



# AIA® Document B101™ – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the day of            in the year            date signed by Owner at the end of this Agreement

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

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

Galion City School District Board of Education  
470 Portland Way North; Galion, OH 44833  
Contact: Jim Grubbs, Superintendent

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)*

MKC Architects, Inc.  
90 Hidden Ravines Drive; Powell, OH 43065  
Contact: Gregory V. Lonergan, AIA

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

Galion Bus Garage and Soccer Playfield  
Located on the Galion High School campus  
472 Portland Way North; Galion, OH 44833

Architect was selected by Owner following the qualifications-based selection process required by Ohio Revised Code (ORC) Sections 153.65, et seq., to provide professional design services for the Project.

The Owner and Architect agree as follows.

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### ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

The Project Scope includes:

1. The bus garage is a 8,750 SF one-story pre-fabricated metal building with metal siding and roofing, split-faced CMR water table 4 feet high, an 8-inch CMU interior facing masonry wall 8 feet high. Interior masonry walls at the lounge/office area with a mezzanine above. Heating in the bus portion of the building, heating/cooling of the office/lounge area. Plumbing as required. Exterior cleaning areas. All required electrical engineering.
2. Project construction budget is \$1,300,000 for the bus garage and the related surrounding site development. The balance of the site, which will be the soccer playfield, was designed under a separate contract but will be part of this Project. Construction cost for the soccer playfield is \$350,000. Total construction costs of \$1,650,000.
3. Site grading, road design, gravel bus parking, exterior lighting of the parking lot, and all site utilities associated with the new bus garage.
4. Possible alternates include:
  - a. 15-bay partially covered bus garage of pole barn construction with gravel floor (included as a Basic Service)
  - b. Playgrounds (to be provided as an Additional Service if requested):

- i. Design to prepare site for relocation of existing playground from Galion Intermediate School, including add basketball poles and move playground equipment
- ii. Prepare second playground area at site to be determined by Owner

5. A previously designed soccer field will be bid as part of the Project (included in Item 2).

Architect will work with Owner to review preliminary designs and verify compliance with program needs and revise/edit preliminary designs based upon Stakeholder before developing the Construction Documents.

Owner anticipates using the general contracting delivery method for the Project, with the contractor being procured through a competitive proposal process, rather than the statutory competitive bidding requirements for public schools.

**§ 1.1.2** The Project's physical characteristics:

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

Existing site on the Galion City Schools campus.

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

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

\$1,650,000 for the new bus garage with alternate and soccer playfield

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

- .1 Design phase milestone dates, if any:

Refer to Bus Garage Time Line attached as Exhibit A.

- .2 Construction commencement date:

July 29, 2018

- .3 Substantial Completion date or dates:

January 27, 2019

- .4 Other milestone dates:

Closeout completion no later than February 17, 2019

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

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

Competitive proposal process for a single general contract for all or separate portions of the Work included in the Project

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

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

None.

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner

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and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

Jim Grubbs, Superintendent  
Galion City Schools  
470 Portland Way North  
Galion, Ohio 44833  
grubbs.james@galionschools.org

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

None

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

- .1 Geotechnical Engineer:  
TBD, if needed
- .2 Civil Engineer: within Architect’s scope of Basic Services
- .3 Other, if any:  
(List any other consultants and contractors retained by the Owner.)

None identified at the time this Agreement is signed

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

Greg Lonergan, AIA, Technical Leader  
MKC Architects, Inc.  
90 E. Hidden Ravines Drive  
Powell, OH 43065  
Phone: 740.657.3202  
Email: glonergan@mkcinc.com

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

§ 1.1.11.1 Consultants retained under Basic Services:

- .1 Structural Engineer:  
TBD, if needed
- .2 Mechanical Engineer:  
TBD, if needed
- .3 Electrical Engineer:

TBD, if needed

**§ 1.1.11.2** Consultants retained under Supplemental Services:

None identified at the time this Agreement is signed.

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

None.

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

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

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

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** The Architect shall provide professional services as set forth in this Agreement. The Architect will provide the professional services necessary for the complete design and documentation of the Project for the Basic Fee stated in Section 11.1; the only exception for which the parties will negotiate any additional compensation will be for the cost of architectural/engineering or consulting services that become necessary as a result of a change in the Project scope affecting the Architect. Absent events beyond its reasonable control, the Architect will perform its services in accordance with the schedule established for the Project and approved by Owner as provided in Section 2.2.1. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects licensed to practice in the State of Ohio and practicing in the same or similar locality under the same or similar circumstances. ~~circumstances (referred to as the Standard of Care).~~ The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.2.1 Project Schedule.** After consultation with Owner and finalization of the program for the Project, Architect will prepare a preliminary project schedule for the Project that includes milestones for completion of key phases of the Project from schematic design through completion of construction. Owner will approve such dates and milestones and any modifications to them, and the milestone dates will be included in the Contract Documents. Following award of the contract for construction of the Project, Architect will promptly review the construction schedule(s) prepared by the Contractor and any updates to it. If at any time Architect believes the time for the completion of the portion of the Project covered by a construction contract or any milestone will be exceeded, Architect will use reasonable care to notify Owner promptly in writing of the situation and work with Owner to develop alternatives for maintaining the Project schedule.

§ 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 until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~ must maintain during the term of this Agreement and for a period of two (2) years following final completion of the Project (if such coverage is available at commercially reasonable rates) the following insurance coverages, insuring the Architect, its employees, and where applicable its agents, and designees, which insurance must be obtained from an insurance company rated A- or better by Best Insurance Reports. The Architect will deliver certificates of insurance coverage to the Owner prior to execution of this Agreement and a copy of its professional liability coverage to Owner upon request. The Owner must be named as a certificate holder of each policy. The Architect will require its consultants to maintain appropriate levels of insurance coverage based upon the services to be provided by the consultant. For purposes of this section, final completion means six (6) months after the Architect has issued the Certificate of Substantial Completion for the Project.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000 ) for each occurrence and Two Million Dollars (\$ 2,000,000 ) in the aggregate for bodily injury and property damage.

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

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

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000 ) each accident, One Million Dollars (\$ 1,000,000 ) each employee, and Two Million Dollars (\$ 2,000,000 ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and Two Million Dollars (\$ 2,000,000 ) in the aggregate.

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

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

**§ 2.6 Architect's Duties in General.** Architect acknowledges that Owner is entering this Agreement in reliance on Architect's abilities to perform the Basic Services and any Additional Services requested under this Agreement on a timely basis. To the extent that any service hereunder is performed by consultants retained by Architect, the term "Architect" as used in this Agreement includes any such consultant.



§ 2.6.1 Architect's duties and obligations, as set forth herein, and any liabilities arising hereunder at no time will be diminished or released by reason of any approval by the Owner of the Drawings and Specifications or any other documents prepared by Architect.

§ 2.6.2 In providing services under this Agreement, Architect will exercise usual and customary reasonable professional care to comply with all reasonably known applicable federal, state, and local laws, regulations, and orders in effect at the time of submission of the Contract Documents to the governing building authority. Architect agrees that it will use reasonable care in an effort so that the Plans and Specifications and the improvements, if built in accordance with them, will conform to all reasonably known currently applicable statutes, regulations, ordinances, and orders, except to the extent that Architect has advised Owner in writing that there is an ambiguity or an interpretation by a code official contrary to that by Architect or that a variance is necessary. Architect is not responsible for compliance by any contractor with currently applicable statutes, regulations, ordinances, and orders.

§ 2.6.3 Architect, consistent with its Standard of Care and professional skills, agrees based upon the manufacturers' specifications and data sheets and the Architect's observations and experience that materials and equipment specified will, in Architect's opinion, be adequate for the purposes for which they are specified.

§ 2.6.4 Architect's design for the Project will be consistent with Owner's planned objectives and criteria, as communicated by Owner, in an effort for both functions to be accomplished by the construction and improvements and Owner's maximum budget (or Stated Cost Limitation as defined in this Agreement) for the Project. If Architect's design is not consistent with Owner's planned objectives and criteria, Architect will notify Owner in writing of the differences between the design and Owner's planned objectives and criteria in sufficient time so that the differences can be resolved to Owner's satisfaction prior to beginning construction. The design of each part or phase of the Project and the Plans and Specifications for each component of the Project is subject to approval by Owner.

§ 2.6.5 Architect will respond to inquiries from Owner or Owner's designated representative within five (5) business days from the date of receipt of the inquiry. Each response will adequately address the questions raised in the inquiry and, if requested, will be in writing; provided, however, that if five (5) business days is not an adequate period of time under the circumstances to prepare the response, the period for the response will be extended to give Architect a reasonable amount of time to respond. If a decision or approval is required by Owner under this Agreement, Owner will have at least five (5) business days written notice in advance that its decision or approval is required and will be furnished with sufficient information from which a decision or approval can be made, provided, however, that if the 5-day period is insufficient under the circumstances, the period for responding will be extended to give Owner a reasonable period of time to respond.

§ 2.6.6 Consistent with its Standard of Care, Architect will endeavor to anticipate problems related to zoning, building permits, availability of utilities, equipment and material shortages, proper balancing of the heating, ventilating, and air conditioning systems, and supplier delays and to keep Owner informed of issues that may affect the Project.

§ 2.6.7 Owner and Architect will agree upon the methods of reporting to Owner of problems and disputes on the Project that will assist Owner in addressing the problem or dispute. The information provided should include a description of any problem or dispute relating to the Project; the status of any identified problem or dispute; the date first noted; action taken; responsible persons in the opinion of Architect (if such persons have been identified); and recommended and final resolution. Upon Owner's request, Architect will provide Owner's legal counsel with a copy of such reports marked "confidential" so that Owner's counsel may provide legal advice to Owner concerning the problem or dispute.

§ 2.6.8 Architect will endeavor to maintain good working relations with Owner, Owner Representative, Contractors, and subcontractors and will further endeavor to solve problems and resolve disputes, if reasonably possible, promptly as they occur on the Project and promptly advise Owner through Owner Representative of any action recommended with respect to the problems or disputes.

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

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

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Additional Services. Schematic design, design development, and construction documents design phases may be combined as the parties agree is appropriate for any component of the Project.

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

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

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

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

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 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.

§ 3.1.7 During the design phase for each component of the Project, Architect will work with Owner, through its designated representative, to develop the design, present the completed design phase to Owner, and obtain written approval from Owner, which may be given by Owner's designated representative.

## § 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, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

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

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may



include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

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

**§ 3.2.6** The Architect shall submit to the Owner 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 electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

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

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

### **§ 3.4 Construction Documents Phase Services**

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

**§ 3.4.1.1** In addition to other terms to be included in the Contract Documents on behalf of Owner, Architect will (a) include test requirements for the following building systems, as applicable to the scope of the Project: air conditioning system (to be conducted during the summer months), heating system (to be conducted during the winter months), electrical system, plumbing system, fire protection system, communications system, and other such systems as are reasonably requested by Owner; (b) provide that the respective contractors participate in such series of systems tests; and (c) provide that such tests be conducted during the first 12 months following Substantial Completion. It is intended that the testing will be a comprehensive series of operational tests designed to determine whether the systems, including hardware and software, are fully operational in accordance with the requirements of the Contract Documents. Any additional commissioning beyond the requirements of the Ohio Basic Building Code in effect at the time this Agreement is signed by the parties is beyond the scope of Architect's Basic Services and is available as an Additional Service through Architect's mechanical/electrical consultant or another consultant retained by Owner.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Architect will assist Owner in connection with Owner's responsibility for filing documents required for approval.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; 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 prepared in accordance with Section 6.3.

§ 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 Procurement Phase Services

#### § 3.5.1 General

~~The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or negotiated proposals for portions of the Work, which is not subject to the statutory competitive bidding requirements; (2) confirming responsiveness of proposals; (3) determining the best or best value proposal, if any; and, (4) awarding and preparing contracts for construction. As soon as possible after award of a contract, Architect will coordinate with Owner and its legal counsel, for preparation of the contract for execution by the Contractor. Architect will coordinate distribution of the contract form prepared by Owner's legal counsel to the Contractor for signature and return a signed copy from Owner to the Contractor.~~

#### § 3.5.2 Competitive Bidding – Not Applicable

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

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

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

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

#### § 3.5.3 Negotiated Proposals

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

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

- .1 facilitating the distribution 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;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

## **§ 3.6 Construction Phase Services**

### **§ 3.6.1 General**

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

**§ 3.6.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Nothing in this section relieves Architect of its duty to use reasonable care in an effort to protect Owner from defective and non-conforming Work in accordance with its Standard of Care

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

**§ 3.6.1.4 Communication with Contractors.** Architect agrees to act as the representative of Owner in connection with any communication by or with any Contractor; in most situations, communications from any Contractor to Architect and from Architect to Contractor will be issued through Architect in coordination with Owner Representative. Notwithstanding anything to the contrary in this Agreement, Owner has not relinquished its right to communicate with any Contractor directly. Owner acknowledges, however, that all direction for the prosecution of the Work to a Contractor must be initiated by Architect and that any comments with respect to the Project from individual members of the Board of Education or its staff must be directed to Owner's designated representative for communication to Architect. Architect is not responsible for any acts or omissions of a Contractor resulting from such communications made directly by Owner.

**§ 3.6.1.5 Coordination of Responsibilities Regarding Underground Utility Facilities.** Architect, on behalf of and in the name of Owner and at Owner's expense, will assist Owner in giving any notices required to be given by Owner under ORC Section 153.64(B) if applicable to the Project. Architect will include in the Drawings and Specifications the identity and location of existing underground utility facilities located in the construction area of the Project as provided by the owner of the utility facility. Owner acknowledges that Architect is not responsible for determining the locations of the underground utility facilities and these locations will be provided to Owner and Architect by the surveyor employed by Owner

### **§ 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 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Nothing in this section will relieve the Architect of its duty to use reasonable care to protect Owner from defective and non-conforming Work in accordance with its Standard of Care.

**§ 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 the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Architect will keep a record of all such interpretations that includes information such as the date of each request for interpretation, the person making the request, the date of the Architect's response, and a summary of the response. Architect will keep all correspondence and documentation related to such requests organized in a systematic manner and make such documentation available to Owner upon request

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. 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. Architect agrees that the Contract Documents prepared for the Project will reflect Owner's intentions with respect to the Project and will be developed with input from Owner during each design phase.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents. Architect's decision on claims, disputes or other matters in question between Owner and Contractor, except for those relating to aesthetic effect as provided in Section 3.6.2.4, will be subject to further dispute resolution as provided in this Agreement and in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. Architect will not certify any payment application to the extent Contractor has not submitted appropriate waivers of claim or other documents required by the Contract Documents.

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

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

**§ 3.6.3.4** Consistent with its Standard of Care, Architect will advise Owner in writing, which may consist of notations in the job progress meetings, at the time of the delivery of each certification for payment of any defects or problems with respect to the Work, which can be reasonably observed in the course of Architect's observations, given the stage of completion of the Work. Architect will not certify any payment application to the extent Contractor has not submitted any waivers of claim under the Ohio Mechanic's Lien laws or other documents required by the Contract Documents for labor and/or materials listed on the attachment to Contractor's previous Application for Payment or



other documents required by the Contract Documents. Notwithstanding the foregoing, Architect has discretion to adjust the amount certified when missing documentation is deemed by Architect, in consultation with Owner's representative, to be relatively inconsequential or beyond the control of Contractor such that holding all payment for those items would be detrimental to the Project or unfair to Contractor.

#### **§ 3.6.4 Submittals**

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

**§ 3.6.4.2** 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 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. In no event will Architect's approval be construed to waive, alter, or amend Contractor's obligation to provide what is required or reasonably implied by the Contract Documents. Architect is not responsible Contractor's failure to provide what is required by the Contract Documents.

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

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

#### **§ 3.6.5 Changes in the Work**

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

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

**§ 3.6.5.2.1** Architect will maintain a record of all change orders for the Project that shows the status of each change order, identifies potential change orders and includes the name of the contractor, the subject of the change order, the dates of approval, the estimated cost of the change order (if not approved), the number of days additional time requested by the contractor for the Work, and the number of days approved by Architect and Owner to accomplish the



Work. Architect will furnish an updated copy of the change order record to Owner or Owner Representative upon request.

### **§ 3.6.6 Project Completion**

#### **§ 3.6.6.1** The Architect shall:

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

To the extent Contractor has not completed its Work or there are defects or non-conforming Work following the date for Substantial Completion, Architect in its role as design professional will communicate with Contractor and observe its progress to complete its Work and correct any defective or non-conforming Work.

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

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

**§ 3.6.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance. In addition to the foregoing, during the first 12 months following Substantial Completion of the Project, the Architect as part of its Basic Services will observe the comprehensive systems tests described in Section 3.4.1.1 hereof, advise Owner of to its opinion as to the outcome of the tests, participate in design or redesign found to be necessary as a result of such tests, and define the corrective action to be taken by the responsible Contractor. Architect's services in the design or redesign described in this section will be provided at no additional cost if the design or redesign is determined to be required due to an error or omission by Architect in preparing the original drawings and specifications for the Project.

**§ 3.6.6.6 Record Drawings.** Before final payment is due Architect, Architect will assemble, annotate as appropriate, and deliver to Owner two (2) sets of Record Drawings for each component of the Project in paper form and in an electronic PDF file. The Record Drawings to the best of Architect's knowledge based upon the marked drawings delivered to Architect by each Contractor and Architect's knowledge of change orders and observations during the progress of the Project, will detail the actual construction of the Project and contain such annotations by Architect as may be necessary for someone unfamiliar with the Project to understand the changes made to the original plans. As part of the payment approval process for Contractors during the course of the Project, Architect will require each Contractor to update the working sets of drawings on site to reflect Work in progress and verify that such updates have been made. The Record Drawings will be in good condition, legible, and suitable for reproduction. If Owner determines at completion of the Project that it wishes to have the information contained on the Record Drawings for the Project transferred to electronic files for the Project, such services will be provided as an additional service.

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 4.2. 11.2, except as noted otherwise. However, nothing in this Agreement relieves Architect of its professional duties related to the Project. Should Architect believe that any proposed Additional Service is essential for the complete performance of Architect's professional responsibilities, Architect must clearly notify Owner of that fact in writing, stating the objective basis for that believe. If Owner believes that the proposed Additional Service is included in Architect's Basic Services, Architect will perform the service, submitting written notice to Owner before performance of the service, stating that Architect disputes Owner's determination that the service is a Basic Service and that Architect does not waive its right to seek compensation for the service by performing the service. If Architect fails to timely provide such notice, it will be deemed to have waived the right for compensation for such Additional Service. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Basic Service of Architect
§ 4.1.1.2 Multiple preliminary designs	Not Provided
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Basic Service of Architect
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Basic Service of Architect
§ 4.1.1.9 Landscape design	Basic Service of Architect
§ 4.1.1.10 Architectural interior design	Basic Service of Architect, to extent needed
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Basic Service of Architect
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Basic Service of Architect
§ 4.1.1.17 Post-occupancy evaluation	Basic Service for 12-month walkthrough
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Basic Service of Architect, as needed
§ 4.1.1.21 Telecommunications/data design	Not Provided, except for pathways to allow Owner to connect to its existing systems
§ 4.1.1.22 Security evaluation and planning	Not Provided, except for pathways to allow Owner to connect to its existing systems

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.23 Commissioning	<u>Not Provided</u>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.25 Fast-track design services	<u>Basic Service of Architect, as needed</u>
§ 4.1.1.26 Multiple bid packages	<u>Basic Service of Architect, as needed</u>
§ 4.1.1.27 Historic preservation	<u>Not Provided</u>
§ 4.1.1.28 Furniture, furnishings, and equipment design	<u>Not Provided</u>
§ 4.1.1.29 Other services provided by specialty Consultants	<u>Basic Service of Architect, as identified in this Agreement and as needed</u>
§ 4.1.1.30 Other Supplemental Services	<u>None identified when this Agreement is signed</u>
§ 4.1.1.31 Directional and Exterior Site Signage	<u>Not provided; signage within building and on building are included as a Basic Service</u>
§ 4.1.1.32 Special Inspections required by OBC Chapter 17	<u>Architect</u>

### § 4.1.2 Description of Supplemental Services

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

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

Special inspections as required by OBC Chapter 17

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

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

None

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

### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. Any adjustment for Additional Services will be compensated as agreed to by the parties and documented in a written amendment to this Agreement signed by both parties.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b)

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- contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
  - .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
  - .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; Owner, except as noted in the Agreement;
  - .7 ~~Preparation for, and attendance at, a public presentation, meeting or hearing; [this is a Basic Service, unless Owner-requested design changes require additional zoning hearings or building code appeals]~~
  - .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
  - .9 ~~Evaluation of the qualifications of entities providing bids or proposals; [this is a Basic Service]~~
  - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
  - .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

- .1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect; [this is a Basic Service]~~
- .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; [this is a Basic Service]~~
- .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; [this is a Basic Service except under conditions outlined in Section 12.4]~~
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ~~(—)weekly~~ visits to the site by the Architect during construction and more frequently when requested by Owner for observation of Work in progress
- .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.

When additional site visits or inspections are necessitated by Contractor failure to perform as required by the Contract Documents, the Contractor is responsible for Architect's cost associated with the additional site visit or inspection.

**§ 4.2.4** Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, ~~shall~~may be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. The cost of construction administration services caused by a Contractor's failure to perform as required by the Contract Documents is the responsibility of the Contractor. The parties will determine the reasonable cost of such additional services and will withhold that amount



from payments due to the responsible Contractor or seek reimbursement of that amount from the Contractor if insufficient funds remain in the contract balance to cover the costs. Owner and Architect will agree on the amount to be paid to Architect by Owner for these additional services if there are insufficient funds in the contract balance to cover the cost of services.

**§ 4.2.5** ~~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.

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

**§ 5.3** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. 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 other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

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

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



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

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

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

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

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

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

## ARTICLE 6 COST OF THE WORK

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

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

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

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work ~~shall be adjusted~~ may be adjusted if agreed by Owner 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 shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. 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 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 under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. 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 suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. ~~If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~ In the event of termination of this Agreement for whatever reason, Architect grants Owner a nonexclusive license permitting Owner to authorize other similarly credentialed design professionals to reproduce and, as permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

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

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

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

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, 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 modified AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

### § 8.2 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~~, mediation if the parties agree, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association (AAA) in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. ~~A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The party wishing to initiate mediation must notify the other party in writing and propose a forum for mediation. If the other party agrees to mediation, the parties must agree upon a forum and retain a mediator acceptable to both parties. If the parties agree to mediate, but are unable to agree upon a forum or mediation outside of the AAA, within 30 days or such other time as the parties agree, then the party wishing to initiate mediation may file a request for mediation with the AAA. 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.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, 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.

### § 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.~~

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

## ARTICLE 9 TERMINATION OR SUSPENSION

~~§ 9.1 If the Owner 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-21 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 Owner shall pay the Architect all sums due prior to suspension and any~~

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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. The notice provided to Owner by Architect regarding suspension or termination of this Agreement must specify the reason(s) for the intended termination or suspension and state with specificity the means by which Owner may cure the asserted reason(s).

**§ 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~~ adjusted as agreed to by the parties.

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

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

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

**§ 9.6** If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

**§ 9.7** In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

None

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

None

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

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

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**§ 10.1** This Agreement shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8.3, State of Ohio. The parties agree that jurisdiction for any disputes that arise in connection with this Agreement that are not settled through informal discussions or mediation will be in the court of common pleas for the county in which the Project is located or other appropriate local court. The parties waive their rights to remove any dispute to a federal court.

**§ 10.2** Terms in this Agreement shall have the same meaning as those in modified AIA Document A201-2017, 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, including any payments due to the Architect by the Owner prior to the assignment.~~other.

**§ 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.~~site, unless the toxic materials or substances were brought to the Project as a result of terms of the Contract Documents. Should Architect become aware of the presence of hazardous materials and/or toxic substances on the Project site, Architect must immediately report the presence of such materials and/or substances to Owner and Owner Representative in writing.

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

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

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

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

## **ARTICLE 11 COMPENSATION**

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect the total not-to-exceed amount of \$87,000 as follows:

- .1 Stipulated Sum  
(Insert amount)

\$85,000 for Basic Services and a \$2,000 allowance for Reimbursable Expenses

**.2** Percentage Basis  
(Insert percentage value)

— ( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

**.3** Other  
(Describe the method of compensation)

**§ 11.2** For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

None identified by the parties

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

To be negotiated as needed and added to this Agreement by written amendment, signed by both parties

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

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

Schematic Design Phase	<u>fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>forty-five</u>	percent (	<u>45</u>	%)
Procurement 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 identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

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

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

Refer to Exhibit B for Architect's hourly billing rates

**Employee or Category**

**Rate (\$0.00)**

Refer to Exhibit B.

**§ 11.8 Compensation for Reimbursable Expenses**

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

- .1 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 Permitting and other fees required by authorities having jurisdiction over the Project; this may be treated as a Project cost paid directly by Owner
- .4 Printing, reproductions, plots, and standard form documents; printing may be treated as a Project cost paid directly by Owner
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 ~~All taxes levied on professional services and on reimbursable expenses;~~
- .10 Site office expenses;
- .11 ~~Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~
- .12 Other similar Project-related expenditures.

An allowance of \$2,000 for Reimbursable Expenses is included in the amount to be paid to Architect by Owner; any amounts not used during the term of this Agreement will be retained by Owner.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent ( 0 %) of the expenses incurred.

**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

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

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

**§ 11.10.2 Progress Payments**

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. ~~Amounts unpaid — ( — ) 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.)

0.00 % (zero percent)

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

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

## **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:  
(Include other terms and conditions applicable to this Agreement.)

**§ 12.1 Alternates.** Architect will prepare Alternates for bidding changes in material, equipment, and products requiring minimum documentation alternations at no increase in fee. When Alternates require major changes in documentation or additional documentation or are for work outside the scope of the original Project described in this Agreement, Architect's compensation for each alternate will be established at the time the alternate is proposed.

**§ 12.2 Non-Discrimination.** Architect and its consultants, if any, will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of sex, race, color, religion, national origins, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

**§ 12.3 Payment for Change Orders.** The estimate of probable construction cost, upon which Architect's Fee is based, contains a contingency, which may be used for Change Orders. There will be no additional compensation to Architect for Change Orders to the Project so long as the total amount of Change Orders does not exceed the contingency included in the Project construction budget. Owner will authorize Change Orders for work as a result of Owner-initiated changes, unforeseen conditions, and code compliance. If the Project construction budget is increased, the parties may negotiate a fair and equitable adjustment to Architect's fee, which may or may not include an increase to the construction contingency. If the construction contingency is not increased, the parties will negotiate a fair and equitable compensation to the Architect for its services provided for design and administration of the Change Order. When additional payment is appropriate, payment of the fee for an approved Change Order shall be made as follows: 65% after approval of the Change Order and 35% following completion of the work by the responsible Contractor. When an approved Change Order is necessitated by the design clarifications on the part of the Architect or its consultants, no fee will be paid to Architect for design work related to the Change Order, unless approved by Owner, at its sole discretion.

**§ 12.4 Ethics.** Architect certifies that it is aware of the ethics responsibilities contained in ORC Section 3517.13 and is in compliance with this section of the Code.

**§ 12.5** Architect is not subject to any findings for recovery by the Ohio Auditor of State or has taken all necessary steps to address any findings for recovery.

**§ 12.6** All communications between Owner's legal counsel and Architect, while Architect is acting as the agent for Owner under the terms of this Agreement and which relate in any way to the administration of the construction of the Project or to the work of any Contractor, Subcontractor, materialman, or any other person rendering services in connection with the Project, is subject to the attorney-client privileged that can be waived only by Owner. Any such communications and copies thereof that are written including without limitation correspondence, notes, memoranda, notes of meetings and conversations that are reduced to writing and the like, upon notice from Owner's legal counsel, must be placed by Architect in a separate file folder marked "Privileged and Confidential" and may not be disclosed to any person other than Architect's own legal counsel without the express written permission of Owner. This provision

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is intended to protect the confidentiality of Owner's communications with its counsel when Architect comes into possession of such information in its capacity as agent of Owner in the performance of its duties under this Agreement in the event of a dispute between Owner and a third party. This section is not intended to impede communications between Architect and Architect's counsel or insurance company or between Architect and any Contractor seeking a decision from Architect on a claim or dispute related to the Project.

**§ 12.7 Captions.** The captions denoting each article or section of this Agreement have no application in the interpretation thereof; the language of the article or section will be fully controlling.

**§ 12.8 Notices.** A Notice is any written notice to Owner or Architect. Written Notice to Architect will be deemed to have been duly served if delivered in person to an officer or any other official of Architect or if delivered to or sent by registered or certified mail, return receipt requested, to the last known business address of Architect. Written Notice to Owner will be deemed to have been duly served if delivered in person or sent by registered or certified mail, return receipt requested to Owner's representative identified in the Agreement. When sent by certified mail to either party, any written notice will be considered properly delivered to the other party three (3) days after the date sent.

**§ 12.9 Assignment.** This Agreement may not be assigned in whole or in part, including the right to payments, by Architect without Owner's prior written consent.

**§ 12.10 Modification.** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Agreement.

**§ 12.11 Partial Invalidity.** If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

**§ 12.12 Counterparts.** This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

**§ 12.13 Construction.** The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it.

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

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

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



- [ ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this agreement.)
- [ X ] Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Bus Garage Time Line  
Exhibit B – Hourly Rates

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

None

This Agreement entered into as of the day and year ~~first written above~~ signed by Owner below.

OWNER (Signature)  
**GALION CITY SCHOOL DISTRICT**  
**BOARD OF EDUCATION**  
By: James Grubbs, Superintendent  
(Printed name and title)

Date

ARCHITECT (Signature)  
**MKC ARCHITECTS, INC.**  
By: Todd Wroblewski, Principal  
(Printed name, title, and license number, if required)

Date

#### **CERTIFICATE OF FUNDS**

(ORC Section 5705.41)

Charlene Parkinson, Treasurer for the Galion City School District, located in Galion, Crawford, Morrow, and Richland Counties, Ohio, hereby certifies in connection with the preceding Agreement that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the Agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

Date

Charlene Parkinson, Treasurer  
Galion City School District