



New Milford Board of Education  
25 Sunny Valley Rd  
Suite A  
New Milford, CT 06776

## **NEW MILFORD PUBLIC SCHOOLS**

**PROJECT # RFQ/RFP E-2324-004 - HVAC A&E**

**ARCHITECTURAL AND ENGINEERING SERVICES**

**NEW MILFORD PUBLIC SCHOOLS  
FACILITIES CONDITION ASSESSMENT: HVAC**

New Milford Public Schools  
RFQ/RFP E-2324-004  
Architectural & Engineering Services  
NMPS Facilities Condition Assessment: HVAC

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## **1. INTRODUCTION**

The New Milford Public Schools (NMPS or the District) consists of five schools; the most recent constructed in 2000 and the earliest buildings from the 1960's. Throughout the year's renovations and additions occurred district wide in attempts to evolve with both a growing population and technological advancements. We are now looking to bring our schools up to more contemporary heating, ventilation, and cooling standards. The ultimate goal is to achieve better indoor air quality district wide for the health and well-being of our staff, students, and the community in accordance with current codes and standards.

Recently the State of Connecticut has passed legislation requiring school districts to engage in services for HVAC inspections and evaluations. These assessments will eventually be reported to the Department of Administrative Services (DAS) by January 1, 2025. In addition, DAS has and is currently making funds available, through grants, for addressing HVAC equipment improvements in schools.

The New Milford Board of Education is seeking statements of qualifications and pricing proposals from qualified firms to provide a facility condition assessment for all facility locations. The focus of the facility condition assessment will be limited to HVAC systems in order to comply with the new DAS regulations and statutory requirements. In addition, the selected firm must be able to provide analysis, narratives, and documents meeting the guidelines for the submission of grant applications to DAS for available HVAC indoor air quality grants.

## **2. SCOPE OF SERVICES**

The chosen firm shall provide for a uniform inspection and evaluation of the heating, ventilation and air conditioning system within each school building in the New Milford Public School District. These inspections and evaluations shall comply with current and newly established Department of Administrative Services requirements, such as those established by PA 23-167. The inspection and evaluation shall be performed by a certified testing, adjusting and balancing technician, an industrial hygienist certified by the American Board of Industrial Hygiene or the Board for Global EHS Credentialing, or a mechanical engineer.

The inspection and evaluation shall include, but may not be limited to:

- Testing for maximum filter efficiency,
- physical measurements of outside air delivery rate,
- verification of the appropriate condition and operation of ventilation components,
- measurement of air distribution through all system inlets and outlets,
- verification of unit operation and that required maintenance has been performed in accordance with the most recent indoor ventilation standards promulgated by ASHRAE
- verification of control sequences,
- verification of carbon dioxide sensors and acceptable carbon dioxide concentrations indoors, and
- collection of field data for the installation of mechanical ventilation if none exist.

The ventilation systems inspection and evaluation shall identify to what extent each school's current ventilation system components, including any existing central or noncentral mechanical ventilation system, are operating in such a manner as to provide appropriate ventilation to the school building in accordance with most recent indoor ventilation standards promulgated by ASHRAE.

The inspection and evaluation shall result in a written report, and such report shall include any corrective actions necessary to be performed to the mechanical ventilation system or the heating, ventilation and air conditioning infrastructure, including installation of filters meeting the most optimal level of filtration available for a given heating, ventilation and air conditioning system, installation of carbon dioxide sensors and

additional maintenance, repairs, upgrades or replacement. Based on the findings of the on-site inspection process, a Facility Condition Assessment Analysis Report shall be submitted for each school building facility that includes, at minimum:

- An in-depth assessment of the facility as it relates to the operational deficiencies noted above.
- A floor and site plan information of the school facility building
- Provide an assessment of any energy savings opportunities for the recommended systems.
- Provide recommendations concerning the system(s) required to correct the operational deficiency.
- Provide acquisition and construction cost estimates, to correct the operational deficiency. Estimated costs should include:
  - Initial capital cost estimate of the recommended system;
  - Estimated ongoing operational, maintenance and upkeep costs of proposed system(s) [years 2 thru 5 of operation].

Additionally, the selected firm will perform HVAC equipment and associated mechanical system functional assessments and develop comprehensive design plans and bid specifications and plans for the designated, target facilities in a compressed timeline. These services must include for the submission of grant applications for current and future Department of Administrative Services HVAC Indoor Air Quality Grants for Public Schools. Inclusive to these grant applications will be:

- Guidance, participation, and attendance for grant application process,
- Description of HVAC replacement or additions;
- Bid-ready construction drawings;
- Construction bidding services;
  - Pre-bid meeting site visit with potential contractors;
  - Responding to RFI's;
  - Creating addenda;
- Cost estimates for A&E services;
- Cost estimates for potential equipment;
- Cost estimates for construction;
- Construction management and administration;
  - Review of contractor's submittals;
  - Approval and sign-off on contractor's payment applications.

## **2.1 PROJECT DELIVERABLES**

- Completion and submission of DAS required inspection and evaluation reports,
- A proposed schedule, including milestones;
- Attendance at potential meetings with user groups either on site or virtual;
- Printed material shall be 8-½" x 11". General text no smaller than 11-point font;
- Fold-out pages shall be 11" x 17";
- Text shall be bound with identifying covers;
- Drawings shall be Arch D or ANSI D in size, unless otherwise agreed upon with NMPS;
- Drawings shall be no less than 1:8 scale,
- Each sheet of drawings shall be identified as part of a set;
- Three sets of prints and a digitized form agreed upon with NMPS must be provided.

### **3. PROPOSAL INSTRUCTIONS/REQUIREMENTS**

Each Firm must answer the questions honestly and completely; the following section describes the submission requirements:

**A.** Provide an executive summary – maximum three (3) pages, single spaced – that includes the full name, tax identification number and main office address of the primary Firm. Include annual reports, 10k, balance sheets and any other information detailing the financial stability and organizational ability of the Firm. Firm must have been in business for a minimum of five (5) years.

**B.** Provide the business history of the primary Firm. Include any changes in the Firm's status as the result of merger, acquisition, spin-off, reorganization or other change in business organizational status. Identify when the Firm was organized and, if a corporation, where incorporated and number of years engaged in providing full service contract operations under that name. Provide a comprehensive description of Firm's corporate ownership and/or operating name.

**C.** State whether any officer, employee, or person who is payable in whole or in part from the BOE currently has any direct or indirect personal interest in the Firm. If so, describe the circumstances.

**D.** State whether the Firm or any of its employees or officers has been named as a defendant in any litigation brought as a result of any contract operations for operations and maintenance. If so, name the owner and describe the circumstances, including the outcome of the litigation.

**E.** State whether the Firm has ever been terminated, fired, or replaced on a project other than those contracts that have been terminated due to completion. If so, name the owner and describe the circumstances.

**F.** The primary Firm must demonstrate the capability to successfully complete facility assessment studies with an emphasis on public school facilities. Describe Firm's experience and provide documentation on such expertise.

**G.** Include resumes and project lists of the key personnel who are proposed to work on this project. Including a contact person for questions about the proposal.

**H.** Identify any subcontractors, if any, who will perform work on this project. The BOE retains the right to reject any and all proposed subcontractors. This provision applies through the term of the contract.

**I.** State your relevant prior experience, including a list of all clients served during the past five years, complete with names, addresses and telephone numbers of contact persons for each. Provide the client name, contact, address, and phone number of at least one BOE project that Firm has designed, if available.

**J.** Provide examples of work produced for similar projects completed within the past five years.

**K.** Include a proposed project schedule

**L. Scope of Work** (detailed description of work and products. The consultant should include additional issues, if any; they believe to be important to this project.)

**M. Lump sum fee and supporting budget** for all components of the project.; Include a fee schedule, estimated hours, hourly rates per discipline / function, and a maximum cost.

All proposals for service shall remain valid and be binding upon the respondent if accepted by the District within ninety (90) calendar days of the proposal submission date. All proposals shall be signed by an authorized representative of such company.

Response must include completed appendices.

### **3.1 TIMELINE**

**Questions Due from Bidders:** Friday, October 13, 2023 12PM

**Proposals Due:** Friday, October 20, 2023 9AM  
New Milford Public Schools Facilities Office  
386 Danbury Rd  
New Milford CT, 06776

**Public Bid Opening:** Friday, October 20, 2023 12PM  
New Milford Public Schools Facilities Office  
386 Danbury Rd  
New Milford CT, 06776

### **3.2 QUESTIONS AND COMMUNICATIONS**

Bidders are hereby notified not to contact any member of the NMPS staff and its elected officials, except as provided herein regarding this proposal until such time as a contract has been awarded. All questions about the proposals should be directed to Matt Cunningham, Director of Facilities, by email at [cunningham@newmilfordps.org](mailto:cunningham@newmilfordps.org) by Friday, October 13, 2023 at 12PM. Answers to all received questions will be sent to Bidders requesting them and posted on the New Milford Public Schools website at <https://www.newmilfordps.org/fiscalservices>

### **3.3 ADDENDA**

New Milford Public Schools reserves the right to revise any part of this RFQ/RFP by issuing an addendum at any time prior to the submittal deadline. Addenda notifications will be emailed to all persons on record from the mandatory pre-bid conference and posted on the NMPS website <https://www.newmilfordps.org/fiscalservices>

### **3.4 FORMAT**

The submitted proposals must follow the rules and format established within this RFQ/RFP. Failure to comply with all provisions of this RFQ/RFP may result in the proposal being disqualified. All proposals must be securely

bound. Proposals must submit completed appendices.

### **3.5 SUBMISSION**

Adherence to these rules will ensure a fair and objective analysis of all proposals. Each proposal must be submitted in a sealed envelope bearing the bid number **“RFQ/RFP E-2324-004 - HVAC A&E”**. Three (3) printed copies of the proposal and one (1) electronic copy on a USB drive must be provided. Proposals must be delivered to New Milford Public Schools Facilities Office, 386 Danbury Rd. New Milford, CT 06776 by Friday, October 20, 2023 at 9AM. Proposals submitted after this time will not be considered. Each Bidder shall be responsible for all costs incurred in order to prepare and submit their response to this RFQ/RFP. All submitted materials including any work product, instruments of service and other deliverables shall become the property of the New Milford Public Schools, and the Bidders shall not claim any ownership interest in the same.

**Submissions received after the deadline of Friday, October 20, at 9am will be considered informal and rejected.**

### **4. SELECTION PROCESS**

Proposals will be evaluated by a selection committee based upon the response to the criteria presented in the request and any other factual information it deems appropriate. The committee will make a recommendation to the Superintendent of Schools and Board of Education for final acceptance of the selection. During the evaluation process, a firm/organization may be asked to make an oral presentation. The New Milford Public Schools reserves the right without prejudice to reject any or all proposals or parts thereof for any reason, to negotiate changes to proposal terms, waive minor inconsistencies with the request for proposals, and to select the proposal the committee deems best fits the needs of the district.

#### **4.1 AGREEMENT PERIOD**

To be negotiated. A multiyear arrangement is anticipated, likely in the form of a one- year commitment with District options for subsequent yearly renewals.

The District reserves the right to cancel the contract awarded pursuant to this RFP at any time and will incorporate such provision in the agreement entered into with the selected Firm.

### **5. TERMS AND CONDITIONS**

Based on the outcome of this process, evaluation, design and specifications with cost estimates need to be completed within 30 days of award notice or contract signing, whichever is later.

#### **5.1 INDEMNITY**

Unless otherwise provided by law, the Contractor will fully and completely indemnify and hold harmless NMPS against any and all liability, loss, damages, costs or expenses for personal injury or damage to real or tangible personal property that NMPS may sustain, incur or be required to pay, arising out of or in connection with the performance of the Contract by reason of any negligent action/inaction or willful misconduct by the Contractor, its agents, servants or employees. These provisions shall also include any liability, which may result from a worker’s compensation claim or resulting third party action against NMPS.

#### **5.2 ASSIGNMENT OF RIGHTS, TITLES, & INTERESTS**

Any assignment or subcontracting for work to be performed related to this request, in whole or in part, and any other interest in conjunction with the District’s procurement shall not be permitted without the express written consent of NMPS.

### **5.3 AVAILABILITY OF FUNDS**

Any contract award associated with this RFQ/RFP is contingent upon the availability of funding to NMPS. If funds for the continued fulfillment are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then New Milford Public Schools will have the right to terminate the Contract at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding. NMPS will provide at least thirty (30) days advance written notice of such termination and will use reasonable efforts to ensure appropriated funds are available. In the event that funds are not available, any agreement resulting from this RFQ/RFP shall become null and void.

### **5.4. TAX EXEMPT**

New Milford Public Schools is tax exempt by state statute. The successful vendor will be responsible for any and all state and local taxes including personal property tax. Such taxes must not be included in the bid price.

### **5.5 INSURANCE**

Prior to the commencement of any work and no later than ten (10) days after notice of award of the contract, the selected bidder shall submit to the District evidence of insurance demonstrating that the contractor has coverage for Workmen's Compensation Insurance, Liability, Property Damage, and Automobile/Truck insurance with the minimum limits of liability Certificates of insurance to be determined in the formal contract. The District, the Town of New Milford and their current and former officers, members, agents and employees shall be named as an additional insured on a primary and noncontributory basis on the aforementioned policies. The contractor and its insurers shall waive all rights of subrogation against the Town of New Milford and New Milford Board of Education and their current and former officers, members, agents and employees.

The successful bidder may also be required to furnish a Performance and Payment Bond with Surety and a Certificate of Insurance satisfactory to the District for the faithful performance of the contract.

### **5.6 CONTRACT**

The selected bidder will be required to execute a contract substantially similar to the AIA form document included under Appendix C, as may be amended by the BOE. By submitting a proposal, a Bidder agrees to all the terms and conditions of the attached contract form. A Bidder may not take exception to the terms of the contract form. Any changes or amendments to the contract form will be at the sole discretion of the New Milford Public Schools without adjustment to price.

### **5.7 PERMITS AND CODES**

The selected consultant will comply with all laws, codes, rules and regulations of the State, County and Town applicable to the work to be performed at the New Milford Public Schools. Any permits lawfully required shall be obtained by the consultant, who shall pay all required charges.



## **5.8 PRICE**

The price quoted shall include all contingencies, including but not limited to profit, BFO, administrative fees, direct costs, etc. to complete the project as described in this document.

## **6.DISCLAIMERS AND DISCLOSURES**

The District has prepared this document to give background information to interested parties for participating in the RFP process. While the District has taken due care in the preparation of this RFP document and believes it to be accurate, neither the District nor the Town of New Milford nor any of their respective officers, employees, agents or advisors give any warranty or make any representations (collectively the “District Parties”), express or implied as to the completeness or accuracy of the information contained in this document or any information which may be provided in association with it.

The information is not intended to be exhaustive. The information disclosed herein is provided on the basis that it is non-binding on the District Parties. The District reserves the right to alter/increase/decrease the scope of work requirements as later determined. The District reserves the right not to proceed with the Project or to change the configuration of the Project, to alter the time-table reflected in this document or to change the process or procedure to be applied. It also reserves the right to decline to discuss the matter further with any party expressing interest. No reimbursement of cost of any type will be paid to persons or entities expressing interest. The District reserves the right to accept or reject, in full or in part, any or all the offers without assigning any reason whatsoever. The District does not bind itself to accept the lowest or any offered RFP and reserves the right to reject all or any or cancel the RFP without assigning any reason whatsoever. The District also has the right to re-issue the RFP without the Vendors having the right to object to such reissue. No oral statement of any representatives of the District shall be effective to waive, change or otherwise modify any of the provisions of this RFP, and no proposer shall rely on any alleged statement.

The District may elect to meet with any, all, or none of the consultants prior to selection. The District reserves the right to reject any or all of the proposals submitted, to negotiate changes to proposal terms and to waive minor inconsistencies with the request for proposal. The District reserves the right to negotiate the cost of this proposal and to award the work to other than the proposer with the lowest cost, if it is in the best interest of the District. Submission of a proposal indicates acceptance by the proposer of the conditions contained in this request for proposals unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the District and the proposer selected. The District may, before or after proposal opening and in its sole discretion, clarify, modify, amend or terminate this request for proposals if it is determined that doing so is in the District’s best interests. Any such action shall be communicated to prospective consultants via a posting on the District’s website. Each prospective bidder shall be responsible for checking the District’s website at <https://www.newmilfordps.org/fiscalservices> to determine if the District has clarified, modified or amended this request for proposals and if so ensuring that its proposal is in accordance with the terms of the clarified, modified or amended request for proposal.

The District reserves the right to cancel the award of a contract at any time before execution of the contract by both parties if cancellation is deemed to be in the District’s best interest. In no event shall the District have any liability for the cancellation of the award. If the District deems it necessary, the District may postpone the date for the opening of the proposals by notifying each proposer by telephone, mail or the issuing of an addendum.

**APPENDIX A**  
**BIDDER INFORMATION SHEET**

Name of Bidder \_\_\_\_\_

Business Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Date of Bid \_\_\_\_\_

The bidder listed above declares and certifies:

1. That the said bidder is of lawful age and the only one interested in this Bid, and that no other bidder has any interest herein.
2. That this bid is made without any previous understanding, agreement or connection with any other person, firm or corporation making a bid for the same purposes, and is in all respects fair and without collusion or fraud.
3. That said bidder has carefully examined the instructions to bidders, schedules and specifications prepared under the direction of the Board of Education, and will, if successful in this bid, furnish and deliver at the prices bid and within the time stated, all the materials, supplies, apparatus, goods, wares, merchandise, service and/or labor for which this bid is made.
4. That the price quotes herein are net and exclusive of all federal, state and municipal sales and excise taxes.

\_\_\_\_\_  
(Person, Firm, or Corporation)

\_\_\_\_\_  
(Authorized Signature)

**APPENDIX B**  
**AFFIRMATIVE ACTION/EQUAL OPPORTUNITY STATEMENT**

New Milford Public Schools is an Equal Opportunity Employer and will not transact business with firms that are not in compliance with all Federal and State Statutes and Executive Orders pertaining to non- discrimination.

This form is required to be filled in (enter company name above lines below), signed and returned with any Invitation to Bid, Request for Proposal, or other public solicitation document in order to transact any business with New Milford Public Schools.

\_\_\_\_\_ will not make employment decisions (including decisions related to hiring, assignment, compensation, promotion, demotion, disciplinary action and termination) on the basis of race, color, religion, age, sex, marital status, sexual orientation, national origin, alienage, ancestry, disability (including pregnancy), genetic information, veteran status or gender identity or expression, except in the case of a bona fide occupational qualification.

It is the policy of \_\_\_\_\_ that any form of discrimination or harassment on the basis of race, religion, color, national origin, alienage, sex, sexual orientation, marital status, age, disability (including pregnancy), genetic information, veteran status or gender identity or expression, or any other basis prohibited by state or federal law is prohibited.

\_\_\_\_\_ will also take affirmative action as called for by applicable laws and Executive Orders to ensure that minority group individuals, females, disabled veterans, recently separated veterans, other protected veterans, Armed Forces service medal veterans, and qualified disabled persons are introduced into our workforce and considered for promotional opportunities.

\_\_\_\_\_ will remain in full compliance with the above while under contract with or performing work for New Milford Public Schools.

\_\_\_\_\_

Signed

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Business Address

Name/Title of Company Officer

\_\_\_\_\_

Date

\_\_\_\_\_

Phone

# **AIA**® Document B103™ – 2007

## **Standard Form of Agreement Between Owner and Architect** for a Large or Complex Project

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year \_\_\_\_\_  
(In words, indicate day, month and year.)

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

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

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

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

The Owner and Architect agree as follows.

Init.

**§ 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:

**§ 1.1.5** The Owner intends the following procurement or delivery method for the Project:  
*(Identify method such as competitive bid, negotiated contract or construction management.)*

**§ 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.)*

Init.

/

§ 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 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.12.2 Consultants retained under Additional Services:

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

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

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

Init.

### **§ 3.2 Schematic Design Phase Services**

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

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

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

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

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

**§ 3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's 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 Cost Consultant. The Architect shall meet with the Cost Consultant to review the Schematic Design Documents.

**§ 3.2.7** Upon receipt of the Cost Consultant's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, 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.

### **§ 3.3 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 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.3.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Design Development Documents.

**§ 3.3.3** Upon receipt of the Cost Consultant's 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.

### **§ 3.6 Construction Phase Services**

#### **§ 3.6.1 General**

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

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

#### **§ 3.6.2 Evaluations of the Work**

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

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

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

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

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

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

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial



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

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

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

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

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

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

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™–2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building information modeling (E202™–2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Value Analysis (B204™–2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site project representation (B207™–2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record drawings		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™–2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		

Init.

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

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

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

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

**§ 4.3.4** If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

**§ 5.2** The Owner shall furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

**§ 5.3** 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 Cost Consultant 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. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

**§ 5.3.1** 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.

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 Cost Consultant's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Cost Consultant'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.

**§ 6.4** If, prior to the conclusion of the Design Development Phase, the Cost Consultant'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 Cost Consultant, 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, 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, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except 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 Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

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

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of

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

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

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

### **§ 8.3 Arbitration**

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

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

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

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

### **§ 8.3.4 Consolidation or Joinder**

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

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

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

## **ARTICLE 9 TERMINATION OR SUSPENSION**

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

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

**ARTICLE 11 COMPENSATION**

**§ 11.1** For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

**§ 11.2** For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

**§ 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 \_\_\_\_\_ percent ( \_\_\_\_\_ %), or as otherwise stated below:

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

Schematic Design Phase:	percent (	%)
Design Development Phase:	percent (	%)
Construction Documents Phase:	percent (	%)
Bidding or Negotiation Phase:	percent (	%)
Construction Phase:	percent (	%)

Total Basic Compensation:	One hundred percent (100%)
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The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

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

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

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B103™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:  
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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