§ 4.1.13	Conformed construction documents	Architect	Basic Services
§ 4.1.14	As-Designed Record drawings	Not Provided	
§ 4.1.15	As-Constructed Record drawings	Architect	Basic Services
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™–2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner's consultants	Architect	Basic Services
§ 4.1.20	Telecommunications/data design	Architect	Basic Services
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	Not Provided	
§ 4.1.22	Commissioning (B211™–2007)	Architect	Additional Services
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™–2012)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 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 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, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .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 data 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 proposed by the Owner;

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- .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 bidders or persons providing 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.

§ 4.3.2 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 subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to 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;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

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

§ 4.3.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, 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. 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.

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

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

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

~~§ 5.6 The Owner shall 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 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 maintain professional liability insurance as appropriate to the services provided.~~

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

§ 5.8 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.

§ 5.9 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.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, 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.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may 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, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither

the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. 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 requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, 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. 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely

and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 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 consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 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.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

### **§ 8.2 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 as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

Init.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other (Specify)

As modified per Attachment A

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, ~~mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by~~ the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the

Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 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 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 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.

§ 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.

Init.



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

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 11 COMPENSATION

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

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

See Attachment "C" A/E Services Fee Summary

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

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

Compensation for services rendered shall be based upon the hourly rates set forth in the attached Attachment "D" - Hourly Rate Schedule. The rates shall be adjusted in accordance with the Architects normal review practices.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

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

Compensation for services rendered shall be based upon the hourly rates set forth in the attached Attachment "D" - Hourly Rate Schedule. The rates shall be adjusted in accordance with the Architects normal review practices.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent ( 10.00 %), or as otherwise stated below:

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

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Fifteen	percent (	15	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of

the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

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

Compensation for services rendered shall be based upon the hourly rates set in Attachment D-Hourly Rate Schedule

**Employee or Category**

**Rate**

## § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 ~~Long distance services, dedicated data and communication services, teleconferences, Project Web~~ sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) of the expenses incurred.

## § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

As amended by Attachment "A"

## § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 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.

§ 11.10.2 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 (     ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

%

Init.

§ 11.10.3 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.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to 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:

## 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 Owner and Architect.

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

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

Attachment A – State of Delaware's Attachment A

Attachment B – Letter Proposal

Attachment C – A/E Services Fee Summary

Attachment D – Hourly Rate Schedule

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

OWNER

Signature on File

*(Signature)*

Dr. Mark Holodick, Superintendent

*(Printed name and title)*

ARCHITECT

Signature on File

*(Signature)*

Robert Maffia, AIA, Vice President

*(Printed name and title)*

Init.



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET**

**ATTACHMENT "A"**

**Owner and Architect Agreement B101**

**This attachment amends AIA Document B101-2007 as follows:**

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:  
  
"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."
2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.
3. Amend Article 1.1 by adding the following sentence to the end of the Article:  
  
"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."

4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."

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13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."



22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."
23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed ~~two weeks~~ from the time of receipt without prior written approval from the Owner." four (4) weeks

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."
25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".
- Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."
26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".
27. Amend Article 3.6.6.5 by changing "one year" to "two years".
28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

#### **4.1.13 - Conformed Construction Documents**

**4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.**

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#### **4.1.19 - Coordination of Owner's consultants**

**4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.**

**4.1.22 - Incorporate design and review comments from Owner's commissioning agent.**

**4.1.23 - Is a Basic Service as required in Article 3.2.5.1**

**4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.**

**29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:**

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

**.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;**

**Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."**

**30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".**

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

**"Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner's failure to render decisions in a timely manner.**

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

32. Strike Article 4.3.1.5 in its entirety.

33. Strike Article 4.3.1.6 in its entirety.

34. Strike Article 4.3.1.7 in its entirety.

35. Strike Article 4.3.1.9 in its entirety.

36. Strike Article 4.3.2.1 in its entirety.

37. Amend Article 4.3.2.3 to add at the end "as outlined in Article 12 E & O policy."

38. Strike Article 4.3.2.6 in its entirety and replace with the following: "Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work."

39. Amend Article 4.3.3.1 by adding the number two before "reviews".

40. Amend Article 4.3.3.2 by adding "the equivalent of 2 visits per month for the duration of the project."

Providing the number of site visits / construction meetings under basic services do not exceed ten percent (10%) of the fee.

41. Amend Article 4.3.3.3 by adding the number two before "inspections".

42. Amend Article 4.3.3.4 by adding the number two before "inspections".

43. Amend Article 4.3.4 by changing "shall" to "may".

44. Amend Article 5.2 by striking the word "shall" in the last sentence and replacing it with "may".

45. Amend Article 5.6 by striking the last portion of the third sentence that reads "the Architect requests such services...scope of the Project" and replace with "reviewed and approved by the Owner."

Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
  47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
  48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
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49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
  50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. ~~Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications.~~"
  51. Amend Article 7 by striking it in its entirety and replacing it with the following: "All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."

The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

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70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013



**Attachment 'C'**  
**Architectural/Engineering Services Fee Breakdown**

**Two Renovation/ Addition Projects:**  
**Carrcroft Elementary School and the District's Facilities Department Relocation Project**

<b>Basic Services</b>		<b>Carrcroft</b>	<b>Facilities Dept.</b>
Project	Construction Budget	Fee	Fee
Carrcroft Elementary School	\$3,963,101	\$376,495	-
Facilities Department Relocation	\$1,897,200	-	\$189,720
	<b>Sub Total</b>	<b>\$376,495</b>	<b>\$189,720</b>
<b>Additional Services (Lump Sum)</b>			
Existing Facility Survey and CAD documentation		\$20,000	\$8,000
Educational Specification (Programming)		\$8,000	n/a
<del>Geotechnical Engineering</del>		<del>\$7,200</del>	<del>\$7,200</del>
Topographical Land Surveying		\$10,340	\$9,570
Wetlands Delineation and Report		\$825	\$1,045
Architectural Digital Rendering		\$8,000	n/a
Landscape Design		\$550	\$550
	<b>Sub Total</b>	<b>\$54,915</b>	<b>\$26,365</b>
<b>Additional Services (Time and Materials)</b>			
Regulatory Coordination - NCCO, DNREC and DelDot		\$15,950	\$17,050
Utility Mapping		\$5,000	\$5,000
Onsite Construction Testing		\$16,800	\$16,800
Food Service Consultant		\$13,750	n/a
Reimbursable Budget		\$15,000	\$12,000
	<b>Sub Total</b>	<b>\$66,500</b>	<b>\$50,850</b>
	<b>Total</b>	<b>\$497,910</b>	<b>\$266,935</b>

**Services excluded from our scope of work and fee:**

Furniture, Fixture and Equipment Design  
 LEED Certification  
 Multiple bid packages  
 Basic Commissioning

$$\frac{\%}{9.5}$$

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# Schedule of Hourly Rates

Water Environment and Infrastructure (WEI)

Hourly Billing Rates for: TT IER

Rates Effective Starting: February 1, 2016

Personnel	Hourly Rate
<b>Management</b>	
<b>Operations Management</b>	
Principal in Charge	\$300.00
<b>Project and Program Management</b>	
Project Manager 1	\$160.00
Project Manager 2	\$180.00
Sr Project Manager	\$215.00
Program Manager	\$245.00
<b>A/E Services</b>	
<b>Engineers</b>	
Engineer 1	\$85.00
Engineer 2	\$110.00
Engineer 3	\$125.00
Project Engineer 1	\$135.00
Project Engineer 2	\$165.00
Sr Engineer 1	\$215.00
Sr Engineer 2	\$220.00
Sr Engineer 3	\$225.00
Principal Engineer	\$250.00
<b>Engineering Designers</b>	
Engineering Technician	\$60.00
Engineering Designer 1	\$85.00
Engineering Designer 2	\$95.00
Engineering Designer 3	\$115.00
Sr Eng Designer 1	\$125.00
Sr Eng Designer 2	\$140.00
<b>Architects</b>	
Architectural Designer 1	\$75.00
Architectural Designer 2	\$80.00
Architectural Designer 3	\$90.00
Architect 1	\$115.00
Architect 2	\$140.00
Sr Architect 1	\$165.00
Sr Architect 2	\$170.00
Architectural Program Mgr	\$245.00
<b>Information Technology</b>	
Sys Analyst / Programmer 1	\$75.00
Sys Analyst / Programmer 2	\$120.00
Sr Sys Analyst / Programmer 1	\$145.00
Sr Sys Analyst / Programmer 2	\$195.00
<b>Sci Svcs</b>	
<b>Scientists</b>	



# Schedule of Hourly Rates

Water Environment and Infrastructure (WEI)

Hourly Billing Rates for: TT IER

Rates Effective Starting: February 1, 2016

Personnel	Hourly Rate
Scientist 1	\$80.00
Scientist 2	\$95.00
Scientist 3	\$100.00
Sr Scientist 1	\$135.00
Sr Scientist 2	\$165.00
Sr Scientist 3	\$210.00
<b>Field Services</b>	
<b>Construction Observation</b>	
Construction Project Rep 1	\$80.00
Construction Project Rep 2	\$90.00
Sr Constr Project Rep 1	\$125.00
Sr Constr Project Rep 2	\$150.00
<b>Construction Administration</b>	
Construction Administrator	\$75.00
Sr Construction Administrator	\$110.00
<b>Construction Management</b>	
Construction Manager 1	\$150.00
Construction Manager 2	\$195.00
Construction Director	\$200.00
<b>Surveying</b>	
Survey Tech 1	\$55.00
Survey Tech 2	\$75.00
Survey Crew Chief	\$95.00
Surveying Specialist	\$100.00
Land Surveyor	\$110.00
Sr Land Surveyor	\$155.00
<b>Plant Operations</b>	
Plant Operator 1	\$85.00
Plant Operator 2	\$90.00
Plant Supervisor	\$100.00
<b>Technical Services</b>	
<b>Technicians</b>	
Technician 1	\$55.00
Technician 2	\$75.00
Technician 3	\$90.00
Sr Technician 1	\$125.00
Sr Technician 2	\$130.00
Sr Technician 3	\$140.00
<b>Project Support</b>	
<b>Computer Aided Design (CAD)</b>	
CAD Technician 1	\$65.00
CAD Technician 2	\$70.00



Hourly Billing Rates for: TT IER

Rates Effective Starting: February 1, 2016

Personnel	Hourly Rate
CAD Technician 3	\$75.00
CAD Designer	\$90.00
Sr CAD Designer 1	\$110.00
Sr CAD Designer 2	\$120.00
CAD Director	\$130.00
<b>Geographic Information Systems (GIS)</b>	
GIS Analyst 1	\$65.00
GIS Analyst 2	\$80.00
Sr GIS Analyst	\$90.00
GIS Application Developer	\$130.00
Sr GIS Application Developer	\$160.00
<b>Business Support</b>	
<b>Project Administration</b>	
Project Assistant 1	\$65.00
Project Assistant 2	\$70.00
Project Administrator	\$90.00
Sr Project Administrator	\$100.00
<b>Contracts / Legal</b>	
Contract Administrator	\$80.00
Sr Contract Administrator	\$105.00
<b>Finance / Accounting</b>	
Project Analyst 1	\$70.00
Project Analyst 2	\$90.00
Sr Project Analyst	\$140.00
Project Accounting Director	\$220.00
<b>Technical Writers</b>	
Technical Writer 1	\$65.00
Technical Writer 2	\$75.00
Sr Technical Writer	\$85.00
<b>Graphics</b>	
Graphic Artist	\$85.00
<b>Consulting</b>	
Consultant 1	\$70.00
Consultant 2	\$95.00
Sr Consultant 1	\$120.00
Sr Consultant 2	\$180.00
Sr Consultant 3	\$190.00



# Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the October day of 19 in the year 2016  
(In words, indicate day, month and year.)

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

Brandywine School District  
1311 Brandywine Boulevard  
Wilmington, DE 19809-2306

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

Tetra Tech, Inc.  
240 Continental Drive, Suite 240  
Newark, DE 19713  
Telephone Number: 302.738.7551  
Fax Number: 302.454.5989

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

Carrcroft Elementary School, Addition and Renovations  
503 Crest Road  
Wilmington, DE 19803

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The Owner and Architect agree as follows.

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

See Attachment "B", Letter Proposal

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

Summer 2017

.2 Substantial Completion date:

Summer 2019

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 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.

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

§ 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 to compromise the Architect's professional judgment with respect to this Project.

~~§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:~~

~~(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)~~

~~.1 General Liability~~

~~As modified by Attachment A~~

~~.2 Automobile Liability~~

~~As modified by Attachment A~~

~~.3 Workers' Compensation~~

~~As modified by Attachment A~~

~~.4 Professional Liability~~

~~As modified by Attachment A~~

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

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness 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.

§ 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.

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§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## § 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.

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

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner ~~alternative approaches to design and construction of the Project, including the feasibility of incorporating~~ environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's 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 modeling. 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 environmentally responsible 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 other environmentally responsible design services under Article 4.

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 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

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electrical systems, and such other elements as may be appropriate. 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.

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

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and ~~Specifications setting forth in detail the quality levels of materials and systems and other requirements for the~~ construction of the Work. The Owner and Architect acknowledge that in order to construct 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 into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the ~~development and preparation of (1) bidding and 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.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

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

#### § 3.5 BIDDING OR NEGOTIATION 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 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

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### § 3.5.3 NEGOTIATED PROPOSALS

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

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

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 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™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

§ 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.

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§ 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 A201–2007, 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 and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

~~§ 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~

§ 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. 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 review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests

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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 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 authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

#### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and 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 list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional 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.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		Additional Services
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Architect	Additional Services

§ 4.1.5	Site Evaluation and Planning (B203™–2007)	Architect	Basic Services
§ 4.1.6	Building Information Modeling (E202™–2008)	Not Provided	
§ 4.1.7	Civil engineering	Architect	Basic Services
§ 4.1.8	Landscape design	Architect	Additional Services
§ 4.1.9	Architectural Interior Design (B252™–2007)	Architect	Basic Services
§ 4.1.10	Value Analysis (B204™–2007)	Architect	Basic Services
§ 4.1.11	Detailed cost estimating	Architect	Basic Services
§ 4.1.12	On-site Project Representation (B207™–2008)	Not Provided	
§ 4.1.13	Conformed construction documents	Architect	Basic Services
§ 4.1.14	As-Designed Record drawings	Not Provided	
§ 4.1.15	As-Constructed Record drawings	Architect	Basic Services
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™–2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner's consultants	Architect	Basic Services
§ 4.1.20	Telecommunications/data design	Architect	Basic Services
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	Not Provided	
§ 4.1.22	Commissioning (B211™–2007)	Architect	Additional Services
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™–2012)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 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 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, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .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 data 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 proposed by the Owner;

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- .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 bidders or persons providing 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.

§ 4.3.2 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 subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to 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;
- .5 ~~Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

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

§ 4.3.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, 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. 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.

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



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

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall 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 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 maintain professional liability insurance as appropriate to the services provided.

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

§ 5.8 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.

§ 5.9 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.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, 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.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may 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, 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

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the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. 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 requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, 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. ~~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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely

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and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 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 consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 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.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

### § 8.2 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 as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.



§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other (Specify)

As modified per Attachment A

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the

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Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 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 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 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.

§ 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.

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

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 11 COMPENSATION

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

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

See Attachment "C" A/E Services Fee Summary

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

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

Compensation for services rendered shall be based upon the hourly rates set forth in the attached Attachment "D" - Hourly Rate Schedule. The rates shall be adjusted in accordance with the Architects normal review practices.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

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

Compensation for services rendered shall be based upon the hourly rates set forth in the attached Attachment "D" - Hourly Rate Schedule. The rates shall be adjusted in accordance with the Architects normal review practices.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent ( 10.00 %), or as otherwise stated below:

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

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Fifteen	percent (	15	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of

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the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

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

Compensation for services rendered shall be based upon the hourly rates set in Attachment D-Hourly Rate Schedule

Employee or Category

Rate

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner,
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

As amended by Attachment "A"

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 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.

§ 11.10.2 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 ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

%

Init.



§ 11.10.3 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.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to 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:

## 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 Owner and Architect.

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

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

Attachment A – State of Delaware's Attachment A  
Attachment B – Letter Proposal  
Attachment C – A/E Services Fee Summary  
Attachment D – Hourly Rate Schedule

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

OWNER  
Signature on File

*(Signature)*  
Dr. Mark Holodick, Superintendent  
*(Printed name and title)*

ARCHITECT  
Signature on File

*(Signature)*  
Robert Maffia, AIA, Vice President  
*(Printed name and title)*



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

ATTACHMENT "A"

Owner and Architect Agreement B101

This attachment amends AIA Document B101-2007 as follows:

1. Section 6903, Chapter 69, Title 29 of the Delaware Code requires a "prohibition against contingency fees" statement. An acceptable statement would be as follows:

"By signing this Agreement, the Professional swears that he has not employed or retained any company or person, other than a bona fide employee working primarily for the firm offering professional services, to solicit or secure this agreement, and that he has not been paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement."

2. The Professional will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The Professional will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

3. Amend Article 1.1 by adding the following sentence to the end of the Article:

"At the Owner's request, the Architect shall produce all subcontractor agreements, including consultants, or any other agreement related to the Architect's performance on the project."



4. Amend Article 2.5 by striking the second sentence in its entirety.
5. Amend Article 2.5 by striking subsection 2.5.1 through 2.5.4 and inserting the following:

2.5.1 Comprehensive General Liability: \$1,000,000 and

2.5.2 Medical/Professional Liability: \$1,000,000/\$3,000,000 or

2.5.3 Misc. Errors or Omissions: \$1,000,000/\$3,000,000 or

2.5.4 Product Liability: \$1,000,000/\$3,000,000

All architects must carry coverage listed in 2.5.1 and at least one of the coverage listed in 2.5.2 or 2.5.3 or 2.5.4, depending on the type of service or product being delivered.

If the contractual service requires the transportation of State of Delaware, including school districts, clients or staff, the Architect shall, in addition to the above coverage, secure at its own expense the following coverage:

2.5.4 Automotive Liability (Bodily Injury): \$100,000/\$300,000

2.5.6 Automotive Property Damage (to others): \$25,000

6. Add a new Article 2.6 which shall read as follows:

Notwithstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

7. Add a new Article 2.7 which shall read as follows:

The policies required under Article 2.5 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Architect and the Architect's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

8. Add a new Article 2.8 which shall read as follows:

The Architect shall provide a Certificate of Insurance as proof that the Architect has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance including any extensions of the contract.

9. Amend Article 3.1 by adding the word "civil" after "mechanical," and before "and".
10. Amend Article 3.1.4 by striking "the Architect's approval" and replacing it with "prior notice to the Architect."
11. Amend Article 3.2.5 by adding "the mutually agreed-upon program, schedule and construction budget requirement as well as" after "Based on" and before "the Owner's approval" in the first sentence. In the second sentence add ",outline specifications," after "drawings".
12. Amend Article 3.2.5.2 by adding the following sentence to the end of the Article: "The Architect shall perform life cycle cost analysis as required by 29 Del. C. §6909A."
13. Amend Article 3.2.6 by striking "prepared in accordance with Section 6.3."
14. Amend Article 3.3.1 by striking the word "outline" before "specifications".
15. Amend Article 3.4.3 by adding the following sentence to the end of the Article: "The construction documents and the project in its entirety shall comply with the laws of the State of Delaware and the local government including municipality in which the project is located."
16. Amend Article 3.4.4 by striking the Article in its entirety and replacing it with the following: "The Architect shall prepare a construction cost estimate using unit in-place methods with breakdowns including costs of labor, material, overhead and profit."
17. Amend Article 3.4.5 by adding after the last sentence "After Owner's review, incorporate Owner's comments into final construction documents."
18. Amend Article 3.5.1 by inserting in the first and second sentences "if requested" before Architect. In the second sentence after "(4) awarding and", insert "(5) The Architect shall prepare the contracts for construction and hand deliver or mail/ship to Owner within 48 hours of receipt of official notification from Owner. If mailed, documents shall be sent using a delivery service that can track the shipment."
19. Amend Article 3.5.3 by striking it in its entirety.
20. Amend Article 3.6.1.1 by adding "as well as the Owner's Supplementary General Conditions and the Owner's General Requirements."
21. Amend Article 3.6.1.3 by striking it in its entirety and replacing it with the following: "The Architect's responsibility to provide Construction Phase Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment."

22. Amend Article 3.6.2.4 by adding the following to the end of the paragraph: "The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in this subparagraph, shall be subject to mediation and other remedies at law or in equity."
23. Amend 3.6.4.1 by inserting the following after the first sentence: "The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents."

Also, amend by striking the final period in the last sentence and inserting the following: ", but in no case shall the review time exceed two weeks from the time of receipt without prior written approval from the Owner."

← four (4) weeks

24. Amend Article 3.6.4.2 by striking the first sentence in its entirety and replacing it with the following: "In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with information given and the design concepts in the Contract Documents."
25. Amend Article 3.6.4.4 by striking "Subject to the provisions of Section 4.3," and starting the sentence with "The".

Also amend by adding to the end of the fourth sentence the following immediately after "reasonable promptness": "as to cause no delay in the work."

26. Amend Article 3.6.5.1 by striking the following at the beginning of the second sentence: "Subject to the provision of Section 4.3" and starting the sentence with "The".
27. Amend Article 3.6.6.5 by changing "one year" to "two years".
28. Amend Article 4.1 by striking the following subparagraphs from additional services as they are considered Basic Services:

4.1.2 - Multiple Preliminary Drawings

4.1.7 - Civil Engineering

4.1.8 - Landscape Design

4.1.10 - Life Cycle Cost Analysis is required pursuant to 29 Del. C. §6909A.

4.1.11 - Detailed Cost Estimating

**4.1.13 - Conformed Construction Documents**

**4.1.15 - Strike this section in its entirety and replace with the following: Section 507, Chapter 5, Title 29 of the Delaware Code requires archival quality (mylars) "as-built" drawings to be deposited in the Hall of Records. Providing such record drawings will be considered a Basic Service of the Architect in all contracts, involving new construction or major renovations. Upon completion of the project and the recordation of all as-built information, the Architect shall provide to the Owner two (2) copies of all Drawings and the Project Manual on CD-Rom. Drawings must be provided in .dwg format and be compatible with AUTOCAD by Autodesk; Project Manual must be compatible with Microsoft Word (consult with the Owner for program version requirements). In addition to the drawing files, the Architect shall provide to the Owner the pen file(s) used for plotting as well as any fonts, library or any files used that are not included in the standard AUTOCAD program.**

**4.1.19 - Coordination of Owner's consultants**

~~**4.1.20 - In addition to Telecommunications and data design being a Basic Service, the design must comply with the State of Delaware's Department of Technology and Information's standards.**~~

**4.1.22 - Incorporate design and review comments from Owner's commissioning agent.**

**4.1.23 - Is a Basic Service as required in Article 3.2.5.1**

**4.1.26 - If required by local government including municipalities, Historic Preservation services will be considered Basic Services.**

**29. Amend Article 4.3.1.1 by striking it in its entirety and replacing it with the following:**

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

**.1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustment in the Owner's program or Project budget;**

**Providing services required because of significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contract for construction except for services required under Section 6.7."**

**30. Amend Article 4.3.1.2 by inserting "except for Life Cycle Cost Analysis" after "energy modeling" and before "or".**

31. Amend Article 4.3.1.4 by striking in its entirety and replacing it with the following:

"Making revisions in drawings, specifications or other documents, when such revisions are due to changes required as a result of the Owner's failure to render decisions in a timely manner.

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

32. Strike Article 4.3.1.5 in its entirety.

33. Strike Article 4.3.1.6 in its entirety.

34. Strike Article 4.3.1.7 in its entirety.

35. Strike Article 4.3.1.9 in its entirety.

36. Strike Article 4.3.2.1 in its entirety.

37. Amend Article 4.3.2.3 to add at the end "as outlined in Article 12 E & O policy."

38. Strike Article 4.3.2.6 in its entirety and replace with the following: "Providing services after issuance to the Owner of the final Certificate for Payment or, in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of Work."

39. Amend Article 4.3.3.1 by adding the number two before "reviews".

40. Amend Article 4.3.3.2 by adding "the equivalent of 2 visits per month for the duration of the project." Providing the number of site visits / construction meetings under basic services do not exceed ten percent (10%) of the fee.

41. Amend Article 4.3.3.3 by adding the number two before "inspections".

42. Amend Article 4.3.3.4 by adding the number two before "inspections".

43. Amend Article 4.3.4 by changing "shall" to "may".

44. Amend Article 5.2 by striking the word "shall" in the last sentence and replacing it with "may".

45. Amend Article 5.6 by striking the last portion of the third sentence that reads "the Architect requests such services...scope of the Project" and replace with "reviewed and approved by the Owner."



Also amend by adding the following at the end of the paragraph: "The Owner may elect to transfer this responsibility to the Architect as an Additional Service in Article 3 of this Agreement."

46. Amend Article 5.8 by adding the following to the end of the Article: "These services are not provided directly to the Architect."
47. Amend Article 5.10 by adding a third sentence to read as follows: "The Architect shall prepare and distribute meeting minutes during the design and construction phases of the Project."
48. Amend Article 6.2 by inserting "best" before "judgment" in the second sentence. Also, strike the third and fourth sentences in their entirety.
49. Amend Article 6.3 by deleting the second and third sentences and replace with the following: "The Architect's estimate of the Cost of the Work shall be based on a Work Breakdown Structure (WBS) format. If the lowest responsible and responsive bid exceeds the estimated Cost of the Work by more than 5% then the Architect shall provide the Owner with a detailed cost comparison analysis identifying all discrepancies at no additional cost to the Owner."
50. Delete Article 6.7 in its entirety and replace with the following:

"If the Owner chooses to cooperate in the revising the Project scope and quality as required to reduce the Construction Cost, the Architect, without additional compensation, shall modify the documents to comply with the fixed limit. ~~Further, there shall be no additional compensation to the Architect for bidding phase costs due to the modifications.~~"
51. Amend Article 7 by striking it in its entirety and replacing it with the following:

"All pre-design studies, drawings, specifications, and other documents, including those in electronic form, prepared by the Architect under this Agreement are, and shall remain the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Architect. The Contractor, Subcontractors, Sub-subcontractors and Material or Equipment Suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or Material or Equipment Supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. This stipulation shall not prohibit the Architect from the reuse of all instruments of service noted above for any other projects or clients."



The Architect shall not be liable for injury or damage resulting from the re-use of drawings and specifications if the Architect is not involved in the re-use Project. Prior to re-use of construction documents for a Project in which the Architect is not also involved, the Owner will remove from such documents all identification of the original Architect, including name, address and professional seal or stamp."

52. Amend Article 8.1.1 by striking the last sentence in its entirety.
53. Amend Article 8.1.2 by striking it in its entirety.
54. Amend Article 8.1.3 by striking it in its entirety.
55. Amend Article 8.2.1 by striking it in its entirety.
56. Amend Article 8.2.2 by striking the end of the first sentence "shall be administered ...the date of the Agreement." Also add the following to the beginning of the second sentence: "In accordance with Delaware law,"
57. Amend Article 8.2.4 by checking the box marked "Other" and insert the following: "The choice is left to the parties."
58. Amend Article 8.3 by striking it in its entirety.
59. Amend Article 9.3 by adding the following to the first sentence after "fault of the Architect": "or except for funding purposes,"
60. Amend Article 9.7 by striking the following from the end of the sentence: "plus an amount...by the Architect."
61. Amend Article 9.8 by striking it in its entirety.
62. Amend Article 10.1 by striking the following from the end of the sentence: "except that if... govern Section 8.3."
63. Amend Article 10.2 by adding to the following to the end of the sentence: "as amended by the Owner's General Requirements and the Owner's Supplemental Conditions."
64. Amend Article 10.8 by adding the following to the beginning of the first sentence: "Except in accordance with Delaware Freedom of Information Act (FOIA), 29 Del. C. ch. 100,".
65. Amend Article 11.2 by adding the following after "Section 4.1": "as amended by Owner's Attachment A."
66. Amend Article 11.3 by adding the following after "Section 4.3": "as amended by Owner's Attachment A."

67. Amend Article 11.6 by adding the following sentence at the end: "Design Work for Alternates may be included for consideration in the cost of work."
68. Amend Article 11.7 by striking the second sentence in its entirety and replacing it with the following: "The rates may be adjusted subject to negotiation."
69. Amend 11.8.1.1 by striking the phrase "out-of-town" and replacing it with "out-of-state". Normally the State only reimburses "out-of-state" transportation and living expenses directly related to a project.

Also, insert the following at the end of the sentence: "based on Delaware's Office of Management and Budget's policy regarding such reimbursement."

70. Amend Article 11.8.1.2 by striking it in its entirety.
71. Amend Article 11.8.1.8 by striking it in its entirety.
72. Amend Article 11.8.1.9 by striking it in its entirety.
73. Amend Article 11.9 by striking it in its entirety.
74. Amend Article 11.10.1 by striking it in its entirety.
75. Amend Article 11.10.2 by striking the second sentence in its entirety and replace with: "Payments are due and payable within 30 days after Owner's receipt of the Architect's invoice. Amounts unpaid after 30 days shall bear interest of one percent per month not to exceed twelve percent per annum."
76. Amend Article 11.10.3 by striking it in its entirety.
77. Amend Article 12 to include reference to the "Office of Management and Budget, Division of Facilities Management's Errors and Omissions Policy."
78. Amend Article 13.2 by striking it in its entirety and replacing with the following: "All attachments including Owner's Attachment A and all related exhibits."

July 3, 2013

**Attachment 'C'**  
**Architectural/Engineering Services Fee Breakdown**

**Two Renovation/ Addition Projects:**  
**Carrcroft Elementary School and the District's Facilities Department Relocation Project**

<b>Basic Services</b>		<b>Carrcroft</b>	<b>Facilities Dept.</b>
Project	Construction Budget	Fee	Fee
Carrcroft Elementary School	\$3,963,101	\$376,495	-
Facilities Department Relocation	\$1,897,200	-	\$189,720
	<b>Sub Total</b>	<b>\$376,495</b>	<b>\$189,720</b>

**Additional Services (Lump Sum)**

Existing Facility Survey and CAD documentation	\$20,000	\$8,000
Educational Specification (Programming)	\$8,000	n/a
Geotechnical Engineering	\$7,200	\$7,200
Topographical Land Surveying	\$10,340	\$9,570
Wetlands Delineation and Report	\$825	\$1,045
Architectural Digital Rendering	\$8,000	n/a
Landscape Design	\$550	\$550
	<b>Sub Total</b>	<b>\$54,915</b>

**Additional Services (Time and Materials)**

Regulatory Coordination - NCCO, DNREC and DelDot	\$15,950	\$17,050
Utility Mapping	\$5,000	\$5,000
Onsite Construction Testing	\$16,800	\$16,800
Food Service Consultant	\$13,750	n/a
Reimbursable Budget	\$15,000	\$12,000
	<b>Sub Total</b>	<b>\$66,500</b>

<b>Total</b>	<b>\$497,910</b>	<b>\$266,935</b>
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**Services excluded from our scope of work and fee:**

Furniture, Fixture and Equipment Design  
 LEED Certification  
 Multiple bid packages  
 Basic Commissioning

%  
9.5  
10



## Schedule of Hourly Rates

Water Environment and Infrastructure (WEI)

Hourly Billing Rates for: TT IER

Rates Effective Starting: February 1, 2016

Personnel	Hourly Rate
<b>Management</b>	
<b>Operations Management</b>	
Principal in Charge	\$300.00
<b>Project and Program Management</b>	
Project Manager 1	\$160.00
Project Manager 2	\$180.00
Sr Project Manager	\$215.00
Program Manager	\$245.00
<b>A/E Services</b>	
<b>Engineers</b>	
Engineer 1	\$85.00
Engineer 2	\$110.00
Engineer 3	\$125.00
Project Engineer 1	\$135.00
Project Engineer 2	\$165.00
Sr Engineer 1	\$215.00
Sr Engineer 2	\$220.00
Sr Engineer 3	\$225.00
Principal Engineer	\$250.00
<b>Engineering Designers</b>	
Engineering Technician	\$60.00
Engineering Designer 1	\$85.00
Engineering Designer 2	\$95.00
Engineering Designer 3	\$115.00
Sr Eng Designer 1	\$125.00
Sr Eng Designer 2	\$140.00
<b>Architects</b>	
Architectural Designer 1	\$75.00
Architectural Designer 2	\$80.00
Architectural Designer 3	\$90.00
Architect 1	\$115.00
Architect 2	\$140.00
Sr Architect 1	\$165.00
Sr Architect 2	\$170.00
Architectural Program Mgr	\$245.00
<b>Information Technology</b>	
Sys Analyst / Programmer 1	\$75.00
Sys Analyst / Programmer 2	\$120.00
Sr Sys Analyst / Programmer 1	\$145.00
Sr Sys Analyst / Programmer 2	\$195.00
<b>Sci Svcs.</b>	
<b>Scientists</b>	



# Schedule of Hourly Rates

Water Environment and Infrastructure (WEI)

Hourly Billing Rates for: TT IER

Rates Effective Starting: February 1, 2016

Personnel	Hourly Rate
Scientist 1	\$80.00
Scientist 2	\$95.00
Scientist 3	\$100.00
Sr Scientist 1	\$135.00
Sr Scientist 2	\$165.00
Sr Scientist 3	\$210.00
<b>Field Services</b>	
<b>Construction Observation</b>	
Construction Project Rep 1	\$80.00
Construction Project Rep 2	\$90.00
Sr Constr Project Rep 1	\$125.00
Sr Constr Project Rep 2	\$150.00
<b>Construction Administration</b>	
Construction Administrator	\$75.00
Sr Construction Administrator	\$110.00
<b>Construction Management</b>	
Construction Manager 1	\$150.00
Construction Manager 2	\$195.00
Construction Director	\$200.00
<b>Surveying</b>	
Survey Tech 1	\$55.00
Survey Tech 2	\$75.00
Survey Crew Chief	\$95.00
Surveying Specialist	\$100.00
Land Surveyor	\$110.00
Sr Land Surveyor	\$155.00
<b>Plant Operations</b>	
Plant Operator 1	\$85.00
Plant Operator 2	\$90.00
Plant Supervisor	\$100.00
<b>Technical Services</b>	
<b>Technicians</b>	
Technician 1	\$55.00
Technician 2	\$75.00
Technician 3	\$90.00
Sr Technician 1	\$125.00
Sr Technician 2	\$130.00
Sr Technician 3	\$140.00
<b>Project Support</b>	
<b>Computer Aided Design (CAD)</b>	
CAD Technician 1	\$65.00
CAD Technician 2	\$70.00

# Schedule of Hourly Rates

Water Environment and Infrastructure (WEI)

Hourly Billing Rates for: TT IER

Rates Effective Starting: February 1, 2016

Personnel	Hourly Rate
CAD Technician 3	\$75.00
CAD Designer	\$90.00
Sr CAD Designer 1	\$110.00
Sr CAD Designer 2	\$120.00
CAD Director	\$130.00
<b>Geographic Information Systems (GIS)</b>	
GIS Analyst 1	\$65.00
GIS Analyst 2	\$80.00
Sr GIS Analyst	\$90.00
GIS Application Developer	\$130.00
Sr GIS Application Developer	\$160.00
<b>Business Support</b>	
<b>Project Administration</b>	
Project Assistant 1	\$65.00
Project Assistant 2	\$70.00
Project Administrator	\$90.00
Sr Project Administrator	\$100.00
<b>Contracts / Legal</b>	
Contract Administrator	\$80.00
Sr Contract Administrator	\$105.00
<b>Finance / Accounting</b>	
Project Analyst 1	\$70.00
Project Analyst 2	\$90.00
Sr Project Analyst	\$140.00
Project Accounting Director	\$220.00
<b>Technical Writers</b>	
Technical Writer 1	\$65.00
Technical Writer 2	\$75.00
Sr Technical Writer	\$85.00
<b>Graphics</b>	
Graphic Artist	\$85.00
<b>Consulting</b>	
Consultant 1	\$70.00
Consultant 2	\$95.00
Sr Consultant 1	\$120.00
Sr Consultant 2	\$180.00
Sr Consultant 3	\$190.00