

**THE AVON LAKE CITY SCHOOL DISTRICT BOARD OF EDUCATION  
REQUEST FOR QUALIFICATIONS  
FOR DESIGN PROFESSIONAL SERVICES**

**Dated September 25, 2023**

**Project Owner:** Avon Lake City School District Board of Education

**Project Name:** Tennis Court Renovation Project

**Project Location:** 175 Avon Belden Road, Avon Lake, Ohio 44012

**Delivery Method:** General Contractor per the Ohio Revised Code

**Deadline to Submit Qualifications:** **12:00 p.m.** local time, **October 13, 2023**

Avon Lake City School District Board of Education (the "Owner"), is soliciting Statements of Qualifications ("SOQs") from qualified individuals or firms to provide Design Professional Services for its Tennis Court Renovation Project (the "Project"). The Owner reserves the right to add additional scope and services if further improvements are identified and funds are available. The Owner anticipates that it will use a general contractor for the construction of the Project and statutory competitive bidding as required by law.

Qualifications received may be retained in a file maintained by the Owner for design professional qualifications, unless the firm specifically requests not to be included in this file. The file may be used for projects or design needs for which design fees are estimated to be less than \$50,000. Each firm is requested to provide annual updates to the qualifications to keep them current.

**Submittals:**

Interested individuals or firms must submit **1 hard copy and 1 electronic copy in PDF format** on CD-DVD or flash drive, of their SOQs, enclosed in a sealed envelope. The envelope shall be plainly marked on the outside "**AVON LAKE CITY SCHOOL DISTRICT BOARD OF EDUCATION – TENNIS COURT RENOVATION PROJECT DESIGN PROFESSIONAL QUALIFICATIONS.**"

SOQs must be delivered to the following address, before the submittal deadline above:

Avon Lake City School District Board of Education  
ATTN: Dr. Ned Lauver, Director of Operations  
175 Avon Belden Road  
Avon Lake, Ohio 44012

**Hand deliveries to this location may be made during the Owner's operating hours and must be made before the deadline. Respondents are responsible for confirming current operating hours.**

Firms must also upload a PDF copy of their SOQ to the following Sharefile link:

<https://bricker.sharefile.com/r-rda4ed5465b0548a8b7ea33a82b0c3904>

The Owner reserves the right to waive any defect or technicality in any SOQ received or to eliminate any firm that submits an incomplete or inadequate SOQ or that is not responsive to the requirements of this RFQ.

### **Questions, Clarifications and Addenda:**

All questions concerning this RFQ shall be directed in writing via email to Dr. Ned Lauver, Director of Operations, at [ned.lauver@avonlakecityschools.org](mailto:ned.lauver@avonlakecityschools.org) by **5:00 p.m., 7 calendar days prior to the submittal deadline**. Questions will be reviewed, and the Owner will determine whether any addenda should be issued as a result of any pertinent or substantive inquiries. Addenda will be issued to all firms that have requested the RFQ for the Project. Firms shall not rely on any oral instructions or answers.

### **Background and Project Description:**

- A. The Project is anticipated to include the design and construction administration for the renovation of the District's tennis courts. The selected firm will be given access to any blueprints or plans the Owner may have in its records.
- B. The Design Professional will assist with budget development, subject to the Owner's approval.
- C. The Owner anticipates that the Design Professional will assist the Owner in program development/evaluating the program for the Project. The Owner anticipates the Design Professional will provide cost estimating (for base bid scope and individual alternates), design phase services, and construction administration services.
- D. The selected design professional will provide cost estimating (for base bid scope and individual alternates), design phase services, bid phase services including assistance with bid tabulation/evaluation and scope review with bidder(s), and construction administration services.
- E. The Owner anticipates that the Design Professional will assist with developing the schedule for the Project.

### **Qualifications:**

Submittals should include the following:

- 1. Firm's History – Information about the firm's history (number of years in business, etc.).
- 2. Education & Technical Training/Experience – Identify your firm's assigned team for the Project. Provide the education, technical training, and experience of the principal in charge of the Project and the Project Manager, as well as any other individuals assigned to the Project, and proposed consultants, if any. Detail the assigned team's experience in providing substantially similar services (i.e., programming/program evaluation, estimating, design/construction administration services for similar facilities and similar projects with an emphasis on similar projects) and the team's experience working together on similar projects. Describe:
  - a. Experience, planned approach, and specific expertise in assisting with Project planning, estimating, and schedule development. Include the team's experience leading and participating in meetings with the public entity boards on similar projects.

- b. Approach to incorporating practical, tested, energy efficiency and sustainability features into similar projects that will enhance the design, be easy/economic to maintain and contribute to energy conservation and savings for the long-term maintenance and operations;
    - c. Experience and approach to obtaining all applicable permits and governmental approvals (including approval of plans) from the Authorities Having Jurisdiction, including but not limited to interpreting requirements/obtaining approval for zoning and the design review board.
  3. Workload – Describe the current workload and availability of the firm and personnel assigned to the Project team, the available equipment and facilities, and the team’s ability to perform the required professional design services competently and expeditiously (i.e., are resources currently available or committed to other projects).
  4. Proposed Schedule –
    - a. Proposed design phase milestones for completion of the Design Professional’s services including completion dates or durations in calendar days for programming, design documents, and construction documents, as well as an anticipated timeline for the bidding, construction and close-out phases of the Project. Provide a detailed narrative demonstrating the firm’s ability to manage the Project schedule during the design phase and construction phase.
  5. Past Performance based on References – Past performance as reflected in evaluations of previous and current clients for which the firm has provided or is providing similar services; please include a list of at least five (5) relevant projects involving similar services performed by the firm during the past five years. Include the following information for each project:
    - a. Project owner, name of project and location;
    - b. Brief description of the project, including size of project (e.g., square footage/area) and project delivery model (e.g., general contractor, construction manager at risk, design-build, etc.);
    - c. The initial scheduled completion date and the actual date services were completed or the current anticipated completion date;
    - d. Construction budget, change order amounts, and actual construction cost;
    - e. Your firm’s assigned team members for the project;
    - f. Other relevant information about the project and the firm’s services; and
    - g. Reference contact person and phone number.
  6. Past Performance with Owner – Describe the firm’s past experience with the Owner, if any.
  7. Proximity to the Site – The firm’s location and proximity to the site for purposes of site visits and attending meetings with the Owner.
  8. Project Estimates and Budget
    - a. Describe the firm’s procedures for Project budget development and cost estimates, including but not limited to, procedures for initial budget development with the

Owner, cost estimating, and the process for reviewing and evaluating the budget in coordination with the Owner at various stages of the design process; and

- b. Describe the firm's experience over the past five years with preparing or evaluating project estimates and construction costs, monitoring project costs, and completing a project within the initial budget with emphasis on any experience with general contractor projects.
9. Unique Qualities and/or Expertise of the Assigned Team – Identify the unique competence, qualities, and/or expertise that set the firm's assigned team apart from other firms and teams as it relates to the required services for the Project. List a maximum of four specific and unique qualities that set your team apart from others in relation to the Owner's Project.
10. Professional Liability Insurance Coverage & Claims History – Include:
  - a. The coverage amounts and types of insurance coverage, particularly the firm's commercial general liability and professional liability limits;
  - b. Specific information about any claims asserted against the firm or its professional liability carrier within the last five years, including the resolution of the claim(s);
  - c. Any statistics kept internally on change order history, project completion, and budget considerations, recognizing that each change order is unique as to its causes. The Owner is interested in information that will show consideration of budget requirements; and
  - d. Specific information about any claims asserted by the firm within the last five (5) years, including the resolution of the claim(s).
11. Construction Phase Services – The firm's practices with respect to site visits and oversight of the Project are subject to the Architect Agreement requirements. Generally, does the frequency of visits typically change based upon the stage of construction? What amount of time is spent on average on site during the construction phase? What is the background of the individuals who would be visiting the Project during construction? What documentation of such site visits is prepared and maintained?
12. Proposed Modification to Agreement Terms – The Architect Agreement, which is a modified AIA Document B104-2017 Standard Abbreviated Form of Agreement Between Owner and Architect, is attached hereto as **Exhibit A** (the "Architect Agreement"). If your firm would like to propose any deviation from the terms of the Architect Agreement, you must identify those terms and submit your proposed modified language in detail in your SOQ in a section clearly titled "Proposed Modification to Agreement Terms". Failure to do so shall be deemed to be a waiver of the right to negotiate the terms. Modifications may be accepted in the Owner's sole discretion and may be taken in to account by Owner when ranking the most-qualified firms.

**Pre-Submittal Site Visit:**

Firms submitting SOQs may contact Dr. Ned Lauver, Director of Operations, at [ned.lauver@avonlakecityschools.org](mailto:ned.lauver@avonlakecityschools.org) to arrange a site visit. Site visits will only occur during the Owner's regular business hours.

**Evaluation & Selection:**

Firms submitting SOQs for the available contract will be evaluated and the Owner will select and rank at least three firms which it considers to be the most-qualified to provide the required services. However, if the Owner determines that fewer than three qualified firms are available, it will select and rank those firms. Such evaluation and selection is subject to the Owner's absolute right to stop the process and refrain from entering into any contract. The Owner may require additional information from one or more Respondents to supplement or clarify the SOQs submitted. The individual project teams from select firms may be asked to meet with Owner representatives to present the firm's qualifications and proposed approach for the Project before final ranking and selection is made. The individual team members that will be involved with the Project must attend such meeting.

Upon selection of the firm determined to be most qualified to provide the requested services for the Project, the Owner reserves the right to negotiate the price for services to be provided, with such firm. If the Owner and the selected firm agree to a price and scope of services, the form of agreement between the Owner and the selected firm will be the attached Architect Agreement with modifications proposed in accordance with this RFQ, if accepted by the Owner in its sole discretion. Any modifications to the attached Architect Agreement will be in the Owner's sole discretion, and the Owner at its option may accept or reject the proposed modifications. The Owner reserves the right to take any action affecting the RFQ process or the Project that it deems to be in its best interest.

Qualifications received may be retained in the file maintained by the Owner for design professional qualifications; each firm is requested to provide annual updates to the qualifications to keep them current.

**Attachments:**

Exhibit A – Architect Agreement



# AIA® Document B104® – 2017

## Standard Abbreviated Form of Agreement Between Owner and Architect

THIS DOCUMENT HAS BEEN MODIFIED FROM ITS ORIGINAL VERSION.

**AGREEMENT** made as of the date signed by Owner

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

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

Avon Lake City School District Board of Education  
175 Avon Belden Road  
Avon Lake, Ohio 44012

The Owner’s Representative is: Dr. Ned Lauver, Director of Operations  
Email: [ned.lauver@avonlakeschools.org](mailto:ned.lauver@avonlakeschools.org)

and the Architect (also called the Design Professional):  
*(Name, legal status, address and other information)*

[Redacted]

The Architect’s Representative is: [Redacted]

The Architect was selected by the Owner [Redacted].

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

Tennis Court Renovation Project

The Owner reserves the right to add additional scope and services as further improvements are identified and funds are available. The parties will negotiate a reasonable compensation for these services and amend this Agreement in writing to include the additional services and compensation, if any.

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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**ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth below:  
*(State below details of the Project’s site and program, Owner’s contractors and consultants, Architect’s consultants, Owner’s budget for the Cost of the Work, and other information relevant to the Project.)*

The Project shall consist of the following:

As part of its Basic Services, the Architect will assist with budget development for the Project, as requested by the Owner and subject to Owner’s approval in its sole discretion. Throughout the term of this Agreement the Architect will perform its services based upon the Owner’s then-current budget.

Design phase milestone dates, if any:

<b>Task</b>	<b>Date</b>
Completion of Construction Documents	
Anticipated Commencement of Construction	
Anticipated Completion of Construction	

The Architect shall complete its Design Phase and Construction Documents Phase services including review and approval by the Owner, so that procurement of the general contractor will begin by the date set forth above. As part of its Basic Services, the Architect will assist with schedule development for the Project, as requested by the Owner. The Design milestone and completion dates stated herein shall only be changed by written, signed agreement between the Owner and Architect.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties may appropriately adjust the schedule, the Architect's services and the Architect's compensation in accordance with the terms of this Agreement.

§ 1.3 [Not Used.]

§ 1.3.1 [Not Used.]

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 **Standard of Care.** The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect's failure to comply with the Standard of Care shall be a material breach of the Agreement.

§ 2.2 The Architect shall maintain the following insurance until termination of this Agreement and for a period of five (5) years following final completion of the Project. However, if professional liability and/or commercial general liability coverage is claims-made coverage, coverage must be maintained in effect for ten (10) years after Final Completion of Work.

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

**.1 General Liability**

Comprehensive General Liability with policy limits of not less than Two Million (\$2,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage. A per project aggregate endorsement shall be included in the General Liability and shall provide that the general aggregate limit applies separately to the Project. This endorsement shall be Insurance Services Office, Inc. (ISO) endorsement CG 25 03, or equivalent

**.2 Automobile Liability**

Automobile Liability covering owned and non-owned vehicles operated by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage

**.3 Workers' Compensation**

Workers' Compensation at statutory limits and Employers Liability with a policy limit as required by Ohio law

**.4 Professional Liability**

Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate.

§ 2.2.5 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.2.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Agreement. The certificates will name the Owner as the holder of the certificate of insurance



listing the required coverages and as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

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

§ 3.1 The Architect's Basic Services consist of those described in this Agreement, Article 3, and **Exhibit A** and include usual and customary civil, structural, mechanical, plumbing, and electrical engineering services as applicable to the Project. Services not set forth in this Agreement are Additional Services.

§ 3.1.1 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. If Owner performs work on the Project or other projects with separate consultants, equipment suppliers, or other vendors, Architect shall cooperate with and coordinate its design and activities with those of such separate consultants, equipment suppliers, or other vendors so that the Project and other projects can be completed in an orderly and coordinated manner without disruption. As applicable, the Architect shall review the reports and shop drawings from Owner's consultants, equipment suppliers, or other vendors and coordinate its design accordingly. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. 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.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall advise the Owner in writing of the results of these contacts and any impacts on Project requirements. The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.4 To the extent needed to provide its Basic Services and to the extent existing conditions are reasonably visible and accessible, the Architect shall provide services to investigate existing conditions or facilities.

§ 3.1.5 In providing services under this Agreement, the Architect shall, in accordance with the Standard of Care, comply with all applicable federal, state, and local laws, regulations, and orders in effect at the time of submission of the Contract Documents to the governing building authority. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the project. The Plans and Specifications and the improvements, if built in accordance with them, shall conform to all currently applicable statutes, regulations, ordinances, and orders, except to the extent that the Architect has advised the Owner in writing that there is an ambiguity or an interpretation by a code official contrary to that by the Architect or that a variance shall be necessary. The Architect shall not be responsible for compliance of any contractor with currently applicable statutes, regulations, ordinances, and orders but shall report any known deviation therefrom to Owner in writing.

### **§ 3.2 Design Phase Services**

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, consult with the Owner to develop the program for the Project, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

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

Init.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.5 The Architect shall submit the Design Documents to the Owner for the Owner's approval.

### § 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the 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 3.4.4.

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

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

§ 3.3.4 The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall work with Owner's legal counsel to assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

### § 3.4 Construction Phase Services

#### § 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor including, but not limited to, site visits and review and processing of submittals, requests for information, change orders and applications for payment, including review of prevailing wage certified payroll reports, as set forth below and in the agreement between the Owner and Contractor for the Project, including the General Conditions of Contract (if applicable).

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

§ 3.4.1.3 Subject to Section 4.2, 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. Notwithstanding the foregoing, Architect will coordinate a meeting with the Contractor(s) prior to the expiration of the one-year period for correction of Work as a Basic Service and will participate in the meeting and work with Owner to address any issues identified during the meeting.

§ 3.4.1.4 Unless otherwise provided in the agreement between the Owner and the Contractor, the Architect shall coordinate and lead progress meetings to be attended by the Owner, Contractor, Architect and any necessary subcontractors and subconsultants. The Architect shall provide an agenda in advance of each meeting and shall be responsible for memorializing all Project meetings. Meeting minutes shall be distributed by the Architect no later than 24 hours after any meeting. To the extent the Contractor is responsible for preparing the meeting minutes, the Architect will review the meeting minutes and report any inconsistencies in writing to the Owner.

### **§ 3.4.2 Evaluations of the Work**

**§ 3.4.2.1** The Architect, and the Architect's subconsultants, as necessary, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.2, 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. Architect's observations must include observing final testing and start-up of equipment. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Nothing in this section relieves Architect of its duty to use reasonable care to endeavor to protect Owner from defective and non-conforming Work in accordance with its Standard of Care.

**§ 3.4.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work. The Architect shall reject Work that it knows or within the Standard of Care should have known does not conform to the Contract Documents and shall notify the Owner and Contractor of the rejection of such Work.

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

**§ 3.4.2.4** 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.

**§ 3.4.2.5** Unless Owner and Contractor designate another person to do so, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents. Architect's initial decision on claims, disputes or other matters in question between Owner and Contractor, except for those relating to aesthetic effect, is subject to mediation and further dispute resolution as provided in this Agreement and in the Contract Documents.

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

**§ 3.4.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. Architect will not certify the final payment application to the extent Contractor has not submitted appropriate lien waivers or other documents required by the Contract Documents. Notwithstanding the foregoing, Architect has discretion to adjust the amount certified when missing documentation is deemed by Architect, in consultation with Owner, to be relatively inconsequential or beyond the control of Contractor, such that holding all payment for those items would be detrimental to the Project or unfair to Contractor.

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

**§ 3.4.3.3** Consistent with its Standard of Care, Architect will advise Owner in writing at the time of the delivery of each certification for payment of any defects or problems with respect to the Work, which can be reasonably observed in the course of Architect's observations, given the stage of completion of the Work.

#### **§ 3.4.4 Submittals**

**§ 3.4.4.1** 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.

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

**§ 3.4.4.3** The Architect shall review and respond to written requests for information about the Contract Documents. 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.

#### **§ 3.4.5 Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. Architect will review costs proposed by Contractor(s) for changes to the Work and negotiate a reasonable cost for the change, which will be documented by written change order and approved by Owner.

**§ 3.4.5.1** Architect will maintain a record of all change orders for the Project. Such record shall show the status of each change order, identify potential change orders and include the name of the contractor, the subject of the change order, the dates of approval, the estimated cost of the change order (if not approved), the number of days additional time requested by the contractor for the Work, and the number of days approved by Architect and Owner to accomplish the Work. Architect will furnish an updated copy of the change order record to Owner upon request.

#### **§ 3.4.6 Project Completion**

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; prepare a list of incomplete or unsatisfactory items and a schedule for their completion for each Contractor; conduct a final review of the Work; evaluate completion of the Work included on the punch list; forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating that the Work complies with the requirements of the Contract Documents. To the extent a Contractor has not completed its Work or there are defects or non-conforming Work following the date for Substantial Completion, Architect, in its role as design professional, will communicate with Contractor and monitor its progress to complete its Work and correct any such defective or non-conforming Work.

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

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental and Additional Services are not included in Basic Services but may be required for the Project. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. If Owner requests a service not indicated as being included in Basic Services or shown as not provided, the parties will negotiate a reasonable compensation for that service and will sign a written amendment to this Agreement to add the services and related compensation.

*(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)*

N/A

§ 4.2 The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner in writing, in accordance with the Agreement. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 may entitle the Architect to compensation pursuant to Section 11.3. Nothing in this Agreement shall relieve the Architect of its professional duties related to this Project. Should the Architect believe that proposed Additional Services are essential for the performance of the Architect's professional responsibilities, the Architect shall clearly notify the Owner of that fact in writing, stating the objective basis for that belief.

§ 4.2.1 The Architect shall provide services necessitated by a material change in the Initial Information, material changes in previous instructions or approvals given by the Owner, or a material change in the Project including size; quality; complexity; the Owner's schedule or budget for Cost of the Work; or procurement or delivery method as an Additional Service.

§ 4.2.2 The Architect has included in Basic Services bi-weekly visits to the site by the Architect during construction or other intervals appropriate to the stage of construction. The Architect shall conduct site visits in excess of that amount with Owner's prior written authorization, as an Additional Service. On site visits shall be in addition to weekly job meetings.

§ 4.2.3 The Architect shall, review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service. However, the Architect shall seek written and signed consent from the Owner before performing any Additional Service(s) that will require additional compensation or an increase to Architect's Compensation.

§ 4.2.4 If the services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Architect, the Architect may request additional compensation for the actual cost of performance to the extent the Architect demonstrates that such costs exceed the costs the Architect would have incurred in the absence of the delay.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

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

§ 5.3 The Architect shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect determines that such services are reasonably required by the scope of the Project.

§ 5.4 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 require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided as determined by Owner.

§ 5.5 To the extent available, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as soils, structural, mechanical, and chemical tests; tests for air and water pollution; and tests for hazardous materials.

§ 5.6 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.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, it being understood that the Owner has no duty to search for the same, nor is the Owner a professional skilled in finding such faults or defects.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

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

§ 5.10 [Not Used.]

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or 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 as provided in Initial Information, or otherwise provided by the Owner in writing, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive procurement/bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, contractor quotes/bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques in order to provide an estimate pursuant to the requirements of the Ohio Revised Code. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service, in accordance with this Agreement.

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

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments. The Architect shall provide these services and update the design documents accordingly, at no additional cost to the Owner.

§ 6.6 If the Architect's estimate(s) for the Work for the Project is exceeded by the lowest bona fide contractor quote or bid, the Owner may, at its option:

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.1, 6.6.2, or 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's revised budget for the Cost of the Work or other adjustments authorized by the Owner. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce (including electronically) applicable published or issues portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. In the event this Agreement is terminated for whatever reason, Architect grants Owner a nonexclusive license permitting Owner to authorize other similarly credentialed design professionals to reproduce and, as permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses.

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

Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

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

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

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

§ 8.1.2 Subject to the agreement of any applicable property insurer, to the extent damages are actually recovered from 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 agreement between Owner and Contractor, as executed for the Project. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

### § 8.1.4 Indemnification

Notwithstanding any other provision in this Agreement to the contrary, the Architect shall indemnify and hold harmless the Owner for all damages, losses, attorney fees or claims which the Owner sustains arising out of or related to any negligent act (including the negligent breach of this Agreement), error, omission or failure to exercise reasonable care skill or diligence on the part of the Architect, its employees, its agents, its consultants, or any party for which the Architect is responsible respecting the performance of any Work or Service in connection with the Project.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement may be subject to mediation if both parties agree in writing, and will be conducted pursuant to mutually agreed-upon procedures.

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

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

*(Check the appropriate box.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction as set forth in Section 10.1
- Other: *(Specify)*

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

### § 8.3 Arbitration [Not Used.]

§ 8.3.1 [Not Used.]

§ 8.3.1.1 [Not Used.]

Init.



§ 8.3.2 [Not Used.]

§ 8.3.3 [Not Used.]

**§ 8.3.4 Consolidation or Joinder [Not Used.]**

§ 8.3.4.1 [Not Used.]

§ 8.3.4.2 [Not Used.]

§ 8.3.4.3 [Not Used.]

§ 8.4 [Not Used.]

**ARTICLE 9 TERMINATION OR SUSPENSION**

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.7

*(Paragraphs deleted)*

[Not Used.]

§ 9.8 [Not Used.]

**ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located. The parties agree that jurisdiction for any disputes that arise in connection with this Agreement that are not settled through mediation will be the Court of Common Pleas for the county in which the Project is located and each party hereby expressly consents to the jurisdiction of such court. The parties expressly waive the right of removal of any litigation arising out of this Agreement to federal court.

§ 10.2 Terms in this Agreement shall have the same meaning as those in the modified (as prepared for the Project) agreement between Owner and Contractor.

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

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 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.

§ 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. However, it is understood that the Owner is an intended third-party beneficiary of Architect's agreements with its consultants for design and engineering services. The Architect shall incorporate the obligations of this Agreement into its respective consultant agreements and subcontracts.

§ 10.6 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, unless the toxic materials or substances were brought to the Project pursuant to the terms of the Contract Documents. Should Architect become aware of the presence of hazardous materials or toxic substances on the Project Site, Architect agrees to immediately report that presence to Owner in writing.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect will not publish other information regarding the Project without the Owner's prior written consent and the Owner agrees not to unreasonably withhold such consent. The Architect agrees to keep confidential and not to disclose to any third-party (without the advance written consent of the Owner or as otherwise permitted under this Agreement) any confidential, proprietary or privileged information or documentation of financial or strategic planning or operational information or documentation or any patient records or information

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

**ARTICLE 11 COMPENSATION**

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

- .1 Stipulated Sum  
*(Insert amount)*

The Architect's compensation for Basic Services shall include the following:

<b>Total Basic Services</b>	<b>\$</b>

- .2 [Not Used.]

*(Paragraph deleted)*

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

§ 11.2  
*(Paragraphs deleted)*  
[Not Used.]

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

Unless otherwise agreed by the parties, Additional Services shall be compensated at the Architect's Hourly Rates set forth in **Exhibit A** and shall be based upon written, signed agreement between the Owner and Architect. No Additional Services shall be performed without written, signed agreement between the Owner and Architect.

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent ( 0%), or as follows:

**§ 11.5** Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation shall be paid monthly. Architect will submit invoices for its services as they are completed up to the stipulated amounts stated in Section 11.1 above.

*(Table deleted)*

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

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

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

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

*(Table deleted)*

**§ 11.8 [Not Used]**

**§ 11.8.1**

*(Paragraphs deleted)*

**§ 11.8.2**

**§ 11.9 Payments to the Architect**

**§ 11.9.1 Initial Payment**

An initial payment of zero ( \$ 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.

**§ 11.9.2 Progress Payments**

**§ 11.9.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. Architect shall give the Owner seven days written notice of late payment before interest shall begin to accrue.

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

0 % zero

**§ 11.9.2.2 [Not Used.]**

Init.

§ 11.9.2.3 As applicable, Architect shall submit invoices tracking total Reimbursable Expenses costs against the not-to-exceed amount set forth in 11.1, or as otherwise requested by Owner. Where applicable, Architect's invoices shall show an hourly rate breakdown including time spent by each member of Architect's personnel. 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:  
(Include other terms and conditions applicable to this Agreement.)

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

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

§ 12.3 The Architect, consistent with its Standard of Care and professional skills, agrees, based upon the manufacturers' specifications or observations, that materials and equipment specified shall be adequate for the purposes for which they are specified.

§ 12.4 Consistent with its Standard of Care, the Architect shall endeavor to anticipate problems related to zoning, building permits, building envelope including roofs and walls, availability of utilities, equipment and material shortages, proper balancing of the heating, ventilating, and air conditioning systems, security systems, and supplier delays.

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

§ 12.6 **Privileged Communications.** All communications between the Owner's legal counsel and the Architect, while the Architect is acting as the agent for the Owner under the terms of this Agreement and which relate in any way to the administration of the construction of the Project or to the work of any Contractor, Subcontractor, materialman, or any other person rendering services in connection with the Project, is subject to the attorney-client privileged that can be waived only by the Owner. Any such communications and copies thereof that are written including without limitation, correspondence, notes, memoranda, notes of meetings and conversations that are reduced to writing and the like, upon notice from the Owner's legal counsel, shall be placed by the Architect in a separate file folder marked "Privileged and Confidential" and shall not be disclosed to any person other than the Architect's own legal counsel without the express written permission of the Owner. This provision is intended to protect the confidentiality of the Owner's communications with its counsel when the Architect comes into possession of such information in its capacity as agent of the Owner in the performance of its duties under this Agreement in the event of a dispute between the Owner and a third-party. This paragraph is not intended to impede communications between the Architect and the Architect's counsel or between the Architect and any Contractor seeking a decision from the Architect on a claim or dispute related to the Project.

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

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

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

**§ 12.10 Non-Discrimination.** Architect agrees:

- .1 That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Architect, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
- .2 That neither the Architect, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
- .3 That there shall be deducted from the amount payable to the Architect by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- .4 That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

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

**§ 12.12 No Findings for Recovery.** The Architect represents that the Architect is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Architect has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this section.

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

**§ 12.14 Assignment.** This Agreement shall not be assigned in whole or in part, including the right to payments, by Architect without Owner's prior written consent. This Agreement may be assigned by Owner to any entity as required by financing, if any, and the Architect agrees to execute whatever assignment documents are required by such entity as are related to the financing as long as Architect's rights and obligations under this Agreement are not affected.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

.1 AIA Document B104™–2017, Standard Abbreviated Form of Agreement Between Owner and Architect, as modified

.2  
*(Paragraphs deleted)*  
[Not Used.]

.3 Exhibits:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.)*

**Exhibit A** — Architect’s Modified Proposal, dated [redacted] to the extent not inconsistent with this Agreement. Any terms and conditions in the Architect’s Proposal are expressly rejected.

.4 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

Not Applicable

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

**AVON LAKE CITY SCHOOL DISTRICT BOARD OF EDUCATION**

[redacted]

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

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

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

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Date)*

**CERTIFICATE OF AVAILABLE FUNDS**  
(ORC Section 5705.41)

The undersigned, Fiscal Officer of the Owner hereby certifies that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the preceding agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

Date \_\_\_\_\_

\_\_\_\_\_  
Fiscal Officer

Init.