



REQUEST FOR PROPOSAL
ARCHITECTURAL & ENGINEERING DESIGN SERVICES

Prepared by:

The Metropolitan School District of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, IN 46240

Request for Proposal (RFP) – Architectural & Engineering Design Services

The Metropolitan School District of Washington Township is accepting written proposals from qualified firms to provide architectural and engineering services.

Sealed RFP proposals shall be submitted no later than 2:00 PM on August 25, 2017.

ATTN: Marvin Murdock/Angela Britain-Smith
Metropolitan School District of Washington Township
8550 Woodfield Crossing Blvd. Indianapolis, IN 46240

Proposals shall be clearly marked on the envelope as “PROPOSAL FOR MIDDLE SCHOOL ARCHITECTURAL & ENGINEERING DESIGN SERVICES”.

A recommendation will be submitted to the Board of Education at their regular meeting on September 27, 2017 at 7:00 PM.

I. Purpose and Objective

The purpose of this Request for Proposal (RFP) is to obtain proposals from qualified design firms (herein referred to as "A/E") interested in contracting with the Metropolitan School District of Washington Township (herein referred to as "District") to provide desired services as outlined in this RFP.

The District has identified the following objectives:

- To ensure all facilities allow for equitable access to education across the District;
- To maximize efficiency in facilities utilization across the District;
- To address identified facility/space needs in the District in an efficient and cost-effective manner.
- To provide educational facilities that support the District's educational vision.

II. Background

The District approved the referenda that was passed in the November 8th ballot allowing the finance of the 2017 Safety, Capacity, Efficiency, Technology, Renovation and Construction Project which consists of updating, improving and construction at North Central High School; J. Everett Light Career Center; Eastwood, Northview and Westlane Middle Schools; Hilltop Developmental Preschool; Allisonville, Crooked Creek, Fox Hill, Greenbriar, Nora, Spring Mill, John Strange and Harcourt Elementary Schools; and Wyandotte, which is estimated to cost \$185,000,000.

The District, located in Marion County, serves students in grades PreK-12. The District has 13 school facilities, 7 elementary schools (grades K-5), 3 middle schools (grades 6-8), a high school (grades 9-12), Career Center and a Developmental Preschool.

III. Scope of Services

The following scope of design services, including structural, mechanical, electrical, plumbing and site / civil engineering services, energy modeling/analysis, food service and energy, technology and security integration and management, shall be provided by the A/E for the following Additions and Renovations at:

Schools

Eastwood Middle School 4401 E. 62nd Street, Indianapolis, IN 46220

Westlane Middle School 1301 W. 73rd Street, Indianapolis, IN 46260

A/E's scope of services shall include District's eventual assignment of technology consultant's final proposal or alternatively the District's final agreement with technology consultant for provision of energy, technology and security integration and management; technology consultant fees shall be treated as a reimbursable expense under District's Agreement with A/E with the exception that such technology consultant fees / expense shall not be subject to A/E's markup.

- **Vision and Pre-Design-along with Educational Facility Planner Specs Professional (Phase I)**
Participate and follow directives conveyed in visioning work sessions in collaboration with District's educational facility planner.
- **Conceptual/Schematic Design Phase (Phase II)**
Refine program, space needs and project scope. This phase will involve meetings with school staff, students, parents, community members and local governmental officials for program development / refinement. For each component in the project, determine relationship of proposed new spaces to exiting building (where applicable) and site.
- **Design Development Phase (Phase III)**
After approval and acceptance of the end product from Phase II by the District, the A/E will work to create detailed plans for building elevations, material selections, mechanical, plumbing, electrical / control systems and final design. Several revisions of the plan may be needed as the project is developed during this planning stage. The A/E shall provide energy modeling for mechanical and other building systems under consideration. The A/E will then prepare a final design plan based on the input received from the District and any applicable governmental agencies responsible for project approvals.
- **Construction Documents (Phase IV)**
After approval and acceptance of the end product from Phase III by the District, the A/E will be responsible for preparation of the required architectural / engineering drawings and plan documents, e.g. site plan, mechanical, electrical, plumbing, and structural plan.

After final approval of the architectural drawings and plan documents by the District, as well as the appropriate municipal commissions and other governing bodies, the A/E will create detailed construction and specification documents for bidding purposes.

The final construction documents shall include as a minimum: Site Plan, Landscaping Plan, Storm water Management Plan, Roof Plan, Drainage Plan, Floor Plan(s), Exterior Elevations, Building Sections, Foundation Plan, Framing Plan(s), Details, Plumbing Isometrics, Door / Window / Room finish / Header / Plumbing / Electrical schedule, HVAC Plans, Electrical Plans, Submittal Worksheets and the project manual including specifications in the CSI division format.

- **Bidding & Contract Award (Phase V)**

The A/E will assist the District and Construction Manager (CM) in bidding the project to prospective prime contractors. Services will include assisting the CM with the distribution of plans and specifications, assisting with sub-contractor pre-bid meetings, assisting with formulating responses to prospective bidders' questions, issuing addendums (if necessary), attendance at the bid opening, and providing the District with a recommendation for prime contract awards.

- **Construction Administration & Project Closeout (Phase VI)**

The A/E shall be a representative of and shall advise and consult with the District during construction until the final payment to prime contractors is due and during the correction period described in the Contract Documents.

- a. Plan Approvals - The A/E is responsible for the procurement of ALL plan approvals from the local municipal (ies), Marion County, and the State of Indiana Department of Commerce, Safety & Building Division for the building(s) including, but not limited to, Storm water Management, HVAC, Mechanical, plumbing and/or Fire Protection.
- b. Construction Related Services - The A/E will provide on the District's behalf, construction administration and inspection services. At a minimum, services to be provided consist of coordinating regular progress meetings, review of shop drawings, assist District in floor and finish material selection, undertake construction observation, process certificates for payment to prime contractors, and facilitate preparation of final record drawings, warranty follow-up and project closeout.

The A/E, in conjunction with the Construction Manager, shall provide updated budgetary cost estimates during each phase of the design process.

IV. Design Guidelines

The District will require the A/E to integrate sustainable principles/design into the District's projects. The A/E shall apply/utilize standards found in the Leadership in Energy & Environmental Design Green Building Rating System, Declare, Cradle to Cradle or other nationally recognized sustainability program/certification. The District may consider pursuing LEED or other sustainability program/certification. The District may engage the services on an independent commission agent/authority.

The A/E shall integrate District's vision for teaching & learning concepts into the program and design of all projects.

The A/E shall include options in the program and design to expand District's options for community access and use of facilities.

V. Project Construction Timeline-November 2017 thru August 2021

VI. RFP Timeline

RFP issued for Eastwood and Westlane Middle Schools	August 2, 2017
Information Meeting and Tour - Eastwood MS 4401 East 62 nd Street, Indianapolis, IN 46220	August 14, 2017 4:45 PM
Information Meeting and Tour - Westlane MS 1301 West 73 rd Street, Indianapolis, IN 46260	August 15, 2017 4:45 PM
Last date/time to submit questions regarding RFP	August 18, 2017
Proposals due to District	August 25, 2017
Notify A/E(s) of invitation to participate in presentation/interview	August 31, 2017
A/E(s) Interview/Presentations	TBD
Notification to selected firm(s) for projects(s)	TBD
Contracts/negotiations finalized	September 15, 2017
Approval of A/E Contract by MSDWT Board of Education	September 27, 2017 7:00 PM

VII. A/E Profile

Respondents to this RFP shall include the following minimum information in their proposal:

- a. General qualifications: describe the general qualifications of A/E).
- b. Special qualifications: describe any special or unique qualifications of A/E as they relate to this project including, but not limited to, sustainable/green building design and school facility designs.
- c. Staff qualifications: submit resumes showing relevant experience of key personnel to be assigned to this project. Specify the role of each key staff member in the project.
- d. Previous experience: provide a list of clients, including name, address, contact person and telephone number for whom similar or related design services (for elementary and middle school facilities) that have been provided within the last ten (10) years. Include a short description of the project(s), the name of the project manager(s), and other staff members that were assigned and their role(s) in the project.

VIII. Proposal Response

Respondents to this RFP shall include the following minimum information in their proposal:

- a. Describe how A/E will organize and perform the work described in the Scope of Services section. List the names of any sub-consultants that are intended to be used on the project and the specific services to be provided the sub-consultant(s).
- b. Describe A/E's understanding of the project and the planned approach to achieve the goals of the project. **Submittal shall include a listing of contemplated tasks and number of estimated hours by personnel classification/discipline for each phase of the project.**
- c. Describe sustainable or "green" design experience as well as experience working with Focus on Energy.
- d. Include conceptual time schedules and related expectations/obligations of the District needed to complete the scope of work specified based on occupancy for all projects by September 2021.
- e. Provide a fee proposal using the attached fee proposal spreadsheet. **Fees shall include ALL meetings needed to successfully complete this project and ALL reimbursable costs other than plan/document printing costs (incurred for this bidding phase of the project) and required plan submittal fees.**
- f. Provide a description of any possible additional related costs and/or fees (not included in your base fee) that the District might incur as a result of this design process.
- g. Provide a description of monthly status reports, e.g. project timeline, deliverables, costs incurred to date, and costs to project timeline.
- h. Consultant / Supplier Diversity inclusion in the present RFP and past projects.

IX. Proposal Evaluation/Selection Process / Agreement Award

The responses will be reviewed an evaluation panel consisting of individuals selected by the District. Responding A/E(s) will bear all costs of this RFP and interviews, if any.

Proposals will be reviewed using the following criteria /elements:

- o Conciseness, responsiveness and completeness of the proposal to the information requested, objectives, and deliverables as outline in the RFP
- o Consultant / Supplier Diversity inclusion
- o Fee Proposal / Cost: Overall fee / billing rates
- o Prior experience, Qualifications, References, Past Performance of A/E
- o Experience / Expertise in K-12 School Projects

- Experience with Sustainable or “Green” Design
- Level of Innovation with a Focus on our Educational Vision
- A/E’s Technological Capabilities (to manage this project in a paperless or almost paperless manner)

At the District’s discretion, to further assist in evaluation, some, one, or all of the responding A/E(s) and/or individuals may be requested to participate in an interview process. The interview will be used as another opportunity to clarify any issues within a given Proposal and explore the approaches that may be used to satisfy all requirements for the District.

A/E(s) shall submit fee proposal using the Fee Proposal Form provided with this RFP. At the District’s discretion, it may directly negotiate with the best qualified A/E on final scope and fee.

The District may also consider alternative proposals to provide A/E services if there is an opportunity for substantive savings (without adversely affecting the project timeline or quality) and other significant benefits (to be clearly articulated by the proposer and be measureable) accruing to the District.

The District may investigate the qualification of any individual or A/E under consideration, require confirmation of information furnished and require additional evidence of qualifications to perform the services described in this RFP. The District also reserves certain rights, including, but not limited to, the following:

- a. Reject any or all of the proposals
- b. Issue subsequent Requests for Proposals
- c. Cancel the entire Request for Proposal
- d. Remedy technical errors in the Request for Proposal process
- e. Appoint evaluation committees to review qualifications and proposals
- f. Seek the assistance of outside technical experts in evaluation
- g. Approve or disapprove the use of particular subcontractors
- h. Establish a short list of A/E(s) eligible for discussions after review of RFP
- i. Negotiate with any, all, or none of the A/E(s)
- j. Solicit best and final offers from all, some, or one of the A/E(s)
- k. Award a contract to one or more A/E(s)
- l. Waive informalities and irregularities in RFP
- m. Award without discussion

Selection will be based upon a determination as to which proposal is in the best interest of the Metropolitan School District of Washington Township. Any decision made by the District, including the selection of A/E, shall be final and is NOT subject to appeal.

This RFP shall not, in any manner, be construed to be an obligation on the District to enter into a contract or result in any claim for reimbursement of cost for any efforts expended in responding to the RFP or in anticipation of any contract.

Award of Agreement. Upon the completion of the selection process, the District shall notify all A/E(s) of the selection and the successful A/E shall enter into the District's AIA Document B132 - 2009 Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as modified by the District and included in these RFP Documents (the "Agreement"). The Agreement includes AIA Document A232 – 2009 General Conditions of the Contract for Construction, Construction Manager as Advisor Edition modified by the District and is available for review upon A/E's request to District. A/E's Proposal and Fee shall be based on the terms of the Agreement as contained herein and the modified General Conditions without qualification or exception.

X. Submittal Requirements

Any questions concerning this RFP must be submitted via e-mail on or before August 18, 2017 at 1:00 PM to:

Marvin Murdock, Owner's Representative
E-mail: mmurdock@msdwt.k12.in.us

Responses to RFP shall be received by the District no later than 2:00 PM on August 25, 2017. Six (6) copies of your proposal are requested.

Marvin Murdock, Owner's Representative
Metropolitan School District of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, IN 46240.

Proposal shall be marked "Proposal for Middle School Architectural & Engineering Design Services" and shall clearly identify the A/E submitting the proposal.

Proposals received after the date and time specified will be returned unopened.
All proposals will become property of the MSDWT.

**METROPOLITAN SCHOOL DISTRICT OF WASHINGTON TOWNSHIP
Architectural & Engineering Services RFP
FEE PROPOSAL FORM**

Name of A/E: _____

Address: _____

Contact: _____

Telephone: _____

Fax: _____

E-mail: _____

Please state the fees for this project below:

FEE FOR ALL PHASES OF PROJECT – Vision and Pre-Design (Phase 1), Conceptual / Schematic Design (Phase II), Design Development (Phase III), Construction Documents (Phase IV), Bidding and Contract Award (Phase V) and Construction Administration, Project Closeout and Warranty (Phase VI). The Fee shall be expressed as a flat dollar of total construction costs for the Project (the only allowable reimbursable will be plan submittal fees and plan printing costs in the Bidding & Contract Award phase – all other costs are within the Fee of: \$ _____)

The undersigned attests that the information contained within the proposal is accurate to the best of his/her knowledge, and that the A/E he/she represents. If selected, agrees to incorporate the requirement of this RFP in the final contract with the District.

Signature of Person Authorized to Submit Proposal: _____

Typed Name of Signature Above: _____



AIA® Document B132™ – 2009

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the _____ day of "_____ " in the year 2017.
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:

(Name, legal status, address and other information)

MSD of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, IN 46240
(317) 205-3333 (Ext 77189)
(317)-205-3385 (Fax)

and the Architect:

(Name, legal status, address and other information)

for the following Project:

(Name, location and detailed description)

The Construction Manager:

(Name, legal status, address and other information)

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.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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ARTICLE 1 INITIAL INFORMATION

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

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

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

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

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

.2 Commencement of construction:

.3 Substantial Completion date or milestone dates:

.4 Other:

| TBD

§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:

(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)

- | Contractor (which includes other separate Contractors as determined by Owner)
- | Multiple Prime Contractors ("Contractors")
- | Unknown at time of execution

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

(List name, address and other information.)

Mr. Marvin Murdock
Owners Representative
MSD of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, IN 46240
(317) 205-3333 (Ext 77189)
(317) 205-3385 (Fax)

In the event that the Owner's Designated Representative is terminated, or otherwise unavailable, the Owner shall designate a replacement representative in writing.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address and other information.)

CONSTRUCTION MANAGER

§ 1.1.10 The Owner will retain the following consultants **and** shall endeavor to comply with all equal employment opportunity programs and as required by Article 10.15 herein:

(List name, legal status, address and other information.)

- .1 Construction Manager: The Construction Manager is identified on the cover page.
- .2 Cost Consultant (if in addition to the Construction Manager):
(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)
- .3 Land Surveyor:
- .4 Geotechnical Engineer:
- .5 Civil Engineer:
- .6 Other consultants:
(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

| § 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

| § 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

| § 1.1.12.1 Consultants retained under Basic Services:

- .1 Associate Architect and Interior Design:
- .2 Civil Engineer:
- .3 Landscape Architect:
- .4 Structural Engineer
- .5 Mechanical and Technology Design:
- .6 Plumbing and Electrical Design:
- .7 Educational Programming:

.8 Food Service Design:

§ 1.1.12.2 Consultants retained under Additional Services:

NONE

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

TBD

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change. The Architect shall be entitled to rely on the accuracy and completeness of information furnished by the Owner unless the Architect had cause to not so rely. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such information. If the Owner observes or otherwise becomes aware of any defect in the Project, it shall give prompt written notice thereof to the Architect.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement and described in The General Conditions of the Contract for Construction as modified and supplemented AIA Document A232 (2009 Edition) and incorporated by reference as if set forth herein in full.

§ 2.2 The Architect's services shall be performed consistent with professional skill and care ordinarily provided by Architects with experience with projects similar to these Projects practicing in the same or similar locality and under the same or similar circumstances and consistent with the orderly progress of the Work. The Architect shall submit for the Owner's approval and the Construction Manager's information a schedule for the performance of the Architect's services which may be adjusted as the Projects proceed, and shall include allowances for periods of time required for the Owner and Construction Manager's review and for approval of submissions by authorities having jurisdiction over the Projects. Time limits established herein shall not, except for reasonable cause, be exceeded by the Architect. The Owner shall be entitled to reasonably rely on the accuracy and completeness of services and information provided by the Architect.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the modified AIA Document C132™–2009, Standard Form of Agreement Between Owner and Construction Manager. The Architect shall not be responsible for actions taken by the Construction Manager.

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

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

(Paragraphs deleted)

§2.6 INSURANCE

§2.6.1 The Architect shall purchase and maintain from an insurance company or insurance companies lawfully authorized to do business in Indiana policies of insurance acceptable to the Owner, in a form and substance reasonably satisfactory to the Owner, which afford the coverages set forth in Section 2.6.2 below. This insurance shall be written for not less than the limits of liability specified in Section 2.6.2 or required by law, whichever coverage is greater. Certified copies of all insurance policies or, with the Owner's consent, Certificates of Insurance acceptable to the Owner shall be given to the Owner prior to commencement of the services. Each policy must be endorsed to provide that the policy will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been provided to the Owner.

§2.6.2 The required coverages and limits which the Architect is required to obtain are as follows:

.1 COMMERCIAL GENERAL LIABILITY

a.	General Aggregate (including Completed Operations)	\$2,000,000.00
	Each occurrence	\$1,000,000.00
	General Aggregate	\$2,000,000.00
b.	Bodily Injury & Property Damage (Combined Single Limit / Per Occurrence)	\$1,000,000.00
c.	Personal / Advertising Injury (Per Occurrence)	\$1,000,000.00

The Commercial General Liability Policy must be endorsed to provide that the general aggregate amount applies separately to each of Architect's separate projects. ISO Endorsement *CG2503 Per Project Endorsement* or its equivalent shall be used to satisfy this requirement. .

.2 COMMERCIAL AUTO LIABILITY (Owned, Non-Owned and Hired)

Bodily Injury & Property Damage (Per Occurrence)	\$1,000,000.00
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.3 WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY

Coverage A (Worker's Compensation) - Statutory Minimum Requirements

Coverage B (Employers Liability) - \$500,000/each accident; \$500,000 Disease – each employee; \$500,000 Disease policy limit.

.4 EXCESS LIABILITY (Umbrella Form)

Each Occurrence	\$5,000,000.00
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.5 PROFESSIONAL LIABILITY INSURANCE. The Architect shall carry and maintain during the continuance of this Agreement, professional liability insurance in the amount of \$5,000,000 for single limit claims and \$5,000,000 in the aggregate. The Architect's policy of insurance shall contain prior acts coverage sufficient to cover all services performed by the Architect for this Project. Upon Owner's request, Architect shall give prompt written notice to Owner of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement. If the insurance is written on a claims-made basis and coverage is cancelled at any time, the Architect will obtain, at its cost, an extended reporting endorsement which provides continuing coverage for claims based upon alleged acts or omissions during the term of the Agreement until all applicable statute of limitation periods have expired.

All coverage provided above shall be endorsed to include the Owner, as Additional Insured except for the Worker's Compensation/Employer's Liability and Professional Liability policies. ISO forms *CG 2010 07 04* and *CG 2037* or equivalent endorsement forms must be used on the commercial general liability policy to provide additional insured status to the Owner, and shall include coverage for completed operations. The policies for which the Owner is named as additional insured shall provide primary and non-contributing coverage and any valid and collectible insurance carried separately by the Owner shall be in excess of the limits provided by such policies and shall be non-contributory. All insurance requirements and limits contained in this Section 2.6 apply to all of Architect's consultants and the Architect is responsible to verify those insurance requirements and limits, or seek approval through the Architect from the Owner for alternative coverage or reduced limits. The commercial general liability, automobile liability, and workman's compensation policies must be endorsed to provide a waiver of subrogation in favor of Owner.

§ 2.6.3 The Architect hereby agrees to deliver to the Owner, within ten (10) days of the date of the Owner-Architect Agreement and prior to bringing any equipment or personnel onto the site of the Work or the Project site, certified copies of all insurance policies procured by the Architect under or pursuant to this Section or, with consent of the Owner, Certificates of Insurance in form and substance satisfactory to the Owner evidencing the required coverages with limits not less than those specified in the Agreement.

§ 2.6.4 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under this Section or to demand receipt of such certified copies or certificates prior to the Architect's commencing the services be construed as a waiver by the Owner of the Architect's obligations to obtain insurance pursuant to this

Section 2.6. The obligation to procure and maintain any insurance required is a separate responsibility of the Architect and independent of the duty to furnish a certified copy or certificate of such insurance policies.

§ 2.6.5 The Architect's policies of insurance shall contain prior acts coverage sufficient to cover all services performed by the Architect for this Project and shall provide primary and non-contributory coverage. Any insurance by the Owner shall be considered excess and non-contributory. Deductibles shall be paid by the Architect. Upon Owner's request, Architect shall give prompt written notice to Owner of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement.

(Paragraph deleted)

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other 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 to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

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

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

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

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review and validate the program of space requirements and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall review the program, schedule and construction budget to ascertain the requirements for the Project and shall arrive at a mutual understanding of such requirements with the Owner and Construction Manager and modify if and as required. Based on the cost estimates, the Architect to prepare all necessary

drawings, specifications and other documents required for the construction and completion of the Project based on the Project's budget.

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

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

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. The Schematic Design Document shall provide options for size, location and configuration of the Owner approved prototype design on each site. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. Architect shall prepare written description of structural, mechanical, electrical, plumbing and technology work along with preliminary layouts as needed for cost estimating.

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

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager 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 schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Schematic Design Documents and the schematic cost estimate prepared by the Construction Manager. If the schematic cost estimate exceeds the Project Budget, Architect shall discuss with Owner and Construction Manager potential cost reduction options and modify the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and Construction Manager's schematic cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and 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 include detailed layouts of the site plans and the floor plan with furniture and equipment. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. Architect's Design Development documents shall include interior and exterior renderings.

§ 3.3.1.1 The Architect shall commence the process to select interior finishes, patterns and colors for each Project and review with the Owner on a regular basis until the process is complete.

§ 3.3.1.2 The Architect shall direct the preparation of civil, landscape architecture, structural, mechanical, electrical, plumbing and technology work as required for the Project along with required narrative information as needed for estimating the Cost of the Work.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Design Development Documents and estimate of the Cost of the Work. If the cost estimate exceeds the Project Budget, the Architect shall discuss potential cost reduction options with the Owner and Construction Manager and modify the Design Development Documents as required.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

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

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

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Construction Documents at fifty percent (50%) and ninety-five percent (95%) completion.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.4.6 The Architect shall prepare early bidding packages for each Project in conjunction with Construction Manager's requirements to include site, foundations, structural steel and under-slab utilities.

§ 3.5 Bidding Phase Services

§ 3.5.1 General

Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining competitive bids ; (2) confirming responsiveness of bids; (3) determining the successful bidder, if any; and (4) awarding the contracts for construction, including early bidding packages in conjunction with Construction Managers' requirements.

§ 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 and Construction Manager in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

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

(Paragraphs deleted)

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the modified AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document 232-2009, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services until final payment to the Contractors are due and all punch list items are complete and the Certification of Substantial Completions for each Project is issued. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment and after the one (1) year Contractor Warranty period.

§ 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, 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. The Architect shall also attend the Owner/Architect/Construction Manager meetings and shall be available with reasonable promptness as needed to address other issues related to the progress of construction. 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 informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

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

§ 3.6.2.3 (Stricken)

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings approved by the Construction Manager. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The Architect shall assist the Owner in matters relating to aesthetic effect and determine what course of action is consistent with the intent expressed in the Contract Documents. The Owner and Construction Manager, however, shall have final authority on all matters relating to aesthetic effect.

§ 3.6.2.5 The Architect shall render 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 an application for payment not more frequently than monthly. Within seven (7) days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect. The Architect shall maintain a record of the Contractor's Applications for Payment.

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

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

§ 3.6.4.2 In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, 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 After receipt of the Construction Manager's recommendations, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 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. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final

Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, 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 and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, 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 Upon request of the Owner, and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Unless specifically identified as a Basic Service, any services not included in Basic Services but required for the Project are additional services. The Owner must provide prior written consent before the Architect commences Additional Services. If the Owner provides consent to the Additional Services, the Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Article 4 shall entitle the Architect to compensation pursuant to Section 11.3, and an appropriate adjustment in the Architect's schedule. If the Architect believes it is entitled to additional compensation for services the Architect believes are needed or for other services requested by the Owner, the Architect shall notify the Owner in writing with reasonable promptness and (1) explain the basis of the Architect's belief that such services are outside the scope of Basic Services, and (2) provide an estimate of the probable cost of such services and probable impact, if any, on the Architect's schedule. The Architect shall not provide services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization will either (1) acknowledge that the Architect is entitled to additional compensation, or (2) deny that the Architect is entitled to additional compensation, and direct the Architect to proceed with the services, in which case the Architect may pursue a claim for additional compensation under Article 8.

(Paragraphs deleted)

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 has retained a Construction Manager to provide services, duties and responsibilities as described in the modified AIA Document C132–2009, Standard Form of Agreement Between Owner and Construction Manager. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 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. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 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.

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

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

ascertaining the information necessary relative to all geotechnical services and shall, on behalf of the Owner, solicit quotations for such work. The Architect shall review quotations received and forward them to the Owner with recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated 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 and other liability insurance as appropriate to the services provided.

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

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

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

§ 5.12 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractors through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contracts for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contracts 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 modified General Conditions of the Contract for Construction.

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner of to construct all elements of the Project designed or specified and shall include the Contractors' general conditions costs, overhead and profit; however, all elements composing the Cost of the Work for the Project may not be coordinated by Architect and may be purchase directly by Owner. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided herein, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's

estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 (Stricken)

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, 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 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.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting the Drawings and Specifications, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit the Drawings and Specifications or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective the Drawings and Specifications, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of the Drawings and Specifications to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license and ownership to use the Project Drawings and Specifications solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Upon any termination of this Agreement prior to its completion, the Owner shall retain the license and ownership and is permitted to make changes, corrections or additions to the Drawings and Specifications for the purposes of completing, using and maintaining the Project, or for future additions or alterations to the Project; provided, however, that such use shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. Upon payment by the Owner of all fees due and owing Architect for professional services under this Agreement, all right, title and interest in the Drawings and Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants ("Drawings and Specifications") that become part of this Agreement and which are incorporated by reference into the Agreement between Owner and Contractor shall become the property of the Owner. If the information is provided in electronic format, the Architect expressly waives any and all actions or claims against the Owner alleging infringement of any copyrights or patents by reason of the Owner's use of the electronic information. The Owner

may utilize the Drawings and Specifications and any of the constituent parts thereof in conjunction with a different project improvement. However, the Owner's use of the Architect's Drawings and Specifications for any other construction purpose other than for the Project shall be at Owner's expense and liability. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Drawings and Specifications solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

(Paragraph deleted)

§ 7.3.1 The Architect agrees to indemnify, save and hold harmless, and defend at its expense, the Owner, its agents, employees and anyone else acting for or on behalf of any of them, and any other person or entity for whom any of them may be legally responsible, from and against all claims, suits, actions, damages, fees, penalties and/or liabilities, including, without limitation, court costs and reasonable attorneys' fees, of any nature whatsoever which arises out of, or is connected with, or are alleged to arise out of or be connected with rights of claims of rights in such Drawings and Specifications or other documents. The Architect shall also defend all actions or claims charging infringement of any copyrights or patents by reason of the use or adoption of any designs, Drawings or Specifications supplied by it and shall hold the Owner, its agents and employees harmless from claims, loss, damages, liability, costs and expenses (including attorneys' fees) resulting therefrom. The Architect's agreement of indemnity shall survive final payment and the termination of this Agreement.

§ 7.3.2 The Owner shall be permitted to authorize the Construction Manager, Contractors, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Project Drawings or Specifications appropriate to and for use in their execution of the Work by license granted in this Article.

§ 7.3.3 Notwithstanding the transfer of ownership set forth in Section 7.3 above, it is agreed and acknowledged that:

- .1 Drawings and Specifications prepared by the Architect will contain numerous design details and typical specifications ("Standard Details/Specifications") which, collectively, form a part of the design for the Project but which, separately, are not Project specific, are related to function as compared to design form, are repetitive in nature and were not specifically developed for or identifiable with the Project; and
- .2 Given the above, the Standard Details/Specifications shall remain the property of the Architect and may be used by the Architect on other projects, in other contexts and/or for other clients, so long as they are not collectively used in a manner which replicates the overall design of the Project.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the modified AIA Document A232–2009, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Architect shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Owner, and its officers, board members, employees and representatives ("Indemnitees"), from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or relating to the negligent or willful acts or omissions of the Architect or those for whom the Architect is responsible, provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property, regardless of whether caused in part by one or more of the Indemnitees, and regardless of any claim of negligence by one or more of the Indemnitees. The indemnification obligations set forth above shall survive completion of the performance and/or termination of this Agreement. With respect to any claim against one or more Indemnitees asserted by an employee of the Architect (or an employee of those for whom the Architect is responsible), the indemnification obligation set forth herein shall not be reduced or limited by any statutory cap or other limitation on the amount or type of damages, compensation or other benefits payable by Architect (or those for whom Architect is responsible) under worker's compensation acts, disability benefit acts or other employee benefit acts.

§ 8.1.4 The parties agree to provide one another with written notice of a dispute within a reasonable time, not to exceed thirty (30) days, after obtaining knowledge of the same and shall include: (1) a statement specifying that a dispute has occurred that falls within the scope of this Article, (2) a statement of the party's position and a summary of evidence and arguments that support such position, and (3) the name and title of the disputing party's authorized representative. Within twenty (20) days after receipt of the disputing party's notice, the responding party shall submit a written response to the disputing party. The response shall contain: (1) a statement of the responding party's position and a summary of evidence and arguments that support such position; and (2) the name and title of the responding party's authorized representative. In the absence of an agreement to the contrary, the parties' authorized representatives shall meet in Marion County, Indiana, at a mutually acceptable time and place within ten (10) days after the disputing party receives a response and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the dispute has not been resolved within forty (40) days after the disputing party receives the response, or if the responding party refuses or fails to comply with the provisions of this Section, then the disputing party may commence legal action against the responding party.

§ 8.2 Mediation

§ 8.2.1 Although the parties to the Contract may agree to mediation, mediation as described in Section 8.2 shall not be a condition precedent to litigation by either party. The exclusive venue for all claims, disputes or litigation arising out of the Contract or the Contract Documents shall be in Marion County, Indiana.

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

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

(Paragraphs deleted)

§ 8.3 Exclusive Venue For Litigation And Attorneys' Fees

§ 8.3.1 Although the parties to the Agreement may agree to mediation, mediation shall not be a condition precedent to litigation by either party. The exclusive venue for all claims, disputes or litigation arising out of the Contract or the Contract Documents shall be in Marion County, Indiana.

(Paragraph deleted)

§ 8.3.2 In the event that a party defaults in its performance or observance of any of the terms, conditions or obligations contained in the Agreement, or in the event that either party has to employ attorneys to enforce any part of the Agreement, the prevailing party in any such action shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection therewith, including litigation, post-judgment proceedings and appeals. For the purposes of this Section, "prevailing party" shall mean the party that receives all or

substantially all of the relief sought by that party, based upon an assessment of the party's major arguments or positions taken in the suit or proceeding and whether it could fairly be said that party prevailed over the other party's major arguments or positions on major disputed issues. Any attorneys' fees and other costs and expenses incurred by either party in enforcing a judgment in its favor under the Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligations is intended to be severable from the other provisions hereof and to survive and not be merged in any such judgment.

(Paragraphs deleted)

§ 8.4 Architect's Consultants Bound

The Architect shall include in its contracts with its Consultants provisions that bind the Consultants to the dispute resolution procedures of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven (7) 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. The Architect's time schedules for the remaining services shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for 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 This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Architect in the event that the Project is permanently abandoned. If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven (7) days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

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

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

(Paragraph deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in the modified AIA Document A232–2009, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement, any portion of this Agreement, or any right, interest, privilege, duty, claim, defense, chose of action or liability arising out of or relating to this Agreement without the written consent of the other, and any purported assignment in violation of this prohibition shall be void, except that the Owner may assign this Agreement to a separate building corporation if the building corporation agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of 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, or that, in the opinion of Architect, might be alleged or construed to impose a duty on the Architect beyond those duties imposed by this Agreement or subject the Architect to liabilities, claims or causes of action other than those that would be available to the Owner under this Agreement.

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

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

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

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

§ 10.9 E-VERIFY PROVISIONS

§ 10.9.1 As required by Indiana Code §22-5-1.7, as amended, Architect will enroll in and verify the work eligibility status of all newly hired employees through the E-Verify Program for as long as the program remains in existence. The Architect will sign Owner's affidavit to this effect, as well as certifying that the Architect does not knowingly employ an unauthorized alien.

§ 10.9.2 Architect represents that it is enrolled in and verified the work eligibility status of all newly hired employees of the Architect through the E-Verify Program as defined herein; however, Architect is not required to verify the work eligibility status of all newly hired employees of the Architect through the E-Verify Program if the E-Verify Program no longer exists and Architect signs an Affidavit affirming that the Architect does not knowingly employ an unauthorized alien. E-Verify Program means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603) (the "E-Verify Program").

§ 10.9.3 Architect and its consultant(s) may not knowingly employ or contract with an unauthorized alien; or retain an employee or contract with a person that the Architect or its consultant subsequently learns is an unauthorized alien. If Architect violates this requirement, the Owner shall require in writing that the Architect remedy the violation not later than thirty (30) days after the date the Owner notifies the Architect of the violation. There is a rebuttable presumption that Architect did not knowingly employ an unauthorized alien if the Architect verified the work eligibility of the employee through the E-Verify Program. If the Architect fails to remedy the violation within the thirty (30) day period, the Owner shall terminate the Agreement with Architect for breach. However, if Owner determines that terminating the Agreement would be detrimental to the public interest or public property, the Owner may allow the Agreement to remain in effect until the Owner procures a replacement Architect. If the Owner terminates the Agreement, the Architect shall be liable to the Owner for any and all actual damages incurred, including, but not limited to, attorneys' fees.

§ 10.9.4 Architect's consultant(s) shall certify to Architect in a manner consistent with federal law that the Architect's consultant(s), at the time of certification, does not knowingly employ or contract with an unauthorized alien; and has enrolled and is participating in the E-Verify Program.

§ 10.9.5 Architect shall maintain in its files a certification of each of its consultant(s) throughout the duration of the term of this Agreement and the term of Architect's agreement with its consultant(s).

§ 10.9.6 Termination of the Agreement for violation of this requirement may not be considered by the Architect or its consultant(s) as a breach of contract by the Owner.

§ 10.10 BACKGROUND CHECKS

§ 10.10.1 The Owner will require the Architect to conduct a background check for criminal history for all workers on the Project in compliance with Indiana Code §20-26-5-10 and §20-26-5-11 for the last ten (10) years.

§ 10.10.2 The Architect shall provide, when awarded the right to provide services under this Agreement, a list of all personnel used by or on behalf of the Architect, whether employed by them or not, who will be engaged in the providing services. The list of persons shall be provided written evidence of a criminal record search with respect to all persons on the list dated within thirty (30) days of the said date of the Agreement and extending at least ten (10) years prior.

§ 10.10.3 Architect agrees that no person will be providing services who has any criminal conviction for any type of behavior that would place the students or staff at risk. If evidence of such behavior occurs after this initial search, but during their employment on Project, such worker shall be removed immediately from the Project and shall be banned for the duration of the Project. Evidence of behavior that is prohibited would include, but not limited to, the following:

- (1) Murder [IC §34-42-1-1].
- (2) Causing suicide [IC §35-42-1-2].
- (3) Assisting suicide [IC §35-42-1-2.5].
- (4) Voluntary manslaughter [IC §35-42-1-3].
- (5) Reckless homicide [IC §35-42-1-5].
- (6) Battery [IC §35-42-2-1] unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (7) Aggravated battery [IC §35-42-2-1.5].
- (8) Kidnapping [IC §35-42-3-2].
- (9) Criminal confinement [IC §35-42-3-3].
- (10) A sex offense under ([IC §35-42-4].
- (11) Carjacking [IC §35-42-5-2].
- (12) Arson [IC §35-43-1-1] unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (13) Incest [IC §35-46-1-3].
- (14) Neglect of a dependent [IC §35-46-1-4(a)(1) and IC §35-46-1-4(a)(2)] unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (15) Child selling [IC §35-46-1-4(b)].
- (16) Contributing to the delinquency of a minor [IC §35-46-1-8] unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (17) An offense involving a weapon under IC §35-47 unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (18) An offense relating to controlling substances under IC §35-48-4 unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3 unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

- (20) An offense relating to operating a motor vehicle while intoxicated under IC §9-30-5 unless five (5) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.
- (21) An offense that is substantial equivalent to any of the offenses listed in this subsection in which the judgment of conviction was entered under the law of any other jurisdiction.

Should the Architect change personnel during the existence of the Agreement providing for services, it shall at least ten (10) days prior to using any other personnel other than those previously disclosed, provide the same information for the new personnel as provided for under the terms of the provision.

§ 10.11 DRUG TESTING

§ 10.11.1 The Owner will require the Architect to conduct testing for drugs and alcohol for all workers on the Project. Drugs and alcohol shall be as defined by Indiana Code §35-48-4-4. The Architect shall provide, when awarded the right to provide services under this Agreement, a list of all personnel used by or on behalf of the Architect, whether employed by them or not, who will be engaged in the providing of services. The list of persons shall be provided written evidence of drug and alcohol testing with respect to all persons on the list dated within seven (7) days of the said date of the Agreement. Architect agrees that no person will be providing services who has tested positive to any of the items included and shall be banned from the jobsite for the duration of the Project. Continued testing shall be conducted throughout the Project duration every six (6) months maximum. Any persons testing positive shall be removed immediately from the site and shall be banned from the jobsite for the duration of the Project. The Architects and their employees shall meet all State and Federal statutory requirements.

§ 10.12 FIRE ARMS

§ 10.12.1 There shall be no firearms allowed on the Project site or anywhere within the Project property. Exceptions would be made for law enforcement officials, security forces required elsewhere by these Specifications, or per other requirements or allowances specifically made by the Owner.

§ 10.13 NO SMOKING OR TOBACCO

§ 10.13.1 There shall be no smoking or tobacco use allowed within the Project buildings, on the Project site or anywhere within the Project property. Violators shall be removed from the Project immediately. Any construction materials in contact with or exposure to such tobacco products shall be removed and replaced with new, at the responsible party's expense.

§ 10.14 ADDITIONAL PROTECTIONS

§ 10.14.1 Additional requirements and levels of protection are afforded to Public Buildings in compliance with Indiana Code §16-41-37, and include an enclosed structure or part of an enclosed structure that is one of the following:

- (1) Occupied by an agency of state or local government.
- (2) Used as a classroom building or a dining area at a state educational institution (as defined in IC §20-12-0.5-1).
- (3) Used as a public school (as defined in IC §20-18-2-15).
- (4) Licensed as a health facility under IC §16-21 or IC §16-28.
- (5) Used as a station for paid firefighters.
- (6) Used as a station for paid police officers.
- (7) Licensed as a child care center or child care home or registered as a child care ministry under IC §12-17.2.
- (8) Licensed as a hospital under IC §16-21 or a county hospital subject to IC §16-22.
- (9) Used as a provider's office.
- (10) School bus (as defined in IC §16-41-37-2.3).

§ 10.15 Policies Of Employment

§ 10.15.1 The Architect, and the Architect's consultants shall comply with all federal, state, and municipal and local rules, ordinances, rules, regulations, orders, notices and requirements relating to non-discrimination in employment, fair employment practices, and equal employment opportunity practices, without additional charge or expense to the Owner. The Architect, and the Architect's consultant's shall be responsible for and shall correct, at its own cost and expense, any violations of this Section resulting from, or in connection with, performance of the Work at the Project.

The Architect shall also, if requested by the Owner, furnish such proof of its compliance with the requirements this Section. Upon any alleged violation of this Section, the Architect shall indemnify and hold harmless the Owner against any and all claims, losses, costs, damages and expenses, including attorneys' fees, asserted against the Owner.

§10.16 Equal Opportunities For Minority, Women And Veteran or Disabled Business Enterprises

Improvements under this Agreement are subject to the Owner's initiative concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes. Architect, has submitted and Owner accepted Architect's participation levels for minority business enterprises, women's business enterprises, and veteran or disabled business enterprises in the performance of the Work consistent with the goals of delivering the Project on time and within the budgeted amount. The services are subject to the provisions of equal opportunities for minority business enterprises, women's business enterprises and veteran or disabled business enterprises to participate in procurement and contracting processes, consistent with the goals of delivering the Project. In connection with the Substantial Completion, Architect shall certify compliance with those goals and the level of participation of minority business enterprises, women's business enterprises, veteran or disabled business enterprises that was achieved in connection with undertaking the services. The Architect, and the Architect's consultants shall comply with any guidelines or compliance programs required by the Owner, including, but not limited to, Owner's Minority, Women, and Veterans or Disabled Business Enterprises Project-Wide Participation Program, if any.

ARTICLE 11 COMPENSATION

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

(Paragraph deleted)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as agreed by the parties and at the attached rates.

See attached.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as agreed by the parties and at the attached rates.

See attached

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

NONE

§ 11.5 Compensation for Basic Services is based on a stipulated sum, the compensation for each phase of services shall be as follows:

Programming/Standards I		
Contractual/Schematic Design Phase	percent	(%)
II	()
Design Development Phase III	percent	(%)
Construction Documents Phase IV	percent	(%)
Bidding or Contract _____ Phase V	percent	(%)
Construction Admin & Closeout Phase VI	percent	(%)

Total Basic Compensation	one hundred percent (100	%)
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(Paragraph deleted)

§ 11.6 [Stricken].

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

(Paragraphs deleted)

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

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

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

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10%) of the expenses incurred, with the maximum not to exceed "\$_____ for each elementary Project.

§ 11.9 Compensation for Use of Architect's Drawings and Specifications

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

See Article 7

§ 11.10 Payments to the Architect

§ 11.10.1 An initial payment of zero dollars (\$0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within thirty (30) days of presentation of the Architect's invoice. Amounts unpaid sixty-days (60) days after the invoice date shall not bear interest, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

None

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, or to offset or compensate the Owner for sums that are claimed by the Owner as loss or damages caused

by alleged negligence or other purported fault of the Architect unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 ADDITIONAL PARAMETERS

§ 12.1.1 The physical parameters for the Project are as set forth in the program identified in Section 2.2.4. Additional parameters for the Project are contained in the Construction Documents and any other restrictions on the site available by actual/constructive knowledge or notice.

§ 12.2 PROJECT TEAM

§ 12.2.1 The Architect agrees and acknowledges that the timely and cost effective completion of the Project is in part dependent on there being no changes in the representative(s) of the Agreement. If the Architect contemplates any changes in the representative(s), the Architect shall immediately provide written notice to the Owner of any proposed change. The Owner shall have the right to withhold consent to another individual serving as a designated representative other than one already designed, which consent shall not be unreasonably withheld. If the Owner consents to a new representative, the Architect shall ensure that the change in representative shall not have any negative impact on the Architect's Services required under this Agreement. The Architect further agrees that it will not charge Owner for any cost, service, expense, or any other item that Architect incurs because of the change in representative other than charges that Owner has already agreed to pay. The Architect shall also reimburse Owner for any cost, loss, damage (including attorney's fees) that Owner incurs because of any change in the designated representative(s) and that such obligation shall continue notwithstanding the expiration or termination of this Agreement.

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 This modified AIA Document B132™–2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
None
- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
None
- .4 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

Modified AIA Document A232-2009, General Conditions of the Contract for Construction

.5 Project Addenda:

Date	Title	Amount
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User Notes:

(1232093781)

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

OWNER (*Signature*)

ARCHITECT (*Signature*)

Board President.

(*Printed name and title*)

MSD of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, IN 46240

OWNER (*Signature*)

Board Secretary.

(*Printed name and title*)

MSD of Washington Township
8550 Woodfield Crossing Blvd.
Indianapolis, IN 46240

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