



AIA®

# Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made effective as of the 6<sup>th</sup> day of May in the year 2015  
(In words, indicate day, month and year.)

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

City of Stamford  
888 Washington Boulevard  
Stamford, CT 06904-2152  
c/o \_\_\_\_\_

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

Perkins Eastman Architects, DPC  
422 Summer Street  
Stamford, CT 06901  
c/o \_\_\_\_\_

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

New K-5 IB Interdistrict Magnet School at 200 Strawberry Hill Avenue, Stamford,  
Connecticut

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

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

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

The following documents are incorporated and included into this Agreement as part of Exhibit A:

- A-1 Owner's Addendum 4 dated February 4, 2015.
- A-2 Owner's Addendum 3 dated January 26, 2015.
- A-3 Owner's Addendum 2 dated January 26, 2015.
- A-4 Owner's Addendum 1 dated January 22, 2015.
- A-5 Owner's Request for Qualifications (the "RFQ") dated January 13, 2015.
- A-6 Stamford City Ordinance Section 3-21 Sustainability Development Design Standards.
- A-7 Notice of Conditional Award dated March 30, 2015.
- A-8 Architect's Proposal dated February 23, 2015.
- A-9 Architect's Comprehensive Professional Service Fees and Expenses Proposal dated March 23, 2015.

The documents indicated in Exhibit A are provided for purposes of scope of services and compensation only. The order of priority of the Exhibit A documents shall be their order as listed above. To the extent that there are any perceived conflicts in the terms and conditions between the documents set forth in Exhibit A and this Agreement other than with respect to scope of services, this Agreement shall govern. With respect to scope of services, in the event of any perceived conflict, the higher standard and more stringent provision shall apply and prevail. The intent of the Agreement is to include all services necessary for the proper and timely completion of the Architectural

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services for the Project. The documents comprising this Agreement are complementary, and what is required in one document shall be binding as if required in all.

**§ 1.2** This project will proceed in phases ("Project Phases"), Project Phases I-IV, as set forth in Exhibit A and below. The Architect shall not proceed beyond Phase I and Phase II Services for any Phase absent a written authorization from the Owner to proceed to the next Project Phase, except that Project Phases I and II will be performed concurrently. Should the Architect do so, it will not be entitled to any compensation for such Services and proceeds at its own risk.

Owner anticipates the following schedule:

Phase I: Project Phase I Services completed by November 6, 2015, stage of construction for this Phase to be available for occupancy by August 2016.

Phase II: Project Phase II Services completed by November 6, 2015, stage of construction for this Phase to be available for occupancy by August 2016.

Phase III: If authorized as set forth in §1.2, Project Phase III Services completed by May 6, 2016, stage of construction for this Phase to be available for occupancy by August 2018.

Phase IV: If authorized as set forth in §1.2, Project Phase IV Services completed by May 4, 2018, stage of construction for this Phase to be available for occupancy by August 2019.

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

## **ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** The Architect's services consist of the services the Architect is required to perform under this Agreement, and, unless inconsistent with the instructions, guidance, and direction of the Owner, all professional services usually and customarily performed in conjunction with, and in furtherance of, such services, including without limitation, those services set forth in Exhibit A and Article 3 of this Agreement.

**§ 2.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by regionally recognized architects having experience with successful projects of comparable size, complexity, and environmentally responsible design, and practicing under the same or similar circumstances. The Architect will provide its services in a good and workmanlike manner consistent with (1) instructions, guidance and directions provided by the Owner; (2) the terms and conditions of this Agreement; (3) the highest prevailing applicable professional or industry standards; (4) sound architectural practices; and (5) any applicable laws, rules regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction.

**§2.2.1** The Architect shall exercise the Architect's standard of care set forth in § 2.2 in performing all aspects of the Architect's services. All references in this Agreement or in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Architect or reference to any similar term shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Architect would have obtained upon the exercise of the Architect's standard of care.

**§2.2.1.1** In addition to the Architect's representations set forth in § 2.2 above, the Architect's prior representations set forth in Architect's Proposal (Exhibit A, A-8) as to its expertise and experience are material representations upon which the Owner has relied and the Architect hereby affirms those representations as part of this Agreement.

**§2.2.2** The Architect acknowledges that the Project is a school construction project receiving funding from the State of Connecticut Department of Administrative Services Division of Construction Services ("DCS") pursuant to a school construction grant under Chapter 173 of the Connecticut General Statutes. The Architect shall cooperate, as part of its services, with DCS audits of the Project, which cooperation shall include, without limitation, the preparation and production of documentation. The Architect shall cooperate with Owner in Owner's submissions

to the DCS for DCS or other governmental agencies' reviews and approvals. Notwithstanding anything to the contrary in the Contract Documents, the Architect shall comply with all DCS requirements.

**§2.2.3** Pursuant to Connecticut General Statute §10-290e, Architect shall not use, publish, distribute, sell or divulge any information obtained from Owner, or any city, town or regional school district, through this Agreement for the Architect's own purposes or for the benefit of any person, firm, corporation or other entity without the prior, written consent of the Owner. Any reports or other work product prepared by the Architect while performing services under this Agreement shall be owned solely and exclusively by Owner and the DCS and cannot be used by the Architect for any purpose beyond the scope of the services agreement without the prior written consent of the Owner. Any information designated by the Owner in accordance with applicable law as confidential shall not be disclosed to any third parties without the prior written consent of the Owner.

**§ 2.3** The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The Architect's representative shall have full authority to accept instructions, make decisions, communicate for and act on behalf of the Architect at all times. While in the employ of the Architect, no key personnel assigned to the Project shall be replaced without the prior consent of the Owner, provided that if key personnel leave the Architect's employ or otherwise become incapacitated, the Architect shall designate a replacement member with at least the same level of experience, subject to the prior approval of the Owner, which approval shall not be unreasonably withheld.

**§ 2.3.1** The "Governmental Requirements" are the requirements of Sections 103-1 through 103-7 of the City Code and all other requirements of the City Charter and/or Code and all other statutory and regulatory requirements, including, but not limited to those set forth in Exhibit A, and all guidelines and standards imposed on the Project by governmental entities, including the Agencies, as defined in Sections 2.3.2 and 2.3.3.

**§ 2.3.2** The "Agencies" are the DCS and all other governmental authorities having regulatory or administrative jurisdiction over the Project, including, but not limited to those set forth in Exhibit A, and state and local fire departments and marshals, and all representatives or designees of the DCS or such other governmental authorities. The term "Agencies" shall also include any individuals or entities designated by the DCS or such other governmental authorities or by the Owner to monitor or oversee compliance of the Project's energy and environmental design with the requirements of the DCS or such other governmental authorities.

**§ 2.3.3** The term "Agencies" shall also include any individual or entity not described in Section 2.3.2 from whom the Owner intends to request certification of the Project's energy and environmental design, to the extent the Architect is required, under this Agreement, to provide services relating to such certification.

**§ 2.3.4** The Architect understands that performance of the Architect's services will require communication with the Agencies and with individuals designated by the Agencies, and the Architect will, at no additional cost to the Owner, so communicate and take all steps reasonably necessary to provide compliance with Governmental Requirements.

**§ 2.3.5** The Architect understands that performance of the Architect's services will require communication with certain utility companies and with individuals designated by the utility companies, and the Architect will, at no additional cost to the Owner, so communicate and take all steps reasonably necessary to provide compliance with utility regulations and requirements.

**§ 2.3.6** The Architect understands that performance of the Architect's services requires overall space planning to account for a gym and cafeteria/kitchen at all times the school is occupied, which may necessitate utilization of the existing gym as a cafeteria following the fall of 2018 or incorporation of a gym/cafeteria as part of the new addition to allow for Phase IV renovations in the existing space.

**§ 2.3.7** The Architect understands that the Owner intends to retain an independent commissioning agent, and that the performance of the Architect's services will require, at no additional cost to the Owner communication and coordination with the independent commissioning agent.

**§ 2.4** 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, unless such

conflict is disclosed to the Owner and approved by the Owner in writing. The Architect shall enforce this provision with its employees and consultants.

**§ 2.5** The Architect shall maintain the following insurance for the duration of this Agreement, for the time period not less than the date of expiration of the applicable statute of limitation and the applicable statute of repose, and such longer periods as indicated below, and shall comply with the insurance requirements set forth in Exhibit B. The Architect shall direct its insurer(s) to provide a certificate of insurance to the Owner upon signing the Agreement disclosing the terms of the policies, the applicable deductibles, and certifying that the insurer shall notify the Owner in writing not less than thirty (30) days in advance of the expiration, termination, restriction or reduction or other material change in coverage, and naming the Owner and the Owner's officers, directors, employees, and agents as an additional insured where appropriate. Complete copies of insurance policies including all declarations, terms, conditions, endorsements and exclusions, shall be made available for inspection by the Owner or its designee upon request. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

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

**.1 General Liability**

\$1,000,000 per occurrence, \$3,000,000 aggregate

**.2 Automobile Liability including owned, hired and non-owned autos**

\$1,000,000 combined single limit for bodily injury and property damage.

**.3 Workers' Compensation**

Coverage A Statutory limits required by applicable law.

Coverage B Employer's Liability and bodily injury by accident (per person) \$500,000

Bodily injury by disease (per person) \$500,000

Bodily injury by disease (aggregate) \$500,000

**.4 Professional Liability**

\$4,000,000 per claim, \$4,000,000 aggregate

The Architect shall maintain continuous professional liability coverage for the period of design and construction of this project, and shall provide for an extended reporting period in which to report Claims for the time periods set forth in § 2.5 above.

**.5 Umbrella/Excess**

The Architect shall maintain umbrella/excess liability insurance with minimum limits of \$5,000,000 for each occurrence and \$5,000,000 in the aggregate. The amounts of such insurance may be satisfied by combination of underlying and umbrella limits, so long as the total amount of insurance is not less than \$5,000,000.

All insurance shall be written on an occurrence basis except the Architect's professional liability, workers' compensation and any umbrella liability insurance which may be written on a claims-made basis. Coverages written on an occurrence basis must be maintained without interruption from the effective date of this Agreement through the completion of all of the Architect's services on the Project and hereunder.

**§ 2.6** The Architect is prohibited from subcontracting this Agreement or any part of it unless the Owner first approves such subcontracting in writing, the specific subcontractors proposed to be used by the Architect. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. In addition to the foregoing, pursuant to §103.4 of the City of Stamford Code of Ordinances, the Architect agrees to provide Owner with the names and addresses of all consultants to be used for any subcontract that shall be in an

amount in excess of ten thousand (\$10,000.00) dollars. Such information shall be supplied at the time such contracts are executed.

§ 2.7 The Architect shall bind its consultants to the obligations and responsibilities which the Architect assumes towards the Owner.

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

§ 3.1 The Architect's Basic Services consist of those described in Exhibit A and Article 3 and include, but are not limited to, usual and customary architectural services and structural, mechanical, and electrical engineering services and other services described in Exhibit A, A-1 - A-5. The Basic Services are to be performed in "Project Phases" more fully described in Section 1.2 and Exhibit A of this Agreement, except that the services under §§ 3.2 and 3.3 are not included in Project Phase I.

As part of the Architect's Basic Services to be performed in all Project Phases, the Architect shall (1) provide and incorporate a new A-2 site survey pre and post demolition, which shall locate all overhead and underground utilities and services, property lines, existing topography, and fixed features on the property, and (2) furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

As part of the Architect's Basic Services to be performed in Project Phases II-IV, the Architect shall provide all services set forth in Exhibit A pertaining to Furnishing, Fixtures, and Equipment. The Architect shall develop preliminary and final design solutions for landforms, athletic fields, lawns, plantings, landscape construction, materials, site furniture, fixtures and equipment, and other landscape elements. The Architect shall prepare and submit preliminary and final specifications for required furniture, furnishings and equipment, including budgeting, and for each floor plan the Architect shall lay out, develop and submit preliminary and final design solutions for partition locations, materials, equipment, furniture and equipment layout, special interior design features, finishes and colors.

After receiving written authorization by the Owner to proceed, the Architect shall proceed with Project Phases I and II in an expeditious and efficient manner. As part of the Hazardous Materials Testing and Abatement Project Phase I Services, the Architect shall (1) identify hazardous materials to be removed for Phases II – IV of the Project and incorporate the costs into the preliminary estimate and design; (2) preparation of environmental abatement bid documents for all six (6) Project buildings with consideration of proposed work in all Project Phases. Develop bid documents for hazardous materials abatement and demolition required for all Project buildings, including preparation of architectural, structural, and MEP demolition plans, specifications, demolition phasing, and cost estimates. Demolition shall include the removal of all regulated asbestos, lead, PCB's, Radon, and HAZMAT and other regulated materials. The design shall include all necessary temporary services and general conditions required for the demolition (i.e. water, heat, weather protection, communication, construction trailer, construction fencing, erosion control, etc.); (3) complete all necessary documentation for applicable Agencies, including, but not limited to, Connecticut Environmental Policy Act (CEPA) and/or Section 106 documentation, if required for each Project Phase; (4) the demolition design shall also include coordination and incorporation of the environmental survey, construction documents, and environmental project monitoring (asbestos, lead, HAZMAT and regulated materials); (5) monitor and coordinate Project demolition and hazardous materials testing and abatement; and (6) plans and specifications for this Phase shall be reviewed and accepted by the State Bureau of School Facilities ("BSF") prior to the bidding of the Work. This work shall include all State and Local approvals and permits prior to bid.

The Architect shall be responsible for and shall coordinate and have full directing authority and control over all portions of the services covered by this Agreement, including those of its employees and consultants within the scope of this Agreement.

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

§ 3.1.2 The Architect shall, in all phases of its services, cooperate fully and coordinate its services with those services provided by the Owner and the Owner's contractors and consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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

§ 3.1.3.1 The schedule shall incorporate all required design information from the Architect's consultants and, if any, the Owner's consultants for the Architect's services, including, but not limited to, traffic studies, the hazardous materials testing and abatement, Schematic Design, Design Development and Construction Documents Phases for all applicable Project Phases, and shall include sufficient periods of time for the process as well as review and coordination between all consultants. The Architect shall coordinate, and incorporate into its schedule, the design schedules and submission dates of all consultants, and shall make all reasonable efforts so that said scheduled submission dates are maintained. At each progress review meeting, the Architect shall identify any expected delays to the schedule. The Architect shall perform its services and submit all required deliverables in accordance with the approved schedule and this Agreement. **Time limits stated herein for the performance of the obligations under this Agreement are of the essence to the Owner. The Architect shall not be held responsible for delays arising from the conduct of others or reasonably beyond the Architect's control; however the foregoing shall not be construed as limiting the Architect's responsibilities to monitor the progress of services and promptly advise the Owner of any slippage in progress, actual delays and reasonably anticipated delays.**

§ 3.1.3.2 When it appears to the Architect that any of the milestone dates in the schedule will not be achieved, the Architect shall promptly notify the Owner in writing, including a detailed description of the nature and cause of the delay, and a proposed means of making up time lost within the overall schedule, including, if necessary, additional resource allocations.

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

§ 3.1.5 The Architect shall assist the Owner in preparing, submitting, revising from time to time pursuant to the Owner's instructions, and completing for the Owner's approval, all reasonable and customary documents and applications required to be filed, or deemed advisable by the Owner to be filed, in order to assist the Owner in obtaining any usual and customary permits or approvals in connection with the Project and to otherwise comply with the Governmental Requirements except to the extent that the preparation of the documents and applications for such filing is customarily the responsibility of the Contractor or other third-parties, in which event the Architect shall assist and cooperate in connection therewith. The Architect shall, as part of Basic Services, appear and provide services in connection with any public or private hearings, proceedings relating to approvals or presentations and present documents in the normal course of development in connection with the obtaining of such approvals.

§ 3.1.5.1 The Architect shall furnish its designs, documents and services in compliance with all Governmental Requirements, including federal, state and local laws, statutes, regulations, ordinances, codes, historical requirements, rules, rulings, decisions and orders of governmental authorities (including without limitation those relating to hazardous materials, development of wetlands (as defined in the Contract for Construction), accessibility for the physically challenged, including the Americans with Disabilities Act, the Civil Rights Act of 1964, and all Equal Employment Opportunity Commission rules and regulations governing the services of this Agreement and the Work or the Project). The Architect agrees that this duty is non-delegable, and the Architect, by preparing, signing or sealing drawings as part of its services hereunder, certifies that it has taken every reasonable measure to identify and comply with Governmental Requirements. Nothing in this Agreement shall be construed to eliminate the Architect's responsibility to comply with Governmental Requirements. The Owner recognizes that the requirements

of the laws, codes, and regulations applicable to the Architect's services may be subject to various and possibly contradictory interpretations, and that such laws, codes and regulations may be in conflict with one another.

§ 3.1.5.2 As part of its Basic Services, the Architect shall make reasonable efforts to keep current on any proposed changes in Governmental Requirements that could impact the Project. Unless compensable as an Additional Service for the unanticipated issuance, enactment or revision of codes, laws or regulations or official interpretations pursuant to Section 4.3.1.3, changes required to be made to Instruments of Service due to changes in Governmental Requirements are included in the Architect's Basic Services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of the Agencies.

§ 3.1.7 If the Architect observes or otherwise becomes aware of any fault, defect or nonconformance in the Work, or any error, omission or deficiency in the Construction Documents, it shall give the Owner prompt written notice thereof along with specific recommendations for addressing such issues.

§ 3.1.8 The Owner will conduct meetings with the Architect and the Owner's consultants, and selected subcontractors during the Hazardous Materials Testing and Abatement, Schematic Design, Design Development and Construction Documents Phases during Project Phases I-IV to establish the elements of the design which can be considered for value engineering studies. The Architect shall perform value engineering studies and incorporate value engineering concepts into the Project's design as approved by or accepted by the Owner, which approval or acceptance shall not be deemed to transfer responsibility or relieve Architect from responsibility for such concepts or design.

§ 3.1.9 Extensive Environmentally Responsible Design. The Architect shall, as part of its Basic Services hereunder, make recommendations and incorporate environmentally responsible design approaches in the Drawings, Specifications and other deliverables for the purpose of obtaining a result equivalent to LEED Silver Certification. The Architect shall conspicuously identify in the Plans, Specifications and other deliverables, performance required of the Contractor for the purpose of achieving an environmentally responsible design.

§ 3.1.10 The Architect shall:

- .1 assist the Owner in hiring a consultant for project commissioning services;
- .2 assist the Owner in hiring a testing agency for soils, concrete, rebar and steel including special inspections as required;
- .3 retain a LEED accredited professional as part of its Project team; and
- .4 complete and submit all paperwork required by the BSF at the conclusion of the Project and throughout the State audit procedure.

§ 3.1.11 Notwithstanding any statements or implications to the contrary in this Agreement, the nature and frequency of the Architect's obligation to provide Cost Estimates are set forth in and limited to the Cost Estimate obligations set forth in A-1, Owner's Request for Qualifications, and as required by Governmental Requirements.

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

After receiving written authorization by the Owner to proceed, the Architect shall proceed with the Schematic Design Phase Services for the required Project Phase in an expeditious and efficient manner. The Architect shall provide all Schematic Design Phase services in accordance with this Agreement and Exhibit A. The Architect shall not proceed beyond the Schematic Design Phase for that Project Phase without a written notice to proceed from the Owner. Should the Architect do so, it would not be entitled to any compensation for such services and proceeds at its own risk.

§ 3.2.1 The Architect and its consultants shall promptly review all information furnished by the Owner, confirm its understanding of program requirements with the Owner, and work with Owner to further refine and define the program. The Architect shall familiarize itself with laws, codes, regulations and Governmental Requirements applicable to the Architect's services. The Architect shall conduct a reasonable review the information made available by the Owner regarding site utility services and site features, including existing construction, and shall inspect the Project site and existing facilities. The Architect shall assess the reliability of the Owner's information based on such inspection, and make recommendations for additional testing and investigations as necessary to

properly coordinate the Project. The Architect shall provide a preliminary evaluation of the program, budget and schedule requirements, each in terms of the other. The Architect shall review with the Owner and its consultants site use and improvements, selection of materials, building systems and equipment. The Architect shall attend meetings during the Schematic Design Phase, as requested by Owner.

**§ 3.2.2** The Architect shall assist the Owner with RFQ and RFP services required by the Owner. Based on the program and budget requirements, the Architect shall prepare and submit Schematic Design Documents for the Owner's review and approval. The Schematic Design Documents shall consist of drawings and other documents illustrating the scale and relationship of the Project components, including without limitation those listed below; and may include some combination of study models, perspective sketches or digital modeling. The Architect shall note preliminary selections of major building systems and construction materials on the Drawings or described in writing. The Schematic Design Documents shall include without limitation the following:

*(Paragraphs deleted)*

**§ 3.2.2.1** Plot plan indicating the proposed location of the building(s); major improvements such as, boundary of Project site, parking areas, walks, plazas and location of exterior utilities and service lines.

**§ 3.2.2.2** Floor plans showing all rooms and areas, entrances, exits, stairways, elevators, circulation corridors, toilet rooms, major mechanical and electrical areas. A tabulation of areas, including net and gross areas of various parts of the Project shall be included.

**§ 3.2.2.3** Building elevations showing, by block outline and breaks, the various building masses and how they coincide with the floor plans, including colors and typical fenestration pattern.

**§ 3.2.2.4** Building sections showing floor to floor dimensions sufficient to indicate interface with existing structures.

**§ 3.2.2.5** Detailed code analysis including identifying building construction type, required egress units, occupancy, smoke and fire separations, maximum travel distances, and wall and building separations. This shall also include an analysis of zoning regulations applicable to the Project.

**§ 3.2.2.6** Refine/prepare information for educational specifications (hereinafter "Education Specifications") set forth in Exhibit A that includes a basis-of-design for the Project and an existing conditions assessment for approval by the Owner. As set forth in Exhibit A, A-5, the Architect understands and affirms that the Education Specifications are subject to modification by the Owner and the Owner's consultants.

**§ 3.2.2.7** Develop schematic design options in accordance with the Educational Specifications, which shall include, but not be limited to: a detailed programming matrix outlining all usable spaces with estimated circulation factors representative of this schematic design phase arriving at the total square footage of the completed school (approved by the Owner's Project Building Committee), floor plans representing building massing within the site indicating additions and/or areas of demolition, exterior and interior renderings indicating the essence of design intent and preliminary estimates.

**§ 3.2.2.8** Establish greening goals and options for the Project to meet and possibly exceed the LEED Silver Certification minimum standard and the development of alternative energy sources.

**§ 3.2.2.9** Guide the Owner's Project Building Committee, Board of Education and the Owner through the process of approving the Project concept and budget.

**§ 3.2.2.10** Assist the Owner's Project Building Committee in the marketing of the Project to the public.

**§ 3.2.3** Not used.

**§ 3.2.4** The Architect shall review with the Owner alternative approaches for design and construction of the Project to permit the Owner to determine the most economical design consistent with the requirements of the Project.

§ 3.2.4.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.4.2 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.

§ 3.2.5 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3 and, as required by Owner, meet with the Owner to reconcile the estimates.

*(Paragraphs deleted)*

§3.2.6 The Architect shall submit three (3) sets of Schematic Design Documents (and make the same available to the Owner electronically) to the Owner, and request the Owner's review and approval. The Schematic Design Phase shall not be deemed completed until the Owner has provided written approval of the Schematic Design Documents, including without limitation, the drawings, systems checklist, energy model, general description, tabulations of areas, and the final design schedule, and the Owner has given the Architect written approval to proceed to the Design Development Phase.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

§ 3.3.1.1 The documents to be submitted by the Architect for the Design Development Phase shall include, without limitation: plans of each floor; major building elevations; building sections; large scale drawings of the building core; elevator areas; mechanical areas; site plans sufficiently complete to attain necessary planning and zoning board approvals; outline specifications; updated energy models; a full building energy model for review by the Owner incorporating: daylighting and lighting modeling, computational fluid dynamics (CFD), building component analysis, HVAC analysis, building thermal analysis, whole building energy simulation programs (BESP); and such other deliverables as may be necessary for the Architect to comply with its obligations hereunder.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work and the Owner, Contractor and Architect shall, as required by Owner, meet with the Owner to reconcile the estimates.

§ 3.3.2.1 If the updated estimate of the Cost of the Work for the applicable Project Phase at the end of the Design Development Phase exceeds the accepted budget, the Architect shall recommend to the Owner items of possible cost reduction to the scope of the Project Phase to bring it within such budget. If the Owner, in its sole discretion, chooses to revise the budget, it shall so notify the Architect expressly in writing. Revisions to the Architect's deliverables on account of approved scope reductions shall be incorporated into the Construction Document Phase Services.

§ 3.3.3 The Architect shall, as part of its Basic Services, provide three (3) sets of progress Drawings (and make the same available to the Owner electronically) at 50% and completion of the Design Development Phase for each Project Phase. The Architect will perform an in depth review of the Drawings, and participate in cost control studies and constructability review meetings with the Owner at 50% and completion of the Design Development Phase for each Project Phase. The Architect shall review and verify the Design Development documents and verify any corrections to the documents per the results of the cost control studies and constructability review meetings.

§ 3.3.4 The Design Development Phase for a Project Phase shall not be deemed completed until the Owner has approved and fully accepted the Design Development Documents prepared by the Architect, and the Owner has given the Architect written approval to proceed to the Construction Documents Phase for that Project Phase.

§ 3.3.5 Not used.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

§ 3.4.2 The Architect shall, as part of its Basic Services, provide three (3) sets of progress Drawings (and make the same available to the Owner electronically) at 50%, 90% and completion of the Construction Documents Phase for Project Phases II - IV. The Architect will perform an in depth review of the Drawings, and participate in cost control studies and constructability review meetings with the Owner at completion of 50% and 90% Construction Documents to consider design intent.

§ 3.4.3 The Architect shall incorporate into the Construction Documents the design requirements of Agencies having jurisdiction over the Project, after consultation with and approval by Owner. The Architect shall verify submittal/application requirements with applicable Agencies prior to submittal of Construction Documents for permitting. Architect will work with Owner in the preparation and submission of all necessary documents and deliverables to successfully complete the permitting process.

§ 3.4.4 At 90% completion of the Contract Documents Phase, the Architect shall update the estimate of the Cost of the Work and the Owner and Architect shall, as required by Owner, meet with the Owner to reconcile the estimates.

§ 3.4.4.1 If the updated estimate of the Cost of the Work exceeds the accepted budget, the Architect shall recommend to the Owner items of possible cost reduction to the scope of the Project Phase to bring it within such budget. If the Owner, in its sole discretion, chooses to revise the budget, it shall so notify the Architect expressly in writing. Revisions to the Architect's deliverables on account of approved scope reductions shall be incorporated into the Construction Document Phase Services.

§ 3.4.5 The Architect shall compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms, as provided by the Owner.

§ 3.4.6 Any design errors or omissions in the Construction Documents furnished by the Architect will be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of, or payment for, all or any part of the Architect's services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder. If, due to the Architect's negligent act, error, omission, or breach of this Agreement, a required item or component of the Project is omitted from the Construction Documents or if, due to such negligent act, error, omission, or breach of this Agreement, the Construction Documents must be modified through a Change Order, subject to the dispute resolution provisions in Article 8, the Owner may hold the Architect responsible for paying the cost required to add or modify such item or component to the Project, excluding the reasonable cost that would have been incurred by the Owner at the time of the original bid for such Project item or component to the extent that such item or component would have been required and included in the original Construction Documents. In no event shall the Owner pay more than once for an item or component of the Project. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades of the Project.

§ 3.4.7 For each Project Phase, the Architect shall assist the Owner in obtaining the approval of Agencies to begin the Bidding Phase. Such assistance shall include attending some or all meetings with the Agencies, including without limitation, providing the Owner with three (3) signed and sealed copies of the Construction Documents, and

producing any other documents and providing any services reasonably required of the Architect and requested of the Owner by the Agencies, and, upon the Owner's written approval, making any adjustments to the Construction Documents requested by the Agencies.

§ 3.4.8 The Architect shall assist the Owner in obtaining all required building permits and approvals, respond promptly to all questions and comments concerning such permits and approvals, and revise the Construction Documents to consider design intent.

## § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

### § 3.5.1 GENERAL

For each Project Phase, the Architect shall assist the Owner by participating in scope review meetings with bidders, preparing responses to questions, and as may be otherwise required by Owner in the review of bids or proposals.

### § 3.5.2 COMPETITIVE BIDDING

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

§ 3.5.2.2 The Architect shall assist the Owner in bidding each Project Phase as required by the Owner, coordinating with and assisting the Owner with the following:

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

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

### § 3.5.3 NEGOTIATED PROPOSALS

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

### § 3.5.3.2

*(Paragraphs deleted)*

Not used.

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

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below, in Exhibit A, and in Exhibit C, the AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended by the Owner.

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

§ 3.6.1.3 Subject to Section 4.3 and Section 3.6.6.5 and 3.6.6.6, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on Final Completion of the Project, as set forth in Exhibit C, the AIA Document A201–2007, as amended.

## § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the Work, and promptly provide written reports to the Owner of its site visits, which shall note: (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, (2) defects and deficiencies observed in the Work, and (3) any Work rejected by the Architect or additional inspections or testing required by the Architect.

§ 3.6.2.2 The Architect has the obligation to recommend that the Owner reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend that the Owner reject or require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Architect shall submit to the Owner documentation supporting such recommendation, and the Owner may engage, at its expense, independent consultants or testing laboratories to confirm the Architect's recommendation. However, neither this obligation of the Architect nor a decision made in good faith in the exercise thereof shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and recommendations 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 recommendations, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

## § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Architect recommends that the Owner release payment to the Contractor in the amount requested. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

- .1 The Architect shall withhold Certificates for Payment and make recommendations to the Owner as to the aggregate sums to be withheld in accordance with § 9.5 of the General Conditions.

§ 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, or (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

#### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall promptly notify the Owner and Contractor of any objections thereto. The Architect's action in reviewing submittals shall be taken in accordance with the submittal schedule or, in the absence of a submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Submittals shall be reviewed by the Architect and returned to the Contractor promptly and in accordance with the schedule. If the Architect believes that more time is required in connection with any submittal based on the requirements of good professional practice, the Architect shall so advise the Owner and the Contractor in writing prior to the end of the allowable time period. The Architect shall be responsible for providing the timely response by the Architect's consultants to all submittals.

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information ("RFI's") about the Contract Documents. A properly prepared RFI shall be in a form prepared or approved by the Architect and the Owner and shall include 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 no more than ten (10) days from the Architect's receipt of the RFI. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to RFI's. Notwithstanding the foregoing, if the Architect determines in its professional judgment that a subsequently filed RFI should take precedence to maintain the Schedule, the Architect may recommend to the Owner and Contractor that the Architect re-prioritize responses to RFIs in the interests of keeping the Project on schedule.

§ 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.

§ 3.6.4.6 The Architect, as part of its Basic Services, shall prepare a full set of as designed record drawings.

#### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect shall give the Owner prompt written notice of any such proposed minor change. In connection with all modifications, the Architect shall,

as part of its Basic Services, prepare, reproduce and distribute to the Owner and the Contractor revised drawings and other documents that describe Work to be added, deleted or modified as part of the modification.

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

#### § 3.6.6 PROJECT COMPLETION

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

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Architect shall prepare for the Owner's approval a schedule of all non-conforming Work and shall make all reasonable efforts to maintain and update such schedule until the Architect determines that such Work conforms to the Contract Documents.

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

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

§ 3.6.6.5 The Architect shall cooperate with the Owner's consultants to provide reasonable assistance to the Owner in the review and start-up of mechanical, electrical, heating, ventilating and air conditioning systems in conformance with the performance design.

§ 3.6.6.6 Upon request of the Owner, and prior to the expiration of eighteen (18) months from the date of Substantial Completion of each Project Phase, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance and conduct warranty inspections.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2, except to the extent such services result from the breach of this Agreement or negligent act or omission of the Architect or those for whom it is responsible.

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

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Architect	Basic Service – See Art. 3.2
<i>(Row deleted)</i>		
§ 4.1.2 Multiple preliminary designs	Architect	Basic Service – See Art. 3
§ 4.1.3 Measured drawings	Architect	Basic Service
§ 4.1.4 Existing Conditions Assessment	Architect	Basic Service
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Architect	Basic Service
§ 4.1.6 Building information modeling	Architect	Basic Service
<i>(Row deleted)</i>		

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§ 4.1.7	Civil engineering	Architect	Basic Service – See Art. 3
§ 4.1.8	Landscape design	Architect	Basic Service – See Art. 3
§ 4.1.9	Architectural Interior Design	Architect	Basic Service – See Art. 3
§ 4.1.10	Value Analysis (B204™–2007) (beyond the requirements of Article 3 and Exhibit A)	Architect	Additional Service
§ 4.1.11	Cost Estimating	Architect	Basic Services – See Art. 3
<i>(Row deleted)</i>			
§ 4.1.12	On-site project representation (beyond the requirements of Exhibit A, Article 3 and 4.3.3)	Architect	Additional Service
<i>(Row deleted)</i>			
§ 4.1.13	Conformed construction documents per any applicable independent third party review under BOCA	Architect	Basic Service
§ 4.1.14	As-Designed Record drawings	Architect	Basic Service – See Art. 3
§ 4.1.15	As-Constructed Record drawings	NP	
§ 4.1.16	Post occupancy evaluation	Architect	Basic Service – See Art. 3
§ 4.1.17	Facility Support Services (B210™–2007)	Architect	Basic Service
§ 4.1.18	Tenant-related services	NP	
§ 4.1.19	Coordination of Owner’s consultants (beyond the requirements of Article 3 and Exhibit A) However, as part of Basic Services, Architect shall furnish a Statement of Special Inspections required	Architect	Additional Service
§ 4.1.20	Telecommunications/data design	Architect	Basic Service – See Art. 3
§ 4.1.21	Security Evaluation and Planning	Architect	Basic Service – See Art. 3
§ 4.1.22	Commissioning (B211™–2007) (beyond the requirements of 3.3.5.1)	Owner	
§ 4.1.23	Extensive environmentally responsible design	Architect	Basic Service – See Art. 3
§ 4.1.24	LEED® Silver Certification (B214™–2007)	Architect	Basic Service
§ 4.1.25	Fast-track design services	NP	
§ 4.1.26	Historic Preservation (B205™–2007)	Architect	Basic Service
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	Architect	Basic Service – See Art. 3
§ 4.1.28	Hazardous Materials Testing	Architect	Basic Service
§ 4.1.29	Hazardous Materials Abatement	Owner	
§ 4.1.30	Hazardous Materials Monitoring	Architect	Basic Service

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

§ 4.2.1 Programming. As regards § 4.1.1, the Architect shall conduct interviews and workshops, and collect other information as necessary to document the current and anticipated program needs and space requirements; describe all desired spaces by function, size, environmental requirements, required relationships and adjacencies and special requirements for equipment, floor loading, special systems, sound isolation and access control; identify requirements for flexibility and expandability; project total net and gross square footage required to meet the program and space requirements; prepare and submit appropriate deliverables documenting the Architect’s conclusions and recommendations as to the program needs and space requirements; provide updates to such deliverables as the design services progress.

§ 4.2.2 Existing Conditions Assessment. As regards § 4.1.4, the Architect shall review existing drawings, specifications, surveys, reports and other documents available from the Owner; where field inspections and measurements of existing conditions are needed, make such reasonable inspections and measurements as necessary to become familiar with the existing condition of the building, including architectural, structural, mechanical, electrical, plumbing, communications, A/V, fire protection, security and specialty systems; evaluate functionality, size, capacity and life expectancy of systems and equipment; make such inspections and measurements as necessary to become familiar with existing conditions at the Project site and conduct investigations of existing conditions as necessary to furnish appropriate and complete design recommendations; verify configuration of existing spaces;

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field measure critical dimensions; verify the type and condition of architectural, mechanical, electrical and other systems; assess the size and capacity of existing equipment and systems based on Owner-provided information and the Architect's inspection; prepare and submit appropriate deliverables documenting the Architect's conclusions and recommendations as to the building's capabilities, limitations and deficiencies based on the identified program requirements. If destructive testing is required, the Architect will not be responsible for creating any openings or for patching or re-construction to such openings as part of its Basic Services, but will nonetheless be responsible for inspection in such areas in which the Owner has provided the openings for testing or inspection. The Basic Services contemplated in this § 4.2.2 shall be done as part of the documentation of the design and used accordingly in the production of the Instruments of Service. Any separate "Existing Facilities Reports" that Owner requests from the Architect will be provided as an "Additional Service."

**§ 4.3** Additional Services or other changes in the scope of services may be provided after execution of this Agreement, without invalidating the Agreement. Except to the extent that such services are required due to the fault, breach of this Agreement or negligence of the Architect or those for whom it is responsible, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Not used;
- .3 Changing or editing Material revisions to previously prepared Instruments of Service necessitated by the unanticipated issuance, enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other material failure of performance on the part of the Owner or the Owner's consultants or

*(Paragraphs deleted)*

contractors provided that the Architect has previously notified the Owner in writing of the date by which a decision is required;

- .5 Preparation for, and attendance at, a public presentation, meeting or hearing, except as required elsewhere in this Agreement;
- .6 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto or where the issues in question relate to fault, breach of this Agreement, or any negligent, or allegedly negligent, acts or omissions of the Architect or those for whom it is responsible;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .8 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner, except if required to maintain budget, and only those beyond the alternates already included as part of Basic Services.

**§ 4.3.2** To avoid delay in the Construction Phase, the Architect shall notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need, prior to providing the following Additional Services. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing an unreasonable amount of Contractor's submittals out of sequence from the submittal schedule;
- .2 Responding to an unreasonable amount of Contractor's RFIs where such information is readily available to the Contractor from a review and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, prior Project correspondence or documentation, or are not prepared substantially in accordance with the Contract Documents;

- .3 Change Orders and Construction Change Directives requiring the preparation or revision of Instruments of Service except to the extent such services are due to the fault, breach or negligence of the Architect or those for whom it is responsible;
- .4 Evaluating substitutions proposed by the Contractor after the Construction Documents are finalized and making subsequent material revisions to Instruments of Service resulting therefrom; or
- .5 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 180 days after the date of Substantial Completion of the Work, except those services contemplated by § 3.6.6.6.

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

- .1 three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor, unless such additional review arises from an error, omission or breach by the Architect
- .2 once every two (2) weeks visits to the site by the Architect over the duration of the Project during construction
- .3 three (3) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 two (2) inspections for any portion of the Work to determine final completion

**§ 4.3.4** If the services covered by this Agreement have not been completed within three (3) months of the scheduled Substantial Completion date, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services to the extent that the Architect demonstrates cost ramifications and actual impact to its services. To the extent that the services which extend beyond the date set forth herein are limited to inspection of the work for substantial or final completion or other similarly limited services as set forth in § 3.6, the Architect shall not seek any additional compensation.

## 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 and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect.

**§ 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 to the Architect existing 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 information contained in these surveys is of a general nature and shall not be relied upon by the Architect, and the Architect shall verify the information contained in the surveys provided prior to using the information to perform its services under this Agreement.

*(Paragraph deleted)*

**§ 5.5** Not used.

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

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

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Architect is not responsible for identifying such services, but will assist Owner in implementing such services where appropriate. All costs to implement such services shall be borne by the Owner. Notwithstanding the foregoing, the Architect acknowledges that (i) it is familiar with DCS requirements, including, without limitation, DCS audit requirements; and (ii) the requirements set forth in this Agreement, including, without limitation equal opportunity employment requirements, and Architect shall comply with and assist in complying with such.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, provided that the Owner's failure to do so shall not excuse the Architect's non-performance.

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

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

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

§ 5.13 The Architect acknowledges that the Owner is a municipal corporation and that the Owner's obligation to make payments under this Agreement is contingent upon the appropriation by the Owner's Board of Finance and the Owner's Board of Representatives of funds sufficient for such purposes, for each budget year in which this Agreement is in effect. If sufficient funds to provide for the payments hereunder are not appropriated, the Owner may terminate this Agreement pursuant to §9.5.

## ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In assisting the Owner in preparing estimates of the Cost of Work, the Architect shall be permitted, subject to Owner review and approval, to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents

alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work.

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

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

§ 6.6 If at any time the cost estimate based upon the then current design documents reveals that the budget may be exceeded, the Architect and its consultants shall meet with the Owner and its designee to discuss the estimate and shall at the direction of the Owner, revise the then current design documents as necessary so that the estimated construction cost conforms with the budget. 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 or portion thereof 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, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except (1) when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment, or (2) when required due to the error, omission or other negligent act or breach of this Agreement by the Architect.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service. Subject to Section 7.6, all designs, architectural works and Instruments of Service, including the Drawings and Specifications, authored or prepared by the Architect and the Architect's consultants shall be the property of the Owner, along with all common law, statutory and other reserved rights, including copyrights, therein. 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 such rights.

§ 7.3 Upon execution of this Agreement, the Owner grants to the Architect a nonexclusive license to use, reproduce, modify and make derivative works from the Architect's architectural works, designs and Instruments of Service solely for the purpose of performing the Architect's obligations hereunder. The Owner may authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to use and reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 7.3.1 In the event the Owner modifies the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases such author from all Claims and causes of action arising from such modification. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless such author 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 modification 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. 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 The Architect shall not incorporate in its designs, architectural works or Instruments of Service a design, process or product that infringes any trademark, service mark, copyright, patent or other proprietary interest held by any third-party for which it has not obtained all necessary permissions and paid all royalties and license fees.

§ 7.6 The Owner expressly acknowledges and agrees that the Instruments of Service to be provided by the Architect under this Agreement will contain innumerable design details, features and concepts including some from the Architect's or the Architect's consultants library ("Architect's Standard Documents"). Although the Architect's Standard Documents collectively form part of the design for the Project, they are to be considered separate from the Instruments of Service and shall remain the sole and exclusive property of the Architect or the Architect's consultants. These details are repetitive in nature, not project specific, function rather than form-oriented, and were not developed for or identifiable with the Project. Nothing herein shall be construed as a limitation on the Architect's absolute right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients. Architect and Architect's consultants shall retain all statutory and reserved rights, including copyright, to Architect's Standard Documents, except that Architect hereby grants to Owner, at no additional cost, a perpetual, non-exclusive license to use Architects Standard Documents relative to the Project.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 A Claim is a demand or assertion seeking adjustment in compensation, payment of money, extension of time or other relief with respect to, arising out of, or relating to the terms of this Agreement. The Owner and Architect shall commence all Claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

§ 8.1.2 To the extent damages are covered by 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 Exhibit C, AIA Document A201-2007, General Conditions of the Contract for Construction, as amended. 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 Not used.

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

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following: Arbitration at the Owner's sole election, and if the Owner does not so elect, litigation in a court of competent jurisdiction.

*(Paragraphs deleted)*

§ 8.2.5 The Architect hereby agrees to participate in good faith in a consolidated mediation with all other parties that the Owner deems necessary for complete resolution of any claims or disputes. The Architect shall include a provision in all of its consultant and contractor agreements obligating its consultants and contractors to participate in any such consolidated mediation.

### § 8.3 ARBITRATION

§ 8.3.1 If the Owner elects to have any claims or disputes decided through 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 If Owner elects to have any claims or disputes decided through arbitration, 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.

§ 8.3.1.2 If the Owner elects arbitration, the venue for all arbitration hearings and presentation of evidence and witnesses shall be the place of the Project.

§ 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 If the Owner elects arbitration, the Owner, may request to 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 The Owner, may request to 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. The Architect shall include a provision in all of its consultant and contractor agreements obligating its consultants and contractors to participate in any such consolidated or joined proceedings.

§ 8.3.4.3 Not used.

§ 8.4 If the Owner does not elect arbitration, any dispute not resolved in mediation shall be subject to litigation in a court of competent jurisdiction in the State of Connecticut. Venue for any such litigation shall be the Judicial District of Stamford-Norwalk at Stamford, Connecticut.

§ 8.5 Pending final agreement as to the impact of Additional Services on compensation or schedule, or as to resolution of a Claim, the Architect shall proceed diligently with performance of its contractual obligations.

§ 8.6 The Architect shall incorporate each of the dispute resolution procedures set forth in this Article 8 in the Architect's agreements with its consultants and contractors.

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

§ 9.2 If the Owner, by written notice, suspends the Project for more than 120 days, the Architect shall be compensated for services performed prior to the effective date of such suspension. The time between Project Phases shall not be considered a suspension of the Project under this Agreement. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 Not used.

§ 9.4 Except as provided in § 9.1, either party may terminate this Agreement upon not less than fifteen (15) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination, provided that the notified party fails to cure its nonperformance within such period.

§ 9.4.1 The Owner may terminate this Agreement for cause upon not less than fifteen (15) days' written notice should the Architect fail to: (a) provide satisfactory assurances to the Owner of its ability to properly complete its contractual obligations; (b) perform its contractual obligations with the diligence to provide for its completion within the time specified in the schedule; (c) make payment to its consultants for services furnished in accordance with their respective consulting agreements. In addition, the Owner may terminate this Agreement for cause upon not less than fifteen (15) days' written notice should the Architect disregard any applicable laws, submit an invoice, certification or other document that is intentionally falsified, or become insolvent or file for bankruptcy protection.

§ 9.4.2 In the event that the Owner terminates this Agreement for cause, payment shall be withheld until the services are completed and the Owner's costs of completion are liquidated. If the unpaid balance of the Architect's Fee payable to the effective date of termination exceeds the Owner's costs of completing the Architect's services and other damages incurred by the Owner as a result of the termination, such excess shall be paid to the Architect. If such costs and damages exceed the unpaid balance, the Architect shall pay the difference to the Owner. Nothing herein shall be deemed a waiver of the Architect's rights to recover payment for services performed pursuant to the dispute resolution provisions in Article 8.

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination for the Owner's convenience, the Architect shall be compensated solely for services performed prior to termination in accordance with compensation terms and conditions of Article 11 of this Agreement, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

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

§ 9.8 In the event that a termination by the Owner for cause is ultimately deemed wrongful by a trier of fact, such termination shall be conclusively deemed to be a termination for convenience by the Owner under § 9.5, and the Architect's sole rights and remedies against the Owner shall be as set forth in § 9.6.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Connecticut.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction. All references herein to the A201–2007 or General Conditions shall refer to the AIA Document A201–2007, General Conditions of the Contract for Construction, as modified and attached as Exhibit C.

§ 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. The Architect shall not assign, subcontract, or transfer any portion of the Architect's services set forth herein without the prior written consent of the Owner.

§ 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 5 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 5 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 If the Architect or its consultants know or become aware of hazardous materials or toxic substances at the Project site other than those introduced by those performing the Work, or if they become aware of any spill or release of hazardous materials or toxic substances at the Project site, the Architect shall immediately notify the Owner. Except as otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall not have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials without the prior, written consent of the Owner. The Architect shall be given reasonable access to the completed Project to make such representations if the Owner so consents. 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 for a reasonable period following the completion of the Project. The Architect's rights, but not its obligations, under this section shall terminate upon termination of this Agreement by either party.

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

§ 10.9 **Records and Audits.** The Architect shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner to assure proper accounting for all project funds. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for eight (8)

years after the expiration date of this Agreement, or for such longer period as may be required by law or DCS, unless permission to destroy them is granted by the Owner.

**§ 10.10 Interest of Members of a Owner.** No member of the governing body of the Owner and no other officer, employee, or agent of the Owner who exercises any functions or responsibilities in conjunction with the planning and carrying out of the Project, shall have any personal financial interest, direct or indirect, in this Agreement.

**§ 10.11 Interest of Architect and Employees.** The Architect covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Architect further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

**§ 10.12 Gifts.** The Architect shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City of Stamford or the Stamford Board of Education or an appointed or elected official or employee their Boards, Commissions, Departments, Agencies, or Authorities. All references to the Architect shall include its officers, directors, employees, and owners of more than 5% equity in the Architect. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be terminated.

## **ARTICLE 11 COMPENSATION**

### **§ 11.1**

*(Paragraphs deleted)*

Not used.

### **§ 11.2**

*(Paragraphs deleted)*

Not used.

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under

*(Paragraphs deleted)*

Sections 4.1 and 4.3, before commencing any Additional Services, the Architect shall provide the Owner with a written proposal to provide such services on an hourly basis at the rates set forth in Exhibit D. The Architect shall receive the Owner's written approval of the proposal for Additional Services prior to commencing the Additional Services. Pursuant to Section 23-18.4C of the City Code, it is specifically understood and agreed by the Architect that all contract extras regarding this contract shall be governed by the City Charter and/or the Code. The City shall not be liable for payment of any additional costs unless the provisions of the City Charter and/or the Code are fully complied with.

**§ 11.4** Not used.

**§ 11.5** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect based on a percentage of the Cost of the Work as set forth below and in further detail in the Exhibit A-9 the Architect's Comprehensive Professional Service Fees and Expenses dated March 23, 2015. The compensation for each Project Phase's services shall be as follows:

<b>Phase</b>	<b>Estimated Fee</b>	<b>Percent</b>	<b>NTE Expenses</b>	<b>Sub-Total</b>
Project Phase I	\$109,500.00	percent (3.65%)	\$5,000.00	\$114,500.00
Project Phase II	\$201,600.00	percent (7.20%)	\$34,994.00	\$236,594.00
Project Phase III	\$1,361,250.00	percent (6.05%)	\$140,668.00	\$1,501,918.00
<i>(Row deleted)</i>				
Project Phase IV	\$1,037,070.00	percent (6.21%)	\$96,038.00	\$1,133,108.00
<i>(Row deleted)</i>				
<b>Total Basic Compensation</b>	<b>\$2,709,420.00</b>		<b>\$276,700.00</b>	<b>\$2,986,120.00</b>

Init.

The above described Fee amounts and those set forth in Exhibit A-9 are estimated amounts only. Upon the Owner's acceptance of the Contractor's bid for the Project Work for each Project Phase, the Fee amounts will be reconciled with the percentages listed in Exhibit A-9 as applied to the Cost of the Work as bid. Upon the Owner's acceptance of the Contractor's bid proposal, the Architect shall submit a reconciled invoice for Owner's approval to adjust the Fee, and all portions of the Fee shall then be designated as fixed.

**§ 11.6** When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 and Exhibit A-9 based on the Cost of the Work as of the completion of the Contract Documents Phase for such portions of the Project. The Architect shall be entitled to compensation for services rendered in accordance with this Agreement for all completed services performed.

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

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

See Exhibit D.

**§ 11.7.1** Allowable hourly billing shall be limited strictly to time reasonably and necessarily required to perform the services, at the hourly rates set forth herein, which rates include all compensation attributable to such portion of the services to which the Architect is entitled, exclusive only of Reimbursable Expenses as defined in § 11.8, and including without limitation: (a) direct wages and/or salaries; (b) payroll taxes; (c) contributions, assessments, and benefits required by law, or otherwise customary and reasonable; (d) general and administrative overhead; and (e) profit

*(Table deleted)*

## **§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

**§ 11.8.1** Expenses are Not To Exceed ("NTE") amounts and shall be invoiced as set forth in §§ 11.5 and 11.10.3.3. Reimbursable Expenses as defined in § 11.8 are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project (and not necessitated by Architect's breach of this Agreement, or errors, omissions or negligent acts of the Architect or its consultants), as follows:

- .1 Transportation and authorized out-of-town travel and subsistence (at fares and rates pre-approved by the Owner);
- .2 Project Web sites, and extranets;
- .3 Third party fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing and reproductions, other than for the office use of the Architect or its consultants;
- .5 Postage, handling and delivery;
- .6 Renderings, mock-ups, professional photography, and presentation materials requested by the Owner other than those described in Exhibit A, A-1 - A-5;
- .7 All taxes levied on professional services and on reimbursable expenses;
- .8 Additional insurance beyond what is required by this Agreement, if specifically requested by the Owner in writing; and
- .9 Other Project-related expenditures approved by the Owner.

**§ 11.8.2** For Reimbursable Expenses, which are set forth as NTE amounts in §11.5, the compensation shall be the direct and reasonable expenses incurred by the Architect plus fifteen percent (15 %) of the expenses incurred. The Architect's consultants shall be compensated for direct and reasonable expenses incurred plus an administration fee of fifteen percent (15%) of the direct and reasonable expenses incurred. The Architect shall not markup via the multiplier the Architect's consultants' expenses.

## **§ 11.9**

*(Paragraphs deleted)*

Not used.

## § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 Not used.

§ 11.10.2 *Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. (Paragraphs deleted)*

*Until the Owner accepts the Contractor's bid proposal and Fee is fixed, the Architect's invoices shall be based on the percentage of the services complete for the applicable Project Phase applied to the estimated Fee amounts in Exhibit A-9. Payments are due and payable within thirty (30) days of the presentation of, and approval by the Owner of, the Architect's invoice.*

§ 11.10.3 The Architect's invoices shall be in a form acceptable to the Owner. Compensation for services based on a stipulated sum or percentage of the Cost of the Work shall be billed and paid in accordance with § 11.5 and Exhibit A-9 and shall include all compensation attributable to such portion of the services to which the Architect is entitled, exclusive only of Reimbursable Expenses as defined in § 11.8, and including without limitation: (a) direct wages and/or salaries; (b) payroll taxes; (c) contributions, assessments, and benefits required by law, or otherwise customary and reasonable; (d) general and administrative overhead; (e) profit; and (f) consultant costs.

§ 11.10.3.1 Portions of the Fee designated as fixed following the Owner's acceptance of the Contractor's bid proposal shall be computed in each invoice on the basis of the percentage of each portion of the services that is properly completed through the period covered by the invoice, less the aggregate of previous payments made by the Owner on account of such portion of the services. If the reconciled Fee for the Project Phase, as approved by the Owner, exceeds the amount paid to the Architect, such excess shall be paid to the Architect. If the reconciled Fee for the Project Phase, as approved by the Owner, is less than the amount paid to the Architect, the difference will be applied as a credit towards the Architect's future Project services, or in the event no such future services are contemplated, the difference shall be credited against amounts otherwise earned by the Architect but unpaid.

§ 11.10.3.2 Amounts invoiced on the basis of hourly rates shall be computed in each invoice on the basis of the number of hours actually incurred by the personnel furnishing such services during the period covered by the invoice. Invoices containing such amounts shall be accompanied by an itemized statement of the actual tasks and hours devoted to the Project on a daily basis by such personnel during the billing period.

§ 11.10.3.3 Invoices that include Reimbursable Expenses shall be accompanied by receipts and other supporting data acceptable to the Owner with sufficient detail to enable the Owner to substantiate such Reimbursable Expenses. Reimbursable Expenses, and expenses pertaining to Additional Services, shall be itemized in the Architect's invoices, and records of such expenses and services shall be maintained by the Architect and made available to the Owner at mutually convenient times.

§ 11.10.3.4 The Architect shall examine the invoices of its consultants to confirm that all claimed fees and expenses are allowed under the Agreement, and shall not include ineligible amounts in its invoices to the Owner. Invoices that include fees based on NTE or hourly rates shall be accompanied by invoices of the Architect's consultants.

§ 11.10.3.5 The submission of the Architect's invoice for payment shall constitute the Architect's representation that:

- .1 the amounts sought are due and earned in accordance with the Agreement.
- .2 it shall use the amounts requested to discharge its financial obligations on account of services furnished for the Project and included in the invoice.
- .3 it has discharged its financial obligations on account of services furnished for the Project for which the Owner has made payment.
- .4 to the best of its knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services to the Project on its behalf.

§ 11.10.3.6 The Architect's invoices shall also be accompanied by such other data, accounts and receipts substantiating amounts invoiced by the Architect as reasonably requested by the Owner.

§ 11.10.4 Upon payment by the Owner, the Architect shall promptly, but in no event later than thirty (30) days after receiving the Owner's payment, pay its consultants the amounts to which they are entitled.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner, its trustees, officers, directors, employees and affiliated entities from and against claims, damages, losses, judgments and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the services of this Agreement, but only to the extent caused by the violation of Governmental Requirements, breach of this Agreement or any negligent acts or omissions of the Architect, its consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

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

Exhibit A – Initial Information (set forth in Article 1.1)

Exhibit B – Insurance Requirements

Exhibit C – AIA Document A201-2007, General Conditions, as modified

Exhibit D – Hourly Rates For Architect and Architect's Consultants

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

**OWNER**

**CITY OF STAMFORD**

**ARCHITECT**

**PERKINS EASTMAN ARCHITECTS, DPC**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

Init.