

**Purchasing Office**  
191 South East St  
Frederick, Maryland 21701  
301-644-5210 phone  
301-644-5213 fax



Bill Meekins CPPB, CPPO, NIGP-CPP,  
CSBO, CPCP, Purchasing Manager  
Kim Miskell, CSBO, Assistant Purchasing  
Manager  
Roy McHaffa, Purchasing Agent  
David Guzman, Purchasing Agent

---

RFP NUMBER/NAME:	24A1, Architectural/Engineering Consultant Services
RFP ISSUE DATE:	September 5, 2023
BID CONTRACT MANAGER:	Kim Miskell, CSBO, Assistant Purchasing Manager
BID CONTRACT ADMINISTRATOR:	Brian Staiger, Senior Project Manager, Construction Management Dept.
QUESTIONS:	Questions due no later than 4:00 P.M., local time, on September 20, 2023. Submit questions in writing via OpenGov.
PRE-PROPOSAL DATE:	N/A
OBTAINING BID DOCUMENTS:	To view and/or download this solicitation package please visit our webpage at: <a href="https://secure.procurenow.com/portal/fcps">https://secure.procurenow.com/portal/fcps</a> . If you have problems downloading this bid or applicable addenda, contact: Michele Graham: <a href="mailto:michele.graham@fcps.org">michele.graham@fcps.org</a>
BONDS REQUIRED:	NO
MBE REQUIREMENTS:	NO
RFP DUE:	2:00 P.M., local time, on September 28, 2023. Bids will be opened and publicly read via Google Meet. Google Meet joining info: Video call link: <a href="https://meet.google.com/dgi-vcbo-itk">https://meet.google.com/dgi-vcbo-itk</a> Or dial: (US) +1 779-429-2111 PIN: 822 248 998#,
SEALED PROPOSAL DELIVERED TO:	FCPS is accepting electronic bid submissions through OpenGov Procurement. Bidders can create a FREE account with OpenGov Procurement by signing up at <a href="http://secure.procurenow.com/signup">http://secure.procurenow.com/signup</a> .
TENTATIVE AWARD DATE:	BOE Work Session, scheduled on: November 20, 2023
ELIGIBILITY TO BID:	All Frederick County Public School vendors and or contractors interested in bidding on FCPS projects must register at eMaryland Marketplace Advantage <a href="http://www.procurement.maryland.gov">www.procurement.maryland.gov</a> . FCPS will no longer accept bidder's applications.

## TABLE OF CONTENTS

COVER PAGE	1
TABLE OF CONTENTS	2-3
FCPS CENTRAL OFFICE MAP	4
FCPS SCHOOL YEAR AT A GLANCE	5
FCPS DIRECTORY OF SCHOOLS	6-7
GENERAL TERMS AND CONDITIONS - SECTION I	8-37
Bidder Registration	
Pre-Bid Meeting	
Preparation of Bid	
Bid Pricing	
Taxes	
Addendum	
Receipt of Bids	
Opening of Bids	
Standard of Quality, "or Equal Clauses," and Substitutions	
Samples	
Guarantees and Warranties	
Award or Rejection of Bids	
Contract Formation	
Protests	
Contract Disputes	
Contract Assignment	
Multi -Year Contract	
Hold Harmless	
Termination for Default	
Termination for Convenience	
Governing Law and Venue	
Multi-Agency Participation	
Packaging and Delivery Requirements	
Billing and Payment	
Compliance with Specifications	
Failure to Perform/Deliver	
Safety Requirements	
Patents	
Technology-Based Instructional Products	
Employment of Child Sex Offenders and Persons with Uncontrolled Access to Students	
Criminal Background Checks	
Drug, Alcohol, And Tobacco-Free Workplace	
Weapon Possession on School Property	
Foreign Language Translator Requirement	
Illegal Immigrant Labor	
Student/Staff Confidentiality	
Public Information Act Notice	
Force Majeure	
Ethics Policy	
Non-Collusion	
Conflict of Interest	
Service Level Agreement (SLA)	
Service Organization Control (SOC) Audit Report	
Federal Contract Awards	

ATTACHMENT A - Appendix II Part 200-Contract Provisions for Non-Federal Entity  
Contract Under Federal Awards

SPECIFIC TERMS AND CONDITIONS - SECTION II	38-44
Scope	
Specific Scope of Service	
Contract Period	
Pricing	
Contract Terms	
Contract Additions/Deletions	
Qualifying Additional Consultants	
Contractor's Insurance	
Preparation of Proposal	
Evaluation Criteria and Award	
Vendor Performance Evaluation	
TECHNICAL PROPOSAL REQUIREMENTS	45-46
FEE PROPOSAL	47
SIGNATURE PAGE ACKNOWLEDGING PROPOSAL/ADDENDA	48
STATUTORY AFFIDAVIT AND NON-COLLUSION CERTIFICATION FORM	49-50
CERTIFICATION OF COMPLIANCE FORM	51-52
VENDOR CONFLICT OF INTEREST DISCLOSURE FORM	53
PROPRIETARY INFORMATION FORM	54
ATTACHMENT A- AIA DOCUMENT B102	55
ATTACHMENT B- AIA DOCUMENT B201	75







# THE SCHOOL YEAR AT A GLANCE

## 2023

August 23 (Wednesday)	First Day of School
September 4 (Monday)	Schools* and Offices Closed
September 22 (Friday)	3 1/2-Hour Early Dismissal for Students
September 25 (Monday)	Schools* Closed
October 11 (Wednesday)	4-Hour Delayed Opening: Elementary and Middle Only (Parent-Teacher Conferences), No 1/2 Day Pre-K; High Schools Open on Time
October 12 (Thursday)	4-Hour Delayed Opening: Elementary and Middle Only (Parent-Teacher Conferences), No 1/2 Day Pre-K; High Schools Open on Time
October 13 (Friday)	3 1/2-Hour Early Dismissal: Elementary and Middle Only (Parent-Teacher Conferences), No 1/2 Day Pre-K; High Schools Open Full Day
October 20 (Friday)	Schools* Closed for Students
October 27 (Friday)	Schools* Closed for Students
November 22 (Wednesday)	Schools* and Offices Closed
November 23-24 (Thursday-Friday)	Schools** and Offices Closed
December 1 (Friday)	2-Hour Early Dismissal for Students
December 25-26 (Monday-Tuesday)	Schools** and Offices Closed
December 27-29 (Wednesday-Friday)	Schools** Closed

## 2024

January 1 (Monday)	Schools** and Offices Closed
January 15 (Monday)	Schools** and Offices Closed
January 16 (Tuesday)	Schools Closed*
January 17 (Wednesday)	Schools Closed*
February 16 (Friday)	2-Hour Early Dismissal for Students
February 19 (Monday)	Schools** and Offices Closed
March 22 (Friday)	Schools* Closed for Students
March 29 (Friday)	Schools** and Offices Closed
April 1 (Monday)	Schools** and Offices Closed
April 2-5 (Tuesday-Friday)	Schools* Closed for Students
May 2 (Thursday)	2-Hour Early Dismissal for Students
May 14 (Tuesday)	Schools** and Offices Closed
May 27 (Monday)	Schools** and Offices Closed
June 5*** (Wednesday)	2-Hour Early Dismissal/Last Day of School for Students

\*BOE Determined

\*\*State Mandated

\*\*\*FCPS will make up days closed for inclement weather or other emergencies in the following sequence: June 6, 7, 10, 11 and 12. If no snow days are used, the last day for students is Wednesday, June 5. The June 2-hour early dismissal will occur on the last day of school for students. The school year will provide 180 days for students. Dates are subject to BOE revision.

## Get Calendar Details:

[www.fcps.org/calendar](http://www.fcps.org/calendar)

Like us on Facebook: FCPS Maryland

Follow us on Twitter: @FCPSMaryland

Follow us on Instagram: @FCPSMaryland

Select FindOutFirst email calendar updates and emergency-closing announcements:

[www.fcps.org/fof](http://www.fcps.org/fof)

See the Calendar Handbook months pages



FCPS Maryland



@FCPSMaryland



[www.fcps.org/fof](http://www.fcps.org/fof)

# DIRECTORY OF SCHOOLS

## ELEMENTARY

1. **Ballenger Creek ■** 240-236-2500  
5250 Kingsbrook Drive  
Frederick, MD 21703  
Fax 240-236-2501  
<https://edu.fcps.org/bces/>
2. **Blue Heron ■◆●** 240-566-0700  
7100 Eaglehead Drive  
New Market, MD 21774  
Fax 240-566-0701  
<https://edu.fcps.org/bhes/>
3. **Brunswick ■** 240-236-2900  
400 Central Avenue  
Brunswick, MD 21716  
Fax 240-236-2901  
<https://edu.fcps.org/bes/>
4. **Butterfly Ridge ■◆●◆◆▲** 240-566-0300  
601 Contender Way  
Frederick, MD 21703  
Fax 240-566-0301  
<https://edu.fcps.org/bres/>
5. **Carroll Manor ■◆●** 240-236-3800  
5624 Adamstown Road  
Adamstown, MD 21710  
Fax 240-236-3801  
<https://edu.fcps.org/cmes/>
6. **Centerville ■◆●** 240-566-0100  
3601 Carriage Hill Drive  
Frederick, MD 21704  
Fax 240-566-0101  
<https://edu.fcps.org/ces/>
7. **Deer Crossing ■** 240-236-5900  
10601 Finn Drive  
New Market, MD 21774  
Fax 240-236-5901  
<https://edu.fcps.org/dces/>
8. **Emmitsburg ■** 240-236-1750  
300 South Seton Avenue  
Emmitsburg, MD 21727  
Fax 240-236-1751  
<https://edu.fcps.org/ees/>
9. **Glade ■◆●** 240-236-2100  
9525 Glade Road  
Walkersville, MD 21793  
Fax 240-236-2101  
<https://edu.fcps.org/ges/>
10. **Green Valley** 240-236-3400  
11501 Fingerboard Road  
Monrovia, MD 21770  
Fax 240-236-3401  
<https://edu.fcps.org/gves/>
11. **Hillcrest ■◆▲** 240-236-3200  
1285 Hillcrest Drive  
Frederick, MD 21703  
Fax 240-236-3201  
<https://edu.fcps.org/hes/>
- B) Woodsboro ■** 240-236-3700  
Grades Pre-K–2  
101 Liberty Road  
Woodsboro, MD 21798  
Fax 240-236-3701  
<https://edu.fcps.org/woes/>
22. **North Frederick ■◆◆★** 240-236-2000  
1010 Fairview Avenue  
Frederick, MD 21701  
Fax 240-236-2001  
<https://edu.fcps.org/nfes/>
23. **Oakdale ■** 240-236-3300  
5830 Oakdale School Road  
Ijamsville, MD 21754  
Fax 240-236-3301  
<https://edu.fcps.org/oes/>
24. **Orchard Grove ■** 240-236-2400  
5898 Hannover Drive  
Frederick, MD 21703  
Fax 240-236-2401  
<https://edu.fcps.org/oges/>
25. **Parkway ■** 240-236-2600  
300 Carroll Parkway  
Frederick, MD 21701  
Fax 240-236-2601  
<https://edu.fcps.org/pes/>
26. **Spring Ridge ■◆◆** 240-236-1600  
9051 Ridgefield Drive  
Frederick, MD 21701  
Fax 240-236-1601  
<https://edu.fcps.org/sres/>
27. **Sugarloaf** 240-566-0500  
3400 Stone Barn Drive  
Frederick, MD 21704  
Fax 240-566-0501  
<https://edu.fcps.org/sues/>
28. **Thurmont** 240-236-0900  
Grades 3–5  
805 East Main Street  
Thurmont, MD 21788  
Fax 240-236-0901  
<https://edu.fcps.org/tes/>
29. **Thurmont Primary ■** 240-236-2800  
Grades Pre-K–2  
7989 Rocky Ridge Road  
Thurmont, MD 21788  
Fax 240-236-2801  
<https://edu.fcps.org/tps/>
30. **Tuscarora ■** 240-566-0000  
6321 Lambert Drive  
Frederick, MD 21703  
Fax 240-566-0001  
<https://edu.fcps.org/tues/>

## Middle (continued)

42. **Governor Thomas Johnson** 240-236-4900  
1799 Schifferstadt Boulevard  
Frederick, MD 21701  
Fax 240-236-4901  
<https://edu.fcps.org/gtjms/>
43. **Middletown** 240-236-4200  
100 Martha Mason Street  
Middletown, MD 21769  
Fax 240-236-4250  
<https://edu.fcps.org/mms/>
44. **Monocacy ★** 240-236-4700  
8009 Opossumtown Pike  
Frederick, MD 21702  
Fax 240-236-4701  
<https://edu.fcps.org/gtjhs/>
45. **New Market** 240-236-4600  
125 West Main Street  
New Market, MD 21774  
Fax 240-236-4650  
<https://edu.fcps.org/nmms/>
46. **Oakdale** 240-236-5500  
5810 Oakdale School Road  
Ijamsville, MD 21754  
Fax 240-236-5501  
<https://edu.fcps.org/oms/>
47. **Thurmont** 240-236-5100  
408 East Main Street  
Thurmont, MD 21788  
Fax 240-236-5101  
<https://edu.fcps.org/tms/>
48. **Urbana** 240-566-9200  
3511 Pontius Court  
Ijamsville, MD 21754  
Fax 240-566-9201  
<https://edu.fcps.org/ums/>
49. **Walkersville** 240-236-4400  
55 West Frederick Street  
Walkersville, MD 21793  
Fax 240-236-4401  
<https://edu.fcps.org/wms/>
50. **West Frederick ★** 240-236-4000  
515 West Patrick Street  
Frederick, MD 21701  
Fax 240-236-4050  
<https://edu.fcps.org/wfms/>
51. **Windsor Knolls** 240-236-5000  
11150 Windsor Road  
Ijamsville, MD 21754  
Fax 240-236-5001  
<https://edu.fcps.org/wkms/>
52. **Brunswick** 240-236-8600  
101 Cummings Drive  
Brunswick, MD 21716  
Fax 240-236-8601  
<https://edu.fcps.org/gg/bhs/>

## HIGH

53. **Catoctin** 240-236-8100  
14745 Sabillasville Road  
Thurmont, MD 21788  
Fax 240-236-8101  
<https://edu.fcps.org/chs/>
54. **Frederick** 240-236-7000  
650 Carroll Parkway  
Frederick, MD 21701  
Fax 240-236-7015  
<https://edu.fcps.org/fhs/>
55. **Governor Thomas Johnson** 240-236-8200  
1501 North Market Street  
Frederick, MD 21701  
Fax 240-236-8201  
<https://edu.fcps.org/gtjhs/>
56. **Linganore** 240-566-9700  
12013 Old Annapolis Road  
Frederick, MD 21701  
Fax 240-566-9701  
<https://edu.fcps.org/lhs/>
57. **Middletown** 240-236-7400  
200 Schoolhouse Drive  
Middletown, MD 21769  
Fax 240-236-7450  
<https://edu.fcps.org/mhs/>
58. **Oakdale** 240-566-9400  
5850 Eaglehead Drive  
Ijamsville, MD 21754  
Fax 240-566-9401  
<https://education.fcps.org/ohs/>
59. **Tuscarora** 240-236-6400  
5312 Ballenger Creek Pike  
Frederick, MD 21703  
Fax 240-236-6401  
<https://edu.fcps.org/thhs/>
60. **Urbana** 240-236-7600  
3471 Campus Drive  
Ijamsville, MD 21754  
Fax 240-236-7601  
<https://edu.fcps.org/uhs/>
61. **Walkersville** 240-236-7200  
81 West Frederick Street  
Walkersville, MD 21793  
Fax 240-236-7250  
<https://edu.fcps.org/whs/>
62. **Career and Technology Center** 240-236-8500  
7922 Opossumtown Pike  
Frederick, MD 21702  
Fax 240-236-8501  
<https://edu.fcps.org/ctc/>
63. **Carroll Creek Montessori Public Charter School** 240-566-0600  
7215 Corporate Court  
Frederick, MD 21703  
Fax 240-566-0601  
<https://carrollcreekmontessori.org/>
64. **FCPS Remote Virtual Program**  
c/o Deer Crossing ES  
10601 Finn Drive  
New Market, MD 21774  
**Elementary/Middle** 240-236-8970  
Fax 240-236-8971  
<https://edu.fcps.org/emsvrp/>  
**High** 240-236-8450  
c/o GTJMS  
1799 Schifferstadt Boulevard  
Frederick, MD 21701  
Fax 240-236-8451  
<https://edu.fcps.org/hsrvp/>
65. **Frederick Classical Charter School** 240-236-1200  
8445 Spires Way, Suite CC  
Frederick, MD 21701  
Fax 240-236-1201  
<https://frederickclassicalcharterschool.org/>
66. **Frederick County Virtual School** 240-236-8450  
c/o GTJMS  
1799 Schifferstadt Boulevard  
Room 116  
Frederick, MD 21701  
Fax 240-236-8451  
<https://edu.fcps.org/fcvhs/>
67. **Heather Ridge School** 240-236-8000  
1445 Taney Avenue  
Frederick, MD 21702  
Fax 240-236-8001  
<https://edu.fcps.org/hrs/>
68. **Monocacy Valley Montessori Public Charter School** 240-236-6100  
64 Thomas Johnson Drive  
Frederick, MD 21702  
Fax 240-236-6101  
<https://mvmpcs.org/>
69. **Rock Creek School** 240-236-8700  
55B West Frederick Street  
Walkersville, MD 21793  
Fax 240-236-8701  
<https://edu.fcps.org/rcs/>
70. **Sabillasville Environmental Charter School** 240-236-6000  
16210-B Sabillasville Road  
Sabillasville, MD 21780  
Fax 240-236-6001  
<https://edu.fcps.org/ses/>

## SPECIALIZED SCHOOLS & PROGRAMS

12. **Kemptown** ■●● 240-236-3500  
3456 Kemptown Church Road  
Monrovia, MD 21770  
Fax 240-236-3501  
<https://edu.fcps.org/kes/>
13. **Lewistown** ■●● 240-236-3750  
11119 Hessong Bridge Road  
Thurmont, MD 21788  
Fax 240-236-3751  
<https://edu.fcps.org/les/>
14. **Liberty** ■ 240-236-1800  
11820 Liberty Road  
Frederick, MD 21701  
Fax 240-236-1801  
<https://edu.fcps.org/libes/>
15. **Lincoln** ■★▲ 240-236-2650  
200 Madison Street  
Frederick, MD 21701  
Fax 240-236-2651  
<https://edu.fcps.org/lnes/>
16. **Middletown** 240-236-1100  
Grades 3-5  
201 East Green Street  
Middletown, MD 21769  
Fax 240-236-1150  
<https://edu.fcps.org/mes/>
17. **Middletown Primary** ■●● 240-566-0200  
Grades Pre-K-2  
403 Franklin Street  
Middletown, MD 21769  
Fax 240-566-0201  
<https://edu.fcps.org/mps/>
18. **Monocacy** ★▲ 240-236-1400  
7421 Hayward Road  
Frederick, MD 21702  
Fax 240-236-1401  
<https://edu.fcps.org/moes/>
19. **Myersville** 240-236-1900  
429 Main Street  
Myersville, MD 21773  
Fax 240-236-1901  
<https://edu.fcps.org/myes/>
20. **New Market** ■ 240-236-1300  
93 West Main Street  
New Market, MD 21774  
Fax 240-236-1301  
<https://edu.fcps.org/nmes/>
21. **New Midway-Woodsboro A) New Midway** 240-236-1500  
Grades 3-5  
12226 Woodsboro Pike  
Keymar, MD 21757  
Fax 240-236-1501  
<https://edu.fcps.org/woes/>
31. **Twin Ridge** ■●● 240-236-2300  
1106 Leafy Hollow Circle  
Mt. Airy, MD 21771  
Fax 240-236-2301  
<https://edu.fcps.org/tres/>
32. **Urbana** ■●● 240-236-2200  
3554 Urbana Pike  
Frederick, MD 21704  
Fax 240-236-2201  
<https://edu.fcps.org/ues/>
33. **Valley** ■ 240-236-3000  
3519 Jefferson Pike  
Jefferson, MD 21755  
Fax 240-236-3001  
<https://edu.fcps.org/ves/>
34. **Walkersville** ■ 240-236-1000  
83 West Frederick Street  
Walkersville, MD 21793  
Fax 240-236-1050  
<https://edu.fcps.org/wes/>
35. **Waverley** ■★▲ 240-236-3900  
201 Waverley Drive  
Frederick, MD 21702  
Fax 240-236-3901  
<https://edu.fcps.org/waves/>
36. **Whittier** ■●● 240-236-3100  
2400 Whittier Drive  
Frederick, MD 21702  
Fax 240-236-3101  
<https://edu.fcps.org/whes/>
37. **Wolfsville** ■ 240-236-2250  
12520 Wolfsville Road  
Myersville, MD 21773  
Fax 240-236-2251  
<https://edu.fcps.org/wfes/>
38. **Yellow Springs** ■ 240-236-1700  
8717 Yellow Springs Road  
Frederick, MD 21702  
Fax 240-236-1701  
<https://edu.fcps.org/yses/>

## MIDDLE

39. **Ballenger Creek** 240-236-5700  
5525 Ballenger Creek Pike  
Frederick, MD 21703  
Fax 240-236-5701  
<https://edu.fcps.org/bcms/>
40. **Brunswick** 240-236-5400  
301 Cummings Drive  
Brunswick, MD 21716  
Fax 240-236-5401  
<https://edu.fcps.org/bms/>
41. **Crestwood** 240-566-9000  
7100 Foxcroft Drive  
Frederick, MD 21703  
Fax 240-566-9001  
<https://edu.fcps.org/cms/>



## KEY

- Gen Ed 4-year-old Full Day Pre-K
- ▶ Inclusive Program 3-year-old Half Day Pre-K
- Inclusive Program 4-year-old Full Day Pre-K
- ◆ Self Contained Special Education Full Day Pre-K
- ★ STAR Schools
- ▲ Judy Center Schools

**FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)**  
**GENERAL TERMS AND CONDITIONS**  
**SECTION I**

**1. BIDDER REGISTRATION**

- a. All Frederick County Public School (FCPS) suppliers and or contractors interested in bidding on FCPS projects must register on eMaryland Marketplace Advantage <https://emma.maryland.gov> FCPS will no longer accept bidder's applications.
- b. Contractors are required to register with eMaryland Marketplace Advantage <https://emma.maryland.gov> within five days following notice of award. Maryland law requires local and state agencies to post award notices on eMaryland Marketplace Advantage. This cannot be done without the contractor's self-registration in the system. Registration is free. Failure to comply with this requirement may be considered grounds for default. It is recommended that any interested bidder register with eMaryland Marketplace Advantage regardless of the award outcome for this procurement as it is a valuable resource for bid notification for municipalities through Maryland.

**2. PRE-BID MEETING**

- a. A Pre-Bid Meeting will be held at the date and time indicated on the cover page of this solicitation package.
- b. Attendance at the Pre-Bid Meeting is not mandatory; however, all suppliers are strongly encouraged to attend.
- c. The agenda for this Pre-Bid Meeting will include the following: introduction of staff; description of scope of work; timeline/scheduling; budget priorities/concerns; and procurement responsibilities.
- d. Questions shall be submitted, via email, to the person(s) indicated on the cover page of this solicitation package. Due to possible changes and/or additions to the specifications, bids should not be submitted prior to the Pre-Bid meeting.
- e. If FCPS offices are closed, or operating on a modified schedule, due to inclement weather on the day a Pre-Bid is scheduled, the Pre-Bid is cancelled and will not be rescheduled unless an addendum is issued. Bidders are advised that they are to email questions to the identified Contract Manager by the date and time required within this solicitation. For the fastest, most reliable information, regarding closures and/or delays check the following:
  - [www.fcps.org](http://www.fcps.org)
  - Social Media: FCPS on Twitter and FCPS on Facebook
  - Email/Text Messages: Sign up for FindOutFirst email and emergency-only text messages
  - FCPS TV: Comcast Channel 18 (Frederick area)
  - Local radio and TV stations

**3. PREPARATION OF BID**

- a. Should any bidder be in doubt as to the meaning of the specifications, or should they find any discrepancy or omission, they shall notify the Contract Manager listed on the solicitation cover



sheet. If required, bidders will be notified of clarifications and/or additional information by means of addendum.

- b. Bidders, or their authorized representatives, are expected to fully inform themselves as to the conditions and requirements of the specifications before submitting bids. Failure to do so will be at the bidder's own risk.
- c. Bidder must submit their proposal with original signatures. Signatures may be in ink (wet) or digitally signed. Signatures submitted with a script-style font will be accepted. Bids must be prepared on the proposal form(s), if provided. FCPS proposal forms format shall not be altered.
- d. Each bid shall show the full business address and contact information of the bidder and be signed by the person(s) legally authorized to sign contracts. All correspondence concerning the bid and contract, including notice of award, copy of contract, and purchase order, will be emailed, or mailed, to the address shown on the bid in the absence of written instructions from the bidder to the contrary.
- e. The following items must be included in submission:
  - i. Proposal pages completely and accurately filled out:
    - Verify all mathematical calculations.
    - Strike through errors, initial and make correction.
    - Initial corrections.
  - ii. Signature Acknowledgement Form completed and signed.
  - iii. Statutory Affidavit and Non-Collusion Certification form completed and signed.
  - iv. Certificate of Compliance form completed and signed.
  - v. Conflict of Interest Form completed and signed.
  - vi. W-9 (This is the company information that will be entered in the FCPS supplier database).
  - vii. Certificate of Insurance (if applicable).
- f. Bidders shall be required under Article 56, Section 270(4), Annotated Code of Maryland, to provide proof of Certificate of Registry and must be licensed to do business in the State of Maryland and must provide a tax certification number. Visit the following website to ensure compliance: [www.Egov.maryland.gov/BusinessExpress](http://www.Egov.maryland.gov/BusinessExpress).
- g. Bids by partnerships must be signed with the partnership name, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.
- h. Bids by corporations must be signed with the name of the corporation, which must match the information on the submitted W-9, followed by the signature and designation of the person having authority to sign. When requested, satisfactory evidence of authority of the person signing will be furnished. Anyone signing the bid as an agent shall file satisfactory evidence of their authority to do so, if requested.
- i. Failure to sign the bid document will result in rejection of the bid as non-responsive.
- j. FCPS will not be responsible for any costs incurred by a bidder in preparing and submitting a proposal in response to this solicitation.
- k. If the bidder has made an error, the bidder may request, in writing, to have their bid withdrawn. Approval of a bidder's request is not automatic and may be given only by the Purchasing Manager.

Requests for withdrawal are usually denied, unless the bidder proves to the satisfaction of the Purchasing Manager that the mistake was either a scrivener's error or another type of clearly unintentional error so departing from customary and reasonable business practices as to be obvious and to legitimately and substantially impair the supplier's business.

#### **4. BID PRICING**

- a. Prices quoted shall not exceed the prices established under any governmental price control regulations.
- b. All proposals submitted shall be irrevocable for a period of 90 days following the proposal due date, and FCPS has within that time period after due date to accept the proposal. FCPS reserves the right to reject any offer that specifies less than 90 days of acceptance time. Upon mutual agreement between FCPS and the contractor, the acceptance time may be extended. Proposals may not be withdrawn during this period.
- c. FCPS retains the right, with mutual consent of the bidder(s), to utilize the bid pricing and approved price changes for future purchases for as long as the bidder(s) mutually agrees to extend the prices.
- d. If the contract includes equipment, all prices must be FOB-Destination (inside delivery), unless specifically authorized in Section II – FCPS Specific Terms and Conditions.
- e. Charges for express delivery will only be allowed if authorized by FCPS in writing.
- f. The bidder(s) are encouraged to bid only one product per line item that most nearly meets the specifications. If the bidder believes that there is more than one product available, a limit of two offers will be considered for each line item.
- g. If two or more particular brands, models, or makes are listed in the specifications (under Base and Alternate Bids) and the bidder has not indicated in the bid which of the two or more brands, models, etc., is being bid, it shall be understood that FCPS may require the bidder to furnish whichever is preferred by FCPS.
- h. All unit prices on items bid shall be completed on the provided proposal sheet(s). A "NO BID" or "N/A" notation should be completed for each item not being bid. Blank spaces in the proposal sheet will be considered as not being bid.
- i. In case of an error in the extension of prices in the bid, the unit price shall govern.
- j. Neither law nor regulations make allowance for errors either of omission or commission on the part of the bidders. In case of error in multiplication of unit price when arriving at total price per line item, the unit price shall govern. If there is a discrepancy between the price written in numbers and the price written in words, the words will govern.
- k. Unit Prices must be rounded off to no more than two decimal places unless so specified in Section II – FCPS Specific Terms and Conditions.
- l. FCPS reserves the right to consider discounts in evaluating a bid with line item pricing requirements. The bidder should calculate all discounts, other than prompt payment, as part of their unit pricing.

#### **5. TAXES**

- a. No charge will be allowed for federal excise, state, and/or municipal sales and use taxes, from which the Board of Education of Frederick County is exempt.
- b. A contractor is not eligible, per the Maryland Comptroller's Office, to utilize the tax exemption certificate for governmental agencies.

## **6. ADDENDUM**

- a. All changes to the bid solicitation will be made through appropriate addendum issued from the Purchasing Department.
- b. Addendum will be available on the FCPS Purchasing Department webpage. All suppliers who are known by the Purchasing Department to have downloaded the bid documents will receive an email notification.
- c. Addendum will be issued a minimum of four days prior to the bid opening date, unless the addendum issued extends the due date. (verified with COMAR, which states addendums within a "reasonable" time)
- d. Each bidder shall ascertain, prior to submitting a bid that they have received all addendum issued and the bidder shall acknowledge receipt on the Signature Acknowledgement Form. Failure of any bidder to acknowledge the receipt of addendum will not relieve that bidder from any obligations under this solicitation as amended by addendum. All addendum so issued will become a part of the award and contract documents.

## **7. RECEIPT OF BIDS**

- a. Bids are to be uploaded to OpenGov Procurement, the online sourcing website utilized by FCPS. Submissions may be uploaded at any time prior to the bid due date and time. Bidders may modify their bid submissions up until the bid due date and time.
- b. Bids uploaded after the designated date and/or time will not be accepted. It is the responsibility of the supplier to ensure that submittals are uploaded on time.
- c. In the event of inclement weather on the date when bids are scheduled to be opened and the FCPS offices are closed, or operating under a modified schedule, bids will be opened on the next business day at the same time as previously scheduled. The bid submission date will not change based on inclement weather, unless changed by an addendum. Often when schools are closed due to inclement weather, administrative offices remain open. When in doubt, refer to Section 2(e) for closing and delays.

## **8. OPENING OF BIDS**

- a. Sealed bids will be publicly opened at the date and time indicated on the solicitation cover sheet.
- b. All bids received must be signed by a person legally authorized to sign the company into a contract. Bids will be submitted on-line via OpenGov Procurement.  
(<https://secure.procurenow.com/portal/fcps>).
- c. Complete evaluation of the proposals will not take place at the bid opening and no indication of award will be made. A final recommendation(s) shall be prepared for review and approval by the Board of Education of Frederick County.

- d. The recommended award will be posted to the FCPS BoardDocs website a minimum of three days prior to the Board of Education meeting in which it will be presented.
- e. Final award recommendation, and the bid tabulation, will be posted on the FCPS webpage, [www.fcps.org/bidlist](http://www.fcps.org/bidlist), after the Board of Education of Frederick County approval.

## **9. STANDARD OF QUALITY, "OR EQUAL CLAUSES," AND SUBSTITUTIONS**

- a. Any make/model specified in the solicitation is used only to establish a quality level, unless specifically noted in Section II – FCPS Specific Terms and Conditions. Any material or article that will perform adequately the duties imposed by the general design will be considered equal and satisfactory. FCPS retains the right to determine if items are equivalent and will be accepted.
- b. It will be the responsibility of the bidder to submit a clear and concise proposal wherein each substitution and deviation is identified and described, in writing, at the time of solicitation submission.
- c. In the absence of any statement to the contrary by the bidder, the submission will be interpreted as being the exact brand and/or qualities, etc., enumerated in the detailed specifications, whenever the specifications indicate a product of a particular manufacturer, model or brand.
- d. Bidders must submit detailed literature if bidding an item other than the specified item. Detailed literature is defined as product features or specifications relating to construction and/or performance.
- e. The detailed literature is to be arranged and labeled according to item number referenced on the solicitation document.
- f. It is the bidders' responsibility to submit required literature, or links to webpages, with the bid submission. Failure to submit such data as required and/or at the time designated by the Purchasing Department shall be cause for rejection of that item.
- g. No substitutions or deviations will be permitted following the award of the contract unless "cause and effect" is presented in writing and approved by the Contract Manager. A statement of any credit or extra cost involved will be included with the request.
- h. FCPS shall not be responsible to provide personnel, testing facilities, or other resources necessary to search out substitutions and deviations in bid proposals which are unclear through the nebulous terms such as "comparable", or blanket statements of deviation such as "our standard design, construction, hardware, finishes, etc."
- i. The bidder will, upon request and with no cost to the FCPS, furnish documents, independent laboratory tests reports, and/or similar materials of proof to substantiate that the substitutions and deviations of the items they propose to furnish do not prevent these items from being truly and factually equal to, or exceeding, that which is specified.
- j. The cost of testing a representative sample of an order or shipment for acceptance and compliance with specifications shall be borne by FCPS. If the order or shipment is rejected for failure to meet the requirements of the specifications or purchase description, the cost of testing will be charged to the awarded suppliers.



## **10. SAMPLES**

- a. Samples will be requested for testing and evaluation purposes. Failure to submit samples as required at the time designated may be cause for rejection of that item.
- b. All samples must be delivered with all charges prepaid to the designated point of delivery. Samples must be marked as "SAMPLE" and include the name of the bidder, bid name and number, and return instructions, if applicable.
- c. The right is reserved to retain any sample submitted with bids for the purposes of examination and testing. FCPS reserves the right to use all samples in any manner which may best serve the final determination of the successful bidder, even if said examination and testing results in damage to or destruction of the sample.
- d. FCPS retains the right to determine the method of testing to be utilized.
- e. Samples that are not retained by FCPS must be removed within two weeks upon notification. Return shipping must be prepaid by the suppliers. Samples not removed within this two-week period shall be retained, or disposed of, at the discretion FCPS, and without compensation to the bidder.

## **11. GUARANTEES AND WARRANTIES**

- a. The awarded supplier(s) will guarantee the material and workmanship on all services, equipment, materials, supplies, and labor, furnished by them, for a minimum period of one year from the date of acceptance, unless a longer period of time is specified in Section II – FCPS Specific Terms and Conditions.
- b. If, within the guarantee period, any defects or signs of deterioration are noted, the awarded supplier(s) at their expense, shall correct the condition or they shall replace the part or entire unit of work/equipment to the complete satisfaction of FCPS. These repairs, replacements, or adjustments shall be made only at such times as will be designated by FCPS to minimize the disruption to building/school operations.
- c. Should the awarded supplier(s) fail to comply with the terms of this guarantee, FCPS may have such work performed as it deems necessary to fulfill the guarantee, charging the cost to the awarded supplier(s).

## **12. AWARDS OR REJECTION OF BIDS**

- a. The basis of award shall be the lowest responsible bidder submitting a responsive bid that conforms to the specifications established in the solicitation with consideration given to the quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, the ability of the bidder to perform satisfactory service, and the plan for utilization of minority contractors, if applicable.
- b. FCPS reserves the right to determine completeness and/or timeliness of bids, to reject any or all bids in whole or in part, to make partial awards, to waive any informality in any quotation, to increase or decrease quantities if quantities are listed in the bid, to reject any bid that shows any omissions, alterations of form, additions not called for, conditions, or alternate proposals, and to make any such award as is deemed to be in its best interest.

- c. Bidders may be required, before the awarding of a contract, to show to the complete satisfaction of FCPS, that they have the necessary facilities, ability and financial resources to execute the contract in a satisfactory manner, and within the time specified. Bidders may be required to demonstrate they have the necessary experience, history and references to assure FCPS of their qualifications.
- d. The Board of Education of Frederick County reserves the right to award the bid within 90 days from the date of the bid opening unless a different time period is stated in the bid document.
- e. Unless stated otherwise in Section II – FCPS Specific Terms and Conditions, the contract may be awarded by line item, group, or in the aggregate, whichever is in the best interest of FCPS.
- f. In the event of a tie, where all other factors, such as past performance, are considered comparable, the award shall be made to the Frederick County based bidder; the closest Maryland out-of-county based bidder; and the closest out-of-state based bidder, in that order of preference.
- g. FCPS does not have local, state or federal preference requirements except when mandated by a targeted funding source.
- h. If, after competitive sealed bids have been opened, the Purchasing Manager determines that only one responsible bidder has submitted a responsive bid, the procurement contract may be negotiated with that one bidder as sole source procurement.
- i. A recommendation for the award of a contract will be presented to the Board of Education of Frederick County for approval. Upon approval of the award of contract, the bidder(s) shall be notified of their award(s). If applicable, an FCPS contract document shall also be issued.
- j. The Board of Education of Frederick County reserves the right to reject the bid of a bidder who has, in the opinion of FCPS, failed to properly perform under previous contracts, or, who investigation shows, is not in a position to perform the contract.
- k. The Board of Education of Frederick County retains the right to reject any and all bids, if it is deemed in the best interest of FCPS to do so.
- l. If, during the life of the contract, a product or service does not meet the solicitation terms and conditions, FCPS retains the right to cancel the awarded item(s) and award to a new bidder, as long as that bidder mutually agrees to the award.

### **13. CONTRACT FORMATION**

- a. Notification of the contract award will be made by letter after approval by the Board of Education of Frederick County.
- b. The primary form of contract is the purchase order(s), and any agreed upon schedules, addendum, shop drawings, and documents associated with the bid solicitation/submission/award.
- c. A secondary form of contract, if required, may be noted in Section II – FCPS Specific Terms and Conditions, of this bid solicitation.
- d. No amendment, modification or change to the contract shall be effective unless such change is in writing and mutually agreed upon by authorized representatives of FCPS and the awarded supplier(s). Changes may not significantly alter the original scope of the agreement.

## **14. PROTESTS**

- a. The Purchasing Manager shall attempt to resolve, informally, all protests of bid award recommendations. Bidders are encouraged to present their concerns promptly to the Contract Manager for consideration.
  - i. The bidder must submit their concern, in writing, addressed to the Purchasing Manager. It should include the following:
    - Name, address, contact information of the protestor;
    - Statement of reasons for the protest;
    - Supporting documentation to substantiate the claim;
    - The remedy sought.
  - ii. The protest must be received by the Purchasing Manager at least two calendar days prior to the date of the Board of Education meeting at which the recommendation will be presented. It is the supplier's responsibility to ascertain the date and time of award.
  - iii. A bidder who does not file a timely protest before the contract is awarded by the Board of Education of Frederick County is deemed to have waived any objection.
- b. The Purchasing Manager shall inform the Chief Financial Officer and/or general counsel upon receipt of the protest, and shall confer with them prior to the issuance of a decision regarding disputes of contracts or awards valued at \$50,000 or above.
- c. The Purchasing Manager shall issue a decision in writing.
- d. Should the protestor disapprove of the Purchasing Manager's decision, they have the right to address the Board of Education of Frederick County during the public comment section of the same Board meeting where the award recommendation is scheduled for award.
- e. The Board of Education of Frederick County's decision is deemed the final action at the local level.
- f. A bidder may appeal a decision of the Board directly to the Maryland State Board of Education in accordance with Board Policy 105.11 and Maryland law.

## **15. CONTRACT DISPUTES**

- a. Any dispute arising under this contract shall be decided by the Contract Administrator, the Contract Manager and the Purchasing Manager, who will communicate their decision to writing and furnish a copy to the supplier. This decision shall be final and conclusive unless, within 30 days, the supplier furnishes a written appeal addressed to the Board of Education of Frederick County. The local Board of Education has the right to hear appeals as provided by Maryland law.
- b. The Board of Education of Frederick County, or its duly authorized representative, will review the appeal for the determination of such appeal and their finding shall be final and conclusive. In connection with any appeal preceding under this clause, the supplier will be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute, the supplier shall proceed diligently with the performance of the contract and in strict accordance with the FCPS staff's decision. Exceptions are decisions determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith, or not

supported by evidence.

- c. This clause does not preclude consideration of laws questioned in connection with the decision provided for above.

## **16. CONTRACT ASSIGNMENT**

- a. The awarded supplier(s) will not assign or transfer any portion of their interest or obligation under this Agreement to any third party, without the prior written consent of the Contract Manager. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer, elected official of the Board of Education of Frederick County, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties to this Agreement.
- b. The awarded supplier(s) will, when required, submit to the Contract Manager, in writing, the name of each subcontractor they intend to employ, the portion of the material to be furnished, their place of business, and any such information as may be required in order to know whether such subcontractor is reputable and reliable and able to furnish satisfactorily the material as called for in the specifications.
- c. FCPS reserves the right to approve or disapprove all subcontractors to be employed on a project. FCPS further reserves the right to approve or disapprove a change of subcontractor once an initial subcontractor has been approved. Any increased cost associated with the change of a subcontractor shall be the full obligation and responsibility of the awarded supplier(s).
- d. The awarded supplier(s) will not legally, or equitably, assign any of the funds payable under the contract, or its claim thereto, unless by, and with, the consent of the Contract Manager.
- e. The awarded supplier(s) will have the same provisions inserted in all subcontracts relative to the terms of the general conditions and other contract documents. Nothing contained in this contract shall create any contractual relations between any subcontractor and FCPS.

## **17. MULTI-YEAR CONTRACT**

- a. Contracts that require funding appropriation for more than one fiscal year automatically terminate if money sufficient for the continued performance is not appropriated for any fiscal year. The date of termination is the last day of the fiscal year for which money was last appropriated, or the date provided in the termination clause of the procurement contract, whichever is earlier.
- b. If the multi-year contract is terminated due to lack of funding, FCPS shall reimburse the supplier for the reasonable value of any nonrecurring costs that were incurred as a result of the multi-year contract, but not amortized in the price of the supplies or services delivered under the multi-year contract. The reasonable value will be negotiated, and mutually agreed upon, by FCPS and the supplier
- c. The cost of termination may be paid from any appropriation available for that purpose.

## **18. HOLD HARMLESS**

It is understood that the awarded supplier shall defend and hold harmless the Board of Education of Frederick County, and its representatives, from all suits, actions, or claims of any kind brought about as a result of any injuries or damages sustained by person(s) or property during the performance of this



contract.

## **19. TERMINATION FOR DEFAULT**

- a. When an awarded supplier has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of FCPS. FCPS may, by written notice of default to the supplier terminate the whole or any part of the contract in any of the following circumstances:
  - i. If the supplier fails to perform the services or provide the products within the time and manner specific herein or any extension thereof, or:
  - ii. If the supplier fails to perform any of the provisions of this contract, or fails to make progress as to endanger performance of this contract, in accordance with its terms and in either of these two circumstances does not cure such failure within a period of ten calendar days (or longer as authorized by the Purchasing Manager) after receipt of written notice from the Purchasing Manager of such failure, or:
  - iii. If the supplier willfully attempts to perform the services other than specified as to coverage, limits, protections, and quality or otherwise, without specified authorization in the form of contract amendment, or:
  - iv. If a determination is made by FCPS that the obtaining of the contract was influenced by an employee FCPS having received a gratuity, or a promise therefore, in any way or form.
- b. In the event FCPS terminates the contract in whole or in part, FCPS may procure such products and services, in a manner the Purchasing Manager deems appropriate, and the supplier shall be liable to FCPS for any additional cost(s) incurred.
- c. If, after notice of termination of this contract under provisions of this clause, it is determined for any reason that the supplier was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience.

## **20. TERMINATION FOR CONVENIENCE**

The contract may be terminated by FCPS in accordance with this clause in whole, or in part, whenever FCPS determines that such a termination is in the best interest of FCPS. Written notice shall be given a minimum of 30 days in advance. FCPS will pay for all services, in accordance with contract pricing, up to the date of the termination. However, the awarded supplier(s) shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Under this contract, the awarded supplier does not have a right to unilateral termination for convenience.

## **21. GOVERNING LAW AND VENUE**

- a. The supplier will comply with all Federal, State, and local laws, ordinances and regulations pertaining to work under their charge. If the supplier performs any work which it knows or should know to be contrary to such laws, ordinance, and regulations and without such notices to FCPS they shall bear all costs arising therefrom.
- b. All suppliers and subcontractors must abide by the Board of Education of Frederick County policies and FCPS regulations while working on school property.

- c. The supplier certifies that their firm adheres to or follows non-discriminatory practices with respect to the employment and promotion of personnel without regard to color, creed, race, sex, or national origin.
- d. The solicitation shall be construed in accordance with, and interpreted under, the laws of the State of Maryland. Any lawsuits shall be filed in the appropriate State Court located in Frederick County, Maryland.

## **22. MULTI-AGENCY PARTICIPATION**

- a. FCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland, as well as, any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The awarded supplier(s) agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested.
- b. By agreeing to extend the contract to other agencies, the supplier(s) reaffirms and warrants his original commitment to FCPS so that afterwards all items and services shall continue to conform to the requirements and conditions of the original agreement for its duration. Agencies who utilize the contract agree to notify FCPS Purchasing Department of any significant experiences, problems or issues which may, or may have the potential to, affect our administration of this contract.
- c. FCPS assumes no obligation on behalf of any other agency and shall be held harmless if either party is damaged due to the agency or supplier's failure to become informed of, or comply with, any provision or pricing under this agreement. All purchase orders and billing will be transacted between the supplier and the public agency.
- d. Each participating jurisdiction or agency shall enter into its own contract with the awarded supplier(s) and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the awarded supplier(s). The Lead Agency does not assume any responsibility other than to obtain pricing for the specifications provided.

## **23. PACKAGING AND DELIVERY REQUIREMENTS**

- a. All materials must be securely packed in accordance with accepted trade practices.
- b. A packing list will be included in each shipment. This list shall contain the following information: Purchase Order Number, Supplier Name, Item Description, Item Number, Quantity and Delivery Location. Failure to comply with this condition may be considered sufficient reason to refuse to accept the goods.
- c. All materials, supplies and equipment for FCPS shall be delivered F.O.B Destination. Unless otherwise noted in Section II – FCPS Specific Terms and Conditions, all items shall be delivered inside the office, school, or warehouse.
- d. Special delivery and handling instructions will be defined in Section II – FCPS Specific Terms and Conditions, of each bid.

- e. All school deliveries shall be made during the hours of 9:00 A.M. and 2:00 P.M. local time and only on regular school days, see School Calendar Closings enclosed, except where modified in Section II – FCPS Specific Terms and Conditions.
- f. All warehouse deliveries shall be made during the hours of 9:00 A.M. to 2:30 P.M. on all regular scheduled school days, see School Calendar Closings enclosed, except where modified in Section II – FCPS Specific Terms and Conditions.
- g. Bulk materials, delivered to the Warehouse, are to be delivered on skids, or pallets, to the Warehouse receiving platform.
- h. No help for unloading will be provided. Suppliers shall notify their delivery personnel accordingly.
- i. The awarded supplier(s) shall be held responsible for and shall be required to make good at their expense, any and all damage done or caused by their employees in the execution of the contract as determined by FCPS.
- j. The supplier will be required to furnish proof of signed delivery in every instance. Delivery receipts indicating only the number and weight of cartons received will not constitute "proof" of delivery in the event of a dispute. FCPS will not accept responsibility for deliveries that have not been signed for by an FCPS employee.

#### **24. BILLING AND PAYMENT**

- a. Invoices shall be submitted to: accounts.payable@FCPS.org or in duplicate to:  
  
FREDERICK COUNTY PUBLIC SCHOOLS  
Accounts Payable Department  
191 South East Street  
Frederick, MD 21701
- b. Invoices and packing slips must contain the following information:
  - i. Bid Number
  - ii. Purchase Order Number
  - iii. Item Number (if applicable)
  - iv. Quantity (if applicable)
  - v. Brief Description of Item or Work Performed including the dates worked
  - vi. Unit Price Bid/Partial Payment Amount
  - vii. Extended Total for Each Item
  - viii. Grand Total
  - ix. Public School Construction Number (PSC) (if applicable)
- c. Payments will be made by FCPS check, single use credit account or credit card. Credit card statements with level three data are preferred. Bidders are prohibited from charging additional costs or fees from their bid price to process such orders.
- d. Invoices to be submitted once commodities have been received and/or services have been rendered.

#### **25. COMPLIANCE WITH SPECIFICATIONS**

- a. The awarded supplier(s) will abide by, and comply with, the true intent of the specifications and not take advantage of any unintentional error or omission, but will fully complete every part as to the true intent and meaning of the specifications and drawings.
- b. Whenever mention is made of any article, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's code, A.S.M.E. regulations, or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
- c. Where the requirements of the specifications call for a higher grade and are not in conflict with the laws, ordinances, etc., the specifications shall govern.
- d. In the case of any apparent conflict between the specifications and such laws, ordinances, etc., the awarded supplier(s) will contact the Contract Administrator and the Contract Manager for a decision before proceeding with any work.

## **26. FAILURE TO PERFORM/DELIVER**

- a. If the awarded supplier(s) fails to provide the services, equipment, or other items required within the prescribed time limits, or established delivery schedule, the Contract Manager may elect to obtain services, equipment, or other items necessary from an alternate source.
- b. The awarded supplier(s) will pay any additional cost(s) incurred by FCPS for obtaining replacement services, equipment, and other necessary items.
- c. FCPS shall have the unilateral right of alternate source selection to perform the work when the awarded supplier(s) does not perform the required work.
- d. In addition to, or in lieu of, paying for any incurred replacement costs(s), the awarded supplier(s) may pay liquidated damages, in the amount of \$150 per day, for any delay or failure in performance, as well as any related damages sustained by FCPS.
- e. The assessment of liquidated damages by FCPS against the awarded supplier(s) does not supersede or affect the right of FCPS to impose other remedies that may be available.

## **27. SAFETY REQUIREMENTS**

- a. When applicable, all machinery/equipment must meet OSHA-MOSHA requirements as to the safety of the operation of the equipment. All required safety devices shall be included in the price(s) bid.
- b. When applicable, kitchen equipment and supplies must meet Maryland State Health Department, National Sanitation Foundation (NSF) and Frederick County Health Department requirements.
- c. All construction activities must be conducted in strict compliance with OSHA/MOSHA requirements.
- d. Equipment offered which fails to comply with any applicable section of the National Electrical Code, or is not U.L. Listed (where U.L. Listings have been established for that type of device) shall be rejected.
- e. The awarded supplier(s) shall submit Safety Data Sheets (SDS) for all items awarded to that supplier provided under the terms of this proposal, if applicable.



- f. The awarded supplier(s) and subcontractor(s) are required to comply with all provisions of the Access to Information about Hazardous and Toxic Substances Act, a part of the Maryland Occupational Safety and Health Law.
- g. The awarded supplier(s) is responsible to report to FCPS any asbestos material or suspected material found or uncovered that is not part of the scope of the project. In addition, they may not introduce new asbestos or asbestos bearing materials into the site.
- h. It is the responsibility of the awarded supplier(s) to comply with all Municipal, State, and Federal EPA regulations and laws when handling or disposing of asbestos materials.
- i. If the awarded supplier(s) intentionally endangers or jeopardizes the health of any building/school occupant(s) through mishandling of hazardous material, the supplier(s) will be held liable for such action.

## **28. PATENTS**

The supplier will defend all suites or claims for infringement of any patent rights and will save the Board of Education of Frederick County harmless from loss.

## **29. TECHNOLOGY-BASED INSTRUCTIONAL PRODUCTS**

All FCPS technology based instructional products (instructional software, online resources, and computer-based equipment) must be consistent with the federal Rehabilitation Act, Maryland Subpart B Technical Standards, Section 508, and the most recent revision of WCAG Standards at level AA, for accessibility by students and staff, with disabilities unless doing so would fundamentally alter the nature of the instructional activity or result in undue financial and administrative burdens. Requests for bids, proposals, procurement contracts, and grants will follow established procedures for evaluating compliance to accessibility standards in all purchase decisions.

## **30. EMPLOYMENT OF CHILD SEX OFFENDERS AND PERSONS WITH UNCONTROLLED ACCESS TO STUDENTS**

### **a. Registered Sex Offenders**

Individuals who are registered sex offenders are not eligible to work on any FCPS' property. Section 11-722 of the Criminal Procedure Article, Annotated Code of Maryland states, "a person who enters into a contract with a County Board of Education or a non-public school may not knowingly employ an individual to work at a school if the individual is a registrant." A supplier violating this Law is guilty of a misdemeanor and may be subject to imprisonment not exceeding five years or a fine not exceeding \$5,000, or both.

It is the responsibility of each awarded supplier to screen their workforce to ensure that a Registered Sex Offender is not assigned to perform work at any FCPS school or project. The term workforce includes direct employees, subcontractors, and material and equipment suppliers the awarded supplier will use to perform the work.

### **b. Other Crimes**

An awarded supplier(s), or subcontractors), may not knowingly assign an employee to work on FCPS school premises with direct, unsupervised, and uncontrolled access to children, if the

employee has been convicted of:

- i. An offense under § 3-307 or § 3-308 of the Criminal Law Article, or an offense under the laws of another state that would constitute a violation of § 3-307 or § 3-308 of the Criminal Law Article if committed in the State; or
  - ii. Child sexual abuse under §3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under §3-602 of the Criminal Law Article if committed in the State; or
  - iii. A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in this state.
- c. Violation of any of these provisions may result in immediate Termination for Cause.

### **31. CRIMINAL BACKGROUND CHECKS**

- a. Contracted service providers who have regular, direct and unsupervised access to children cannot begin service without undergoing the same process as new employees per FCPS Regulation 300-33. The criminal background check includes both fingerprinting and disclosure forms and will be completed by the FCPS Human Resources Department by appointment only.
- b. In the event a provider is unable to be fingerprinted by the FCPS Human Resources Department due to distance (living more than 200 miles from FCPS located at 191 South East Street, Frederick, MD) or any other mutually agreeable reason, then the following alternative fingerprinting and disclosure process will be followed:
  1. A contract service provider must request via email a paper fingerprint card from the FCPS Human Resources Department for manual fingerprinting by the contract service provider's local law enforcement.
  2. The contract service provider must be fingerprinted under the Adam Walsh Act background transaction (commonly referred to as the Child Care background check).
  3. The FCPS Human Resources Department will mail a paper fingerprint card to the mailing address provided by the requesting contract service provider.
  4. Upon being fingerprinted, the contract service provider will return the completed fingerprint card via mail to the FCPS Human Resources Department.
  5. The FCPS Human Resources Department will independently submit the contracted service provider's fingerprint card to the state's Criminal Justice Information System (CJIS) for state and federal criminal background check processing.
  6. The FCPS Human Resources Department will receive the state and federal background check results and maintain a copy.
  7. In the event the FCPS Human Resources Department receives a criminal background check which requires explanation by the contract service provider, the FCPS Human Resources Department will hold a conference (either by phone or virtually) directly with the contracted service provider to determine if the individual would be detrimental to the safety of children and staff and/or if the nature of the crime is such that business operations would be at risk.

8. In the event the FCPS Human Resources Department deems a contract service provider's criminal background check to be unacceptable, the FCPS Human Resources Department will notify the contract service provider in writing of ineligibility to have regular, direct, and unsupervised access to FCPS students. The awarded supplier(s), or subcontractor(s), may not knowingly assign an employee to work on FCPS school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of a crime identified as a crime of violence.

The fingerprinting and background process may change based upon direction from CJIS. If required, an awarded supplier(s) is responsible for payment of the full cost of the criminal background check.

Additional information regarding this requirement will be found in Section II – FCPS Specific Terms and Conditions

- c. In addition, with the passing of Maryland Law MD. Code, Educ. 6-113.2, employers of all contracted staff must obtain background information relating to child sexual abuse or sexual misconduct. This means that all contracted staff having direct contact with students must meet all of the FCPS and Maryland State Department of Education (MSDE) requirements before doing business with FCPS. For additional information, visit:
- [Maryland State Department of Education Website](#);
  - [House Bill 486 Child Sexual Abuse and Sexual Misconduct Prevention](#);
  - [MSDE Guidelines For MD. Code, Educ. 6113.2](#);
  - [Employment History Review Form for Child Abuse and Sexual Misconduct](#)

### **32. DRUG, ALCOHOL, AND TOBACCO-FREE WORKPLACE**

- a. All awarded suppliers and subcontractors must abide by Board Policy 112 while working on any FCPS property at all times.
- a. The Board of Education of Frederick County endorses the provisions of Public Law 100-690, Title V, Subtitle D (Drug-Free Workplace Act of 1988) and Public Law 101-226 (The Drug-Free Schools and Communities Act of 1989) and regulations promulgated there under and establishes a drug-free and alcohol-free workplace and school system.
- b. Maryland State Law (COMAR 13A.02.04) provides that each local school system is required to maintain a tobacco-free school environment.

### **33. WEAPON POSSESSION ON SCHOOL PROPERTY**

- a. The criminal code of Maryland makes it illegal to possess a weapon on school property.
- b. No person shall carry or possess any rifle, gun, knife, or deadly weapon of any kind on FCPS property.
- c. Any awarded supplier(s) whose employees violate this clause may be subject to the termination of the contract for cause.

### **34. FOREIGN LANGUAGE TRANSLATOR REQUIREMENT**

- a. An awarded supplier(s) that assigns employees to an FCPS project that do not speak English must

have an on-site, full time interpreter.

- b. Failure of an awarded supplier(s) to have an on-site, full time interpreter that is fluent in speaking and understanding an employee's native language for those employees that do not speak English is reason for immediate termination of the contract for cause.

### **35. ILLEGAL IMMIGRANT LABOR**

The use of illegal immigrant labor to fulfill contracts solicited by FCPS is in violation of the law and is strictly prohibited. Awarded supplier(s) and subcontractors must verify employment eligibility of workers in order to assure that they are not violating federal/state/local laws regarding illegal immigration. A compliance audit may be conducted.

### **36. STUDENT/STAFF CONFIDENTIALITY**

- a. The Contractor shall comply with all federal, state, and county laws and regulations applicable to the Contract regarding data collection, privacy, and security, including but not limited to the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.), the Protection of Pupil Rights Amendment, (PPRA) 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.), the Maryland Student Privacy Act of 2015, Md. Ed. Code Ann., §4-131, Code of Maryland Regulations (COMAR) 13A.08, as well as applicable Board of Education policies and FCPS regulations, including, but not limited to, FCPS Regulation 200-32, Data Security, and FCPS Regulation 400-20, Student Records.
- b. Questionnaires, survey instruments, or any other form of data collection from FCPS students, staff, parents/guardians or others pursuant to the Contract or otherwise must be reviewed and approved by FCPS.
- c. Access to Confidential Information
  - 1) To assist the Contractor in its work under the Contract, FCPS may disclose to the Contractor, either in writing or orally, records or information which FCPS deems to be proprietary and/or confidential (hereinafter, "Confidential Information"). For purposes of the Contract, Confidential Information is any information or data labeled or identified as confidential in the Contract or at the time of disclosure. This definition and the obligations of this article shall not extend to any information that: (i) the Contractor possesses prior to acquiring it from FCPS; (ii) becomes available to the public or trade through no violation by the Contractor; or (iii) is developed by the Contractor independently of and without reliance on confidential or proprietary information provided by FCPS.
  - 2) Confidential Information also includes any and all "Personally Identifiable Information" regarding FCPS students, parents/guardians, employees, or others in any medium, including but not limited to any user-generated content that FCPS students, parents/guardians, employees, or others ("FCPS Users") input to access or use the Contractor's deliverables, products, and/or services (e.g., log-in information or responses to assessment questions), as well as "Metadata." Metadata includes but is not limited to: information about how long a FCPS User took to perform a task; information about how long a FCPS User's mouse hovered over an item; keystroke data; location data; or other data about the FCPS User's use of the Contractor's deliverables, products, and/or services that has not been stripped of all direct and indirect identifiers. With respect to FCPS students, Personally Identifiable Information, as defined under

applicable law, includes:

- a. A student's name;
  - b. The name of the student's parent/guardian or other family members;
  - c. The address of the student or student's family;
  - d. A personal identifier, such as the student's social security number, student number, or biometric record;
  - e. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
  - f. Other information (including but not limited to Metadata) that, alone or in combination, is linked or linkable to a specific student or family that would allow a reasonable person in the FCPS community, who does not have personal knowledge of the relevant circumstances, to identify the student or family with reasonable certainty; or
  - g. Information requested by a person, who is not an authorized representative of the educational agency and who FCPS and/or the Contractor reasonably believes knows the identity of the student to whom the education record relates.
- 3) Confidential Information shall be maintained in confidence during the Contract and thereafter, except to the extent that it is required to be either disclosed or protected from disclosure by law, regulation or judicial or administrative process. The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall protect the Confidential Information from any Data Security Breach (as defined below), loss, theft, or disclosure using a commercially reasonable care commensurate with the sensitivity of the Confidential Information that in no circumstances is less than the degree of care that the Contractor uses to protect its own confidential information. The Contractor agrees to assist FCPS in maintaining the privacy of Confidential Information as may be required by all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
  - 4) The Contractor shall not permit unauthorized access to the Confidential Information to any individual or entity at any time or provide Confidential Information to any person, party, or organization ineligible or prohibited from receiving such information pursuant to any federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
  - 5) In the event that the Contractor is required by law, regulation, or judicial or administrative process to disclose any Confidential Information, the Contractor will promptly notify FCPS in writing, if permitted by law, prior to making any such disclosure in order to facilitate FCPS' seeking of a protective order or other appropriate remedy from the appropriate body. Should the proprietary or confidential status of any such information be disputed, the Parties agree to work in good faith to reach a mutually satisfactory disposition.
  - 6) To the extent that Confidential Information includes Personally Identifiable Information regarding FCPS Users, FCPS may require additional data sharing protocols, as agreed in writing by the Parties, prior to its disclosure to the Contractor. The Contractor also agrees to comply with the re-disclosure limitations set forth in FERPA, including in 34 C.F.R. § 99.33, and shall not authorize access to Confidential Information to any of its employees, agents, affiliates, and



subcontractors, or to any auditor, unless such employee, agent, affiliate, subcontractor, or auditor (i) requires such access in order to allow the Contractor to provide the deliverables, products, and/or services set forth in the Contract or to fulfill the Contractor's obligations under the Contract; and (ii) has signed a non-disclosure agreement no less restrictive than the terms of the Contract that will (a) prohibit the such individual or entity from using any Confidential Information for any purpose other than providing the contracted service to, or on behalf of the Contractor; (b) prohibit the individual or entity from disclosing any Confidential Information provided by the Contractor to third parties; (c) require the individual or entity to implement and maintain strict security procedures and practices that, at a minimum, comply with industry standards for data security; and (d) require the individual or entity to promptly notify the Contractor if the individual or entity becomes aware of any unlawful access to any Confidential Information stored on its equipment or facilities resulting in loss, disclosure, or alteration of Confidential Information. Such non-disclosure agreements shall be made available for inspection, upon demand, to FCPS. The Contractor agrees to remind (in writing) individuals or entities who cease working with the Contractor of their non-disclosure obligations at the time of departure, and to terminate the network access of such individuals or entities at the time of separation.

- 7) Notwithstanding any other provision of the Contract, FCPS and/or FCPS Users, as appropriate, retain all right, title, and interest in and to the Confidential Information provided by FCPS and/or FCPS Users. Neither the Contractor, nor any successor or entity to which the Contractor's assets are sold, acquires rights in the Confidential Information, other than the rights FCPS grants to the Contractor to perform the work contemplated in the Contract. If the Contractor becomes subject to dissolution or insolvency, FCPS' and FCPS Users' Confidential Information will not be considered an asset or property of the Contractor. FCPS reserves the right to demand the prompt return of any Confidential Information at any time and for any reason whatsoever. The disclosure of Confidential Information to the Contractor shall not be construed as a grant of any right or license with respect to the information other than for the purposes set forth in the Contract.

d. Use of Confidential Information

- 1) The Contractor shall collect, use, and store only such Confidential Information that is necessary in connection with the Contractor's obligations under the Contract.
- 2) The Contractor may collect and use aggregated de-identified Confidential Information to provide the deliverables, products, and/or services set forth in the Contract, for the Contractor's lawful quality assurance, and for no other purpose; provided, however, that all direct and indirect personal identifiers are permanently removed and there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an identifiable individual or to FCPS. Furthermore, the Contractor agrees not to: (i) attempt to re-identify de-identified Confidential Information; and/or (ii) transfer de-identified Confidential Information to any party unless that party agrees not to attempt to re-identify the de-identified Confidential Information and unless FCPS has provided written express consent of the transfer.
- 3) Neither the Contractor nor any of its employees, agents, affiliates, and subcontractors shall: (i) engage in targeted advertising to FCPS Users; (ii) engage in targeted advertising when the targeting of the advertising is based on Confidential Information; (iii) use Confidential Information to amass a profile about a FCPS User, except in connection with the Contractor's performance of its obligations under the Contract; (iv) sell Confidential Information; or (v) share with any individual or entity outside FCPS, without prior review and approval from FCPS, any report, data, or research findings that are based on Confidential Information or the

use by FCPS or FCPS Users of the Contractor's deliverables, products and/or services and that could be linked to an identifiable FCPS User, stakeholder, school, or the district.

- 4) The Contractor acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Contractor and any FCPS Users in connection with their access and use of the Contractor's deliverables, products, or services, and this Contract shall supersede any user agreements that may be adopted during the term of the Contract.

e. Security of Confidential Information

- 1) The Contractor shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall include, but is not limited to, the following:
  - a. Security policies for the Contractor's employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
  - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - c. Secure access controls to Confidential Information, including but not limited to passwords;
  - d. Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
  - e. Encryption of Confidential Information in accordance with industry standard encryption when it is stored or transmitted electronically;
  - f. Protocols for regular backups that include retention of backup copies for such period of time as may be required by FCPS, or by federal, state, and county laws and regulations;
  - g. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
  - h. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
- 2) The Contractor certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm to FCPS. In addition, the Contractor shall not maintain or store Confidential Information outside of the United States. To the extent that the Contractor uses cloud computing services, all Confidential Information provided by FCPS or FCPS Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Contractor will confirm to FCPS that the third-party vendor agrees to the non-disclosure agreement terms described in Article 18.C.6.
- 3) Access to the Contractor's server(s) hosting Confidential Information shall be limited to the

Contractor's operations employees, agents, affiliates, or subcontractors who: (i) have access to Contractor's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Contractor's deliverables, products and/or services.

- 4) Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Contract, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Contractor's operations personnel and personnel directly involved in implementing the Contract. The Contractor shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of FCPS. The Contractor shall not permit Confidential Information to be maintained or stored on mobile computing devices (e.g. laptops or tablets), unless such device is being used in connection with the Contractor's backup and recovery procedures. In the event that such a device is being used in connection with the Contractor's backup and recovery procedures, the Contractor will ensure that such mobile computing devices are encrypted, centrally managed with respect to configuration updates and anti-virus, password protected, and that all such devices will be scanned at the expiration or termination of the Contract to ensure that no Confidential information remains stored on such mobile computing devices.
  - 5) The Contractor will regularly backup or cause to be backed up all Confidential Information under its control and will securely store and retain backups for such period of time as may be required by federal or state law or regulation, or by FCPS. The Contractor will remove Confidential Information from backups in a manner consistent with technology best practices and industry standards for secure data disposal methods. If the Contractor is required to restore any materials from its backups, it will purge all personally identifiable Confidential Information not currently in use in the production systems from the restored backups.
- f. FCPS reserves the right in its sole discretion to perform audits of the Contractor at its sole expense to ensure compliance with this article. The Contractor shall reasonably cooperate in the performance of such audits. The Contractor also will conduct regular internal monitoring and vulnerability assessments of the computers, computing environment, servers, and physical data centers that the Contractor uses to collect, process, maintain, or store FCPS' Confidential Information that includes Personally Identifiable Information regarding FCPS Users, and to hire a third party to conduct no less than annual security audits, which includes penetration testing. The Contractor shall review audit findings and will implement recommended security program changes and enhancements where practical and appropriate. The Contractor will provide FCPS, upon request, summary data of the above audits, scans, and tests. The Contractor will take reasonable measures, including maintaining audit trails, to protect Confidential Information against deterioration or degradation of data quality and authenticity.
- g. Data Security Breach
- 1) A "Data Security Breach" is any instance in which the Contractor has actual knowledge or a reasonable basis on which to suspect or conclude that there has been an unauthorized release or access of Confidential Information, regardless of whether the Contractor stores and manages data directly or through a contractor such as a third-party cloud computing vendor. A Data Security Breach may take various forms, including but not limited to: hackers gaining access to data through a malicious attack; lost, stolen, or temporarily misplaced data or equipment (e.g., mobile computing devices or portable memory devices); employee negligence (e.g., leaving a password list in a publicly-accessible location, technical staff misconfiguring a security service or device); or policy and/or system failure.

- 2) The Contractor shall notify the FCPS Project Contact immediately of any Data Security Breach or data loss, and inform FCPS (to the extent known) what data has been compromised, but in no event later than twenty-four (24) hours after the Contractor learns of the Data Security Breach or data loss. If the Contractor becomes aware of a Data Security Breach or data loss, it shall cooperate with FCPS regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Contractor shall be responsible for performing an analysis to determine the cause of the Data Security Breach or data loss, and for producing a remediation plan in consultation with FCPS. FCPS and the Contractor agree to work together to determine an appropriate notification plan to any FCPS Users of the Contractor's deliverables, products and/or services regarding any such Data Security Breach or data loss. In addition, to the extent not prohibited, the Contractor agrees to notify FCPS of Data Security Breaches or data losses that affect its customers generally.
  - 3) In addition to any other remedies available to FCPS, at law or in equity, the Contractor will reimburse FCPS in full for all costs incurred by FCPS in investigating and remediating any Data Security Breach or data loss caused in whole or in part by the Contractor or its employees, agents, affiliates, or subcontractors. The Contractor shall use commercially reasonable efforts to mitigate any negative consequences caused to FCPS, or to a FCPS User, as the result of a Data Security Breach or data loss and to implement procedures to prevent the recurrence of a similar Data Security Breach or data loss.
  - 4) The Contractor shall provide notice to FCPS within twenty-four (24) hours of notice or service on the Contractor, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Contractor's handling of Confidential Information, failure to follow security requirements, and/or failure to safeguard confidential information of any third party.
- h. Except as specifically set forth by FCPS in writing, or as required by federal, state, and county laws and regulations, the Contractor shall upon the termination or expiration of the Contract, upon cessation or dissolution of the Contractor's business operations, or upon request by FCPS:
- 1) Erase, destroy, permanently delete, and render unreadable all Confidential Information in its paper files, computers, computing environment, systems, equipment, servers, and physical data centers; or, upon FCPS' request to ensure the integrity of FCPS operations, transfer/migrate such Confidential Information to FCPS or its designated third party;
  - 2) Certify in writing that the actions set forth in this subsection have been completed on or before agreed-upon deadlines;
  - 3) Ensure that any transfer/migration uses facilities and methods that are compatible with the relevant systems of FCPS or its designated third party; and
  - 4) To the extent technologically possible, ensure that FCPS will have access to the Confidential Information during any transfer/migration.
- i. Nothing in this article shall supersede in any manner the Contractor's obligations or the obligations of its employees, agents, affiliates, or subcontractors pursuant to all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above, or the provisions of the Contract concerning the Contractor's obligations to FCPS.
- j. Violation of this article constitutes a breach of contract for which FCPS may terminate the Contract pursuant to Article 13, and/or pursue any other appropriate remedy. Notwithstanding anything in the Contract to the contrary, the provisions of this article shall survive the expiration or earlier

termination of the Contract.

### **37. PUBLIC INFORMATION ACT NOTICE**

- a. Bidders should identify those portions of their solicitation, which they deem to be confidential, or to contain proprietary commercial information or trade secrets. Bidders should provide justification why such material, upon request, should not be disclosed by FCPS under the Public Information Act, Title 4, General Provisions Article, Annotated Code of Maryland.
- b. Unless portions of a solicitation are identified as confidential, all records are considered public. A person or governmental unit that wishes to inspect a public record, or receive copies of a public record, shall submit a written or electronic request and direct it to the Office of Legal Services per FCPS Regulation 200-42.

### **38. FORCE MAJEURE**

Force Majeure is defined as an occurrence beyond the control of the affected party and not avoidable by reason of diligence. It includes the acts of nature, war, riots, strikes, fire, floods, epidemics, terrorism, or other similar occurrences. If either party is delayed by Force Majeure, said party shall provide written notification to the other within 48 hours. Delays shall cease as soon as practicable and written notification of same provided. The time of contract completion may be extended by contract modification, for a period of time equal to that delay caused under this condition. FCPS may also consider requests for price increase for raw materials that are directly attributable to the cause of delay. FCPS reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure, and the supplier shall have no recourse against FCPS. Further, except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of Force Majeure as defined herein.

### **39. ETHICS POLICY**

- a. The Board of Education of Frederick County has an Ethics Policy, which covers conflict of interest, financial disclosure and lobbying. All bidders are expected to comply with any and all Ethics Policies that may apply to them individually or as a business entity.
- b. All bidders should carefully review Board Policy 109, Ethics, which prohibits FCPS employees from benefiting from business with the school system.

### **40. NON-COLLUSION**

- a. Bidder represents and certifies that prices for these services have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition or any matter related to such prices with any competitor or other bidder. Prices quoted in this bid have not been knowingly disclosed directly or indirectly to any competitor or other supplier prior to the opening of this bid.
- b. Bidder represents and certifies that it has not employed or retained any other company or person (other than a full-time bona fide employee working exclusively for the bidder) with the primary intent to solicit or secure the contract.

### **41. CONFLICT OF INTEREST**

All suppliers interested in conducting business with Frederick County Public Schools (FCPS) must complete and return the Suppliers Conflict of Interest Disclosure Form included in the solicitation packet, in order to be eligible to be awarded a contract with FCPS.

#### **42. SERVICE LEVEL AGREEMENT (SLA)**

a. Definitions

1. A “Problem” is defined as any situation or issue reported via a help desk ticket that is related to the system operation that is not an enhancement request.
2. “Problem resolution time” is defined as the period of time from when the help desk ticket is opened to when it is resolved.
3. Monthly Charges: for purposes of SLA credit calculation, Monthly Charges are defined as the charges set forth under Fees, invoiced during the month of the breach for the monthly fixed services, or, in the event of annual billing, 1/12 of the annual invoice amount.

b. SLA Requirements

The Contractor shall:

1. Be responsible for complying with all performance measurements, and shall also ensure compliance by all subcontractors.
2. Meet the Problem response time and resolution requirements as defined in item 42 h.
3. Provide a monthly report to monitor and detail response times and resolution times.
4. Log Problems into the Contractor-supplied help desk software and assign an initial severity (Emergency, High, Medium or Low as defined in item 42 h).
5. Respond to and update all Problems, including recording when a Problem is resolved and its resolution. Appropriate personnel shall be notified when a Problem is resolved.
6. FCPS shall make the final determination regarding Problem severity.
7. Contractor shall review any Problem with FCPS to establish the remediation plan and relevant target dates.

c. SLA Effective Date (SLA Activation Date)

SLAs set forth herein shall be in effect beginning with the commencement of monthly services as of the effective date of the contract, unless a defined transition, or implementation, date is provided.

Beginning on the SLA Activation Date, for any performance measurement not met during the monthly reporting period, the SLA credit for that individual measurement shall be applied to the Monthly Charges.

d. Service Level Reporting

1. Contractor performance will be monitored by FCPS.

2. The Contractor shall provide detailed monthly reports evidencing the attained level for each SLA.
3. The Contractor shall provide a monthly summary report for SLA performance.
4. Monthly reports shall be delivered via e-mail to the Project Contact by the 15th of the following month.
5. If any of the performance measurements are not met during the monthly reporting period, the Contractor will be notified of the standard that is not in compliance.

e. SLA Service Credits

Time is an essential element of the Contract. For work that is not completed within the time(s) specified in the service level metrics in the Contract, the Contractor shall be liable for service credits in the amount(s) provided for in the Contract.

Service credits will be cumulative for each missed service requirement. FCPS, at its option for amount due as service credits, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item. In the event of a catastrophic failure, all affected SLAs shall be credited to FCPS.

In no event shall the aggregate of all SLA credits paid to FCPS in any calendar month exceed 25% of any Monthly Charges.

*Example: If Monthly Charges were \$100,000 and one SLA were missed, with an applicable 4% credit, the credit to the invoice would be \$4,000, and FCPS would pay a net Monthly Charge of \$96,000. If the charges for the contract were paid as an annual payment, FCPS will invoice the Contractor for the applicable amount.*

The parties agree that any assessment of service credits shall be construed and treated by the parties not as imposing a penalty upon the Contractor, but as compensation to FCPS for the Contractor's failure to satisfy its service level obligations.

f. Root Cause Analysis

If the same SLA measurement yields an SLA credit more than once, the Contractor shall conduct a root cause analysis. Such root cause analysis shall be provided within 30 days of the second breach, and every breach thereafter.

In addition, for each 'Emergency' or 'High' priority Problem, the affected parties will perform a root cause analysis and institute a process of problem management to prevent recurrence of the issue.

g. Service Level Measurements Table (System performance)

The Contractor shall comply with the service level measurements in the following table:



No.	Service Requirement	Measurement	Service Level Agreement	SLA Credit
1	Problem Response Time - Emergency	Average Response Time for Emergency Priority Problems.	98% <15 minutes	1%
2	Problem Response Time – High	Average Response Time for High Priority Problems.	98% <30 minutes	1%
3	Problem Response Time - Normal	Average Response Time for Normal or Low Priority Problems	98% <4 hours	1%
4	Problem Resolution Time - Emergency	Resolution Time for each Emergency Priority Problem	98% <2 hours	1%
5	Problem Resolution Time - High	Resolution Time for each High Priority Problem	98% <4 hours	1%
6	Problem Resolution Time - Normal	Resolution Time for Normal Priority Problems	98% <24 hours	1%
7	Problem Resolution Time - Low	Resolution Time for Low Priority Problems	98% <72 hours	1%
8	Scheduled Downtime/ Maintenance	Scheduled maintenance and downtime shall only occur during non-business hours*. The Contractor shall provide 14 calendar days' notice prior to any scheduled downtime.	<6 hours each month	1%
9	Service Availability	All application functionality and accessibility shall be maintained at 99.5% uptime performance levels. Contractor shall minimize or eliminate unscheduled network downtime to .5% or less.	<99.5%	1%
10	Notification of Security Incident	Notification of a Security Incident within 24 hours of occurrence	<24 hours	1%
11	Security Incident Reporting	Security incident reporting requirement in 72 hours	<72 hours	1%

FCPS shall have the unilateral right to reallocate percentages among the various SLAs annually on the anniversary of the Contract, provided that such reallocation will not exceed the cap identified in item 42 e.

h. Problem Response Definitions and Times

The Contractor shall meet the Problem response time and resolution requirements.

The Contractor shall provide a monthly report to monitor and detail response times and resolution times.

Service Priority	Response Time	Resolution Time	Response Availability	Work Outage	Users Affected
Emergency	Less than 15 minutes	Within 2 hours of first report.	Mon-Fri, 6AM-5PM EST	The entirety, or essential portions, of the System are inaccessible Systems or users are unable to work, or to perform some portion of their job.	Users or internal System functionalities are impaired
High	Less than 30 minutes	Within 4 hours after first report.	Mon-Fri, 6AM-5PM EST	Major portions of the System are inaccessible Systems or users are unable to work, or to perform some portion of their job.	Affects the majority of users to include public facing users
Normal	Within 2 hours	Within 1 day (24 hours) after first report. If the outage is not resolved a resolution plan must be in place.	Mon-Fri, 6AM-5PM EST	Specific non-critical features are not operating as specified Systems or users are unable to perform a small portion of their job, but are able to complete most tasks.	Affects a number of users
Low	Within 4 hours	Within 3 days (72 hours) after first report. If the outage is not resolved a resolution plan must be in place.	Mon-Fri, 6AM-5PM EST	Lower priority features that can be done manually are not operating as specified Often a request for service with ample lead time.	Affects a number of users

#### **43. SERVICE ORGANIZATION CONTROL (SOC) AUDIT REPORT**

This section applies to the vendor, and any relevant subcontractor, who provides services for FCPS identified critical functions, handles Sensitive Data, and/or hosts any related, implemented system, for FCPS, under the Contract. For purposes of this section, "relevant subcontractor" includes any subcontractor that assists the vendor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the vendor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system

The vendor shall provide annually, at no cost to FCPS, evidence of compliant, and ongoing, internal control of sensitive data and processes through a standard methodology, such as, but without limitation, the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the vendor's internal controls.

If deficiencies in the vendor's internal control processes and procedures are described in the most recent version of the report, the vendor shall automatically submit the report to the Contract Manager, within a timely manner, and shall describe the corrective actions to be put into place by the vendor to remedy the deficiencies.

If the vendor fails, during the contract term to obtain an annual SOC 2 Report by the contract end date, FCPS shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the vendor and under the Contract. The vendor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. FCPS will invoice the vendor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the vendor.

This section shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the content of this section, or the substance thereof, in all subcontracts.

#### **44. FEDERAL CONTRACT AWARDS**

In the event that federal funds are utilized for purchases under this contract, Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, will be applicable.

This document can be found at the end of Section I, General Terms and Conditions, as Attachment "A".

**ATTACHMENT A - APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the

open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

**FREDERICK COUNTY PUBLIC SCHOOLS (FCPS)**  
**SPECIFIC TERMS AND CONDITIONS**  
**SECTION II**

**1. SCOPE**

Frederick County Public Schools requests proposals from licensed consultants (hereinafter referred to as "Consultant or Consultants") for on-call design services for architectural, structural, civil, geo-technical, mechanical, electrical engineering services and other design disciplines in accordance with the instructions and subject to the requirements hereinafter set forth.

Frederick County Public Schools will assign specific projects to what it considers to be the most appropriate firm(s) considering the scope of the project, time to complete the project, and proposed cost of the project. In accordance with the terms of any resulting contract, Frederick County Public Schools reserves the right to decide when and if project consulting services will be assigned and makes no commitment to a specific number of assignments or value of work.

Frederick County Public Schools may require the cooperative effort of several professional design disciplines to work in concert on a single project. If this procedure is required, FCPS will select the most appropriate Consultant to act as the General Consultant for the project and the FCPS selected Sub-Consultants will work through the General Consultant. FCPS will issue only one Purchase Order per project and that will be issued to the project's General Consultant and the Sub-Consultants will work and be coordinated through the General Consultant.

Frederick County Public Schools retains the right to obtain separate bids for large architectural/engineering projects on an as needed basis per project.

This is an indefinite quantities project and may include but is not limited to the following services:

- a. Meet with appropriate FCPS staff as required to review, discuss, plan, design and administer the construction of the various projects varying in size, scope and complexity. Coordinate with other sub-consultants as required. Some projects may require evaluations, studies, reports and consulting services and not require design.
- b. Fees and procedures for individual design projects shall be established as follows:
  - Perform preliminary examination of project
  - Submit design fee proposal per project based on lump sum amounts.
  - Meet with FCPS staff to discuss number of hours required.
  - FCPS will issue one purchase order per project and the project design shall not begin until a purchase order is received.
- c. Perform on-site inspections, surveys, studies, evaluations and observations as required for the project. Provide written reports, results, recommendations and recorded observations to Frederick County Public Schools as directed. Attend periodic progress, Board and Committee meetings.
- d. Provide consulting, design and construction administration services for projects involving architectural, civil, structural, mechanical, plumbing, fire protection, electrical, geo-technical, and other professional services.
- e. Design services may include preparation of construction drawings and specifications as necessary to quote or bid projects. Schematic and or design development drawings will be

required as appropriate. A/E firms shall produce one complete set of electronic drawings and specifications on CD ROM Disc for the record for each project.

- f. Design services shall be performed in accordance with all applicable codes, laws, ordinances and FCPS Standards for the Design of New and Renovated Facilities.
- g. A/E firms will provide all drawings and prints and specifications utilizing PDF and Auto-CADD Revit or other format (most recent version) as well as hard copies of the drawings, specifications and As-Built documents at the completion of each project design as required by FCPS.
- h. Specifications shall be provided utilizing CSI MASTER format and modified as necessary to meet Frederick County Public Schools requirements.
- i. A/E Firms are required to review and prepare a complete set of As-Built drawings (where applicable) showing the actual construction that was performed on the project by coordinating any and all changes with the contractors. The complete As-Built drawings shall be electronic PDF.
- j. A/E firms will be required to prepare, review and sign-off on all of the Project Closeout Documents at the completion of each project. The Project Closeout Documents include:
  - (1) Use and Occupancy Permit
  - (3) Certificates of Substantial Completion AIA Document G704
  - (1) Complete set of As-Built Drawings
  - (2) Complete sets of Operation and Maintenance Manuals as required for the project in electronic format
  - (1) Release of Liens AIA Document G706a
  - (1) Affidavit of Debts and Claims AIA Documents G706
  - (1) Consent of Surety AIA Document G707
  - (1) FCPS Sign-Off Sheet.
- k. Contract will be AIA B102-2007 Standard Form of Agreement between Owner and Architect and B201-2007 Standard Form of Architectural Services. (AIA Contract may be required for large projects. A purchase order will be issued separately for each individual project).

## **2. CONTRACT PERIOD**

The initial term of this contract shall be effective from November 1, 2023 through October 31, 2025. The contract may be renewed for one additional two-year term from November 1, 2025 through October 31, 2027, at the discretion of the Board of Education with all terms and conditions of the original contract remaining unchanged. Bidders automatically accept the possibility of contract renewal as a condition of award.

Extension of this contract is contingent upon satisfactory performance of the contractor, subject to appropriate funding and based upon, but not limited to, the following: timeliness of performance, completeness of drawings, specifications, and documents, management of projects and responsiveness to the needs of the school system.

## **3. PRICING**

- a. All hourly rates shall remain firm through the initial contract period. Hourly rates for the required skill sets shall include all related expenses (for overhead, profit, labor, administrative fees,



insurance, workmen's compensation, license fees, travel, mileage, report writing, and incidentals).

- b. Price adjustments from the agency may be considered only for the renewal. The request is subject to approval by the Contracting Manager. The request must be submitted in writing to the Purchasing Contract Manager at least 60 days prior to the renewal term and shall be accompanied by supporting documentation.

#### **4. CONTRACT TERMS**

- a. Frederick County Public Schools reserves the right to decide when and if project consulting services will be assigned and makes no commitment to a specific number of assignments or value of work. As FCPS has a need for consultant services, FCPS will select a firm from the appropriate approved list.
- b. This contract is to be utilized for projects with an estimated value not exceeding \$200,000. If a project estimate exceeds this threshold, the Purchasing Department reserves the right to issue a formal solicitation.
- c. For projects under \$25,000, FCPS shall reserve the right to obtain in writing a "Request for Quote" (RFQ) from the appropriate approved category list of awarded firm(s). FCPS reserves the right to award the project to the firm offering the most favorable quote (as determined by FCPS). It is important to note that the most favorable quote may not be the one offering the lowest price.
- d. For project exceeding \$25,000, FCPS will obtain in writing a "Request for Quote" (RFQ) from all the awarded firms in the appropriate approved category list. FCPS reserves the right to award the project to the firm offering the most favorable quote (as determined by FCPS). It is important to note that the most favorable quote may not be the one offering the lowest price.
- e. Firms are required to provide written lump sum cost proposals for services requested by FCPS which will be used as the basis for a purchase order.
- f. All work shall be performed on a lump sum basis with the hourly rates utilized for changes in scope of work only.
- g. Firms have the right to refuse to perform a project; however, the reason for refusal must be submitted in writing and will be a consideration in inviting future work.
- h. Reimbursable expenses include reproduction and printing costs.
- i. A/E firms shall invoice monthly and shall provide an itemized listing of work completed. Separate invoices shall be submitted for each project.

#### **5. CONTRACT ADDITIONS/DELETIONS**

FCPS, at its option, may add or delete like or related services as needed at the discretion of the contract administrator and purchasing manager. All specifications and requirements of the solicitation will apply to any additions made during the contract term.

#### **6. QUALIFYING ADDITIONAL CONSULTANTS**

- a. Other consultants may become qualified throughout the contract period if it is determined that their services would be beneficial to FCPS.

- b. Under such circumstances, the provider is expected to meet the same bid requirements and offer competitive rates.
- c. Consultant would be notified in writing of their qualification status no later than forty-five days from receipt of their proposal and will be considered approved as of that notification date.

## 7. CONTRACTOR'S INSURANCE

FCPS requires insurance certificates evidencing the compliance of insurance requirements at least ten calendar days after receipt of the Notice of Award. The vendor will not commence work until a notice to proceed letter, or purchase order, is issued, nor will the vendor allow any subcontractor to commence work on their subcontract until the insurance required of the subcontractor has been obtained and approved.

### a. Commercial General Liability Insurance

The vendor will procure and maintain, during the life of the contract, Commercial General Liability Insurance including premises and operations, completed operations and products, on a per occurrence basis, with at least the following limits:

Bodily Injury	\$1,000,000 each occurrence
	\$1,000,000 Aggregate
Personal Injury	\$1,000,000 each occurrence
	\$2,000,000 Aggregate
Property Damage	\$1,000,000 each occurrence
	\$2,000,000 Aggregate
Products-Completed Operations Aggregate	\$2,000,000 Aggregate
Fire Damage Legal Liability	\$50,000 any one fire
Medical Expense	\$5,000 any one person

Property Damage Liability Insurance shall provide "X, C, and U" coverage for explosion, collapse, and underground property damage.

Completed operations liability coverage shall be in force for one year after completion of work.

### b. Comprehensive Automobile Liability

The vendor shall maintain Comprehensive Automobile Liability Insurance including all automotive equipment owned, non-owned and hired, operated, rented, or leased. Minimum limits of Automobile Liability Insurance shall be:

Bodily Injury	\$1,000,000 per person
Property Damage	\$1,000,000 each occurrence, or
Combined Single Limit Bodily Injury and Property Damage Liability	\$1,000,000 each accident

### c. Worker's Compensation

The vendor will procure and maintain, during the life of the contract, Worker's Compensation Insurance, as required by applicable State laws. In the case of sublet work, the vendor will require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the vendor's Worker's Compensation Insurance.

### d. Employers' Liability Insurance

The vendor will procure and maintain, during the life of the contract, Employers' Liability Insurance

in the following amounts:

E.L. Each Accident	\$500,000.00
E.L. Disease - Each Employee	\$500,000.00
E.L. Disease - Policy Limit	\$500,000.00 each employee

The vendor will require any subcontractor to procure and maintain Employer's Liability Insurance during the life of the contract. It will be the responsibility of the vendor to ensure that all subcontractors comply with this provision, and the vendor will indemnify, and hold harmless, the Board of Education of Frederick County for the failure of the vendor, or any subcontractor, to comply with these provisions.

- e. Professional Liability  
Errors and Omissions  
\$1,000,000 per claim  
\$2,000,000 Aggregate with deductible not exceeding \$50,000
- f. Umbrella Excess Liability  
  
\$10,000,000 over primary insurance, or \$25,000 retention for self-insured hazards each occurrence
- g. Proof of Carriage of Insurance  
The vendor will furnish FCPS with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates also shall contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered, except after thirty days written notice has been received by FCPS."
- i. Additional Insured  
The Owner, Board of Education of Frederick County, the Frederick County Council, and the State of Maryland other entities stipulated by the Owner, shall be named as additional insured on all vendor's policies, other than Worker's Compensation Insurance policy. The vendor's insurance will be primary and non-contributory to any insurance carried by the Board of Education of Frederick County or other entity. Waiver of subrogation applies to above policies in favor of the certificate holder. Insurance providers must have an AM Best Company rating of at least A-/VIII.j.

## **8. PREPARATION OF PROPOSAL**

- a. Due to possible changes and/or additions to the solicitation package, FCPS requests that bidders delay submission of their bid package until after the date questions are due to allow time for the possible issuance of an addendum. All changes will be processed through appropriate addenda.
- b. The Technical and Fee proposals will be submitted separately on-line via OpenGov Procurement (<https://secure.procurenow.com/portal/fcps>).
- c. Technical Proposal:
  - i. The Technical Proposal will include the following forms completed:
    - Signature Page
    - Statutory Affidavit and Non-Collusion Certification
    - Certification of Compliance
    - Vendor Conflict of Interest Disclosure Form
    - Proprietary Information Identification Form
    - W9 Form

- Technical Proposal Questionnaire
  - Supporting documents
- d. Fee Proposal:
- i. The Fee Proposal will include the following form(s) completed:
    - Fee Proposal Form (Including the firm's Standard List of Fees)
  - ii. No separate costs for travel, mileage, overhead or miscellaneous are acceptable. All costs are to be included in the hourly rates on the Fee Proposal

## **9. EVALUATION CRITERIA AND AWARD**

- a. A committee of FCPS staff will independently review and evaluate each technical proposal.
- b. The process for determining which vendor(s) to approve may take the form of either a [questionnaire](#), interview, and/or site visit, and includes appraisals of various aspects of the consultant's business including capacity, financials, [quality assurance](#), organizational structure and processes and performance.
- c. 100 points will be assigned for the technical proposal.
  - Overall Proposal/Cover Letter                      5 points
  - Firm Overview    15 points
  - Organization Chart                                        15 points
  - Architectural Educational Experience            35 points
  - Architectural Consultant Staffing                30 points
- d. Points will be deducted for incomplete or missing responses, or responses that do not follow the required format. Extraneous marketing materials or irrelevant information is not to be submitted.
- e. Based on the information obtained via the evaluation, a supplier is scored and is either approved or not approved.
- f. If not approved, the vendor will not be considered further in price evaluations
- g. If approved, fee proposals will be evaluated on a weighted basis. 20 total points will be awarded with the maximum points given for the lowest overall calculated costs.
- h. Final ranking will be made on the basis of the criteria and rubric listed above.
- i. An interview may be required to obtain more information prior to recommendation for award, and points may be added or deducted.

## **10. VENDOR PERFORMANCE EVALUATION**

- a. The Contract Manager and Administrator shall confer periodically to discuss the status of the contract. Issues of noncompliance may arise throughout the contract term and shall be brought to the attention of the Contract Manager as they occur.
- b. The Contract Manager or Administrator may request multiple metrics, from the vendor, to evaluate contract performance. Metrics may include, but are not limited to:

- i. Delivery
  - ii. Response time
  - iii. Backorders
  - iv. Quality of deliverables
  - v. Invoicing
  - vi. Sales data (Contract data, non-contract data)
  - vii. Financial
- c. Where technical, construction or performance specifications have been identified in the bidding document, the contract administrator shall utilize these specifications as the basis of determining contract compliance.
- d. If noncompliance occurs, it shall be documented in a timely manner, including actions taken and final resolution. Copies of the correspondence will be maintained in the Purchasing Department bid documents.
- e. Issues of noncompliance will be handled on a case by case basis. This may include, but is not limited to, written correspondence, face-to-face meetings, and/or an agreed upon performance management plan. FCPS retains the right to terminate the contract, in whole or in part, if the noncompliance issue is not resolved to the satisfaction of FCPS.

## **TECHNICAL PROPOSAL REQUIREMENTS**

### **A. Cover Letter (2-page maximum):**

The Cover Letter shall include a brief general statement of interest and commitment to perform. The Cover Letter shall include but not be limited to: Identifying the strengths and/or specializations of the company. Identify if the firm is a Minority Business Enterprise (MBE) or a Small Business Enterprise (SBE). Include the name, telephone number, and email address of the key contact person. Address the cover letter to Kim Miskell, Assistant Purchasing Manager. The Cover Letter shall be signed by an authorized officer of the firm having legal authority.

### **B. Table of Contents (1-page):**

The Table of Contents shall list the contents of the proposal in a format consistent with this RFP.

### **C. Firm Overview (4-page maximum):**

1. Firm name. The names of the firm's officers. A brief history of the firm or firm's officers. How many years has your firm been in business? How many years has your firm been providing architectural educational consulting services? How many years has your firm been providing architectural educational consulting services in Maryland?
2. Provide the revenue range for the firm for the last five years (most recent year first). Utilize the following ranges:
  - a. Less than \$1,000,000.
  - b. \$1,000,000 to \$5,000,000.
  - c. \$5,000,000 to \$10,000,000.
  - d. \$10,000,000 to \$20,000,000.
  - e. Greater than \$20,000,000.
3. The location of all your firm's US domestic offices. The location of your firm's headquarters. The location of the office where the majority of the services for FCPS will be performed and the year that office was established.
4. Provide a chart which breaks down the total number and discipline breakdown of professional staff. If the firm has more than one office, provide the total number and discipline of design professional staff company wide and also provide the information for the officer where the majority of these services for FCPS will be performed. Specify how many of these individuals have design experience in K-12 school projects in the United States and, elsewhere and in the State of Maryland. Additional charts may be required if the office performing the majority of the work varies from tier to tier.

	Company Wide (US Offices Only)			Office Where Majority of Work will be Performed (Tier I, Tier II)		
Staff Position	Quantity	Qty w/K-12 Experience	Qty w/K-12 Exp in MD	Quantity	Qty w/K-12 Experience	Qty w/K-12 Exp in MD
Licensed Mechanical Engineer (PE)						
Mechanical Engineer						
Mechanical Designer						
Licensed Electrical Engineer (PE)						
Electrical Engineer						
Electrical Designer						
Plumbing						

Engineer/Designer						
Fire Protection Engineer/Designer						
Other (Support Staff)						

**D. Organization Chart (3-page maximum):**

Organizational Chart: Provide an organization chart and include the chain-of-command. Include personnel expected to be assigned to the projects.

**E. Architect's Educational Experience (7-page maximum):**

1. Project Profiles: Provide project profiles of not more than three (3) projects of a similar size as Tier I, not more than four (4) projects of a similar size as Tier II. Only include projects which completed the design in the last five (5) years. For each project, identify: year of completion (design), status of construction, extent of involvement, whether you were prime or a subconsultant, total budget for your scope of work, total number and dollar amount of construction change orders, and all other pertinent project facts. Include the client, prime consultant, and construction management firm (if any) associated with each of these projects, including a reference contact, the reference's phone number and email address.
2. Preference will be given to projects with K-12 experience. Additional preference will be given for K-12 projects in the State of Maryland.

**F. Architect's Staffing (16-page maximum):**

Architectural Consultant's Staffing: Provide a 1-page resume of the specific individuals of your firm that will be planning and performing the work. A senior member and other key members of the project team shall be registered Engineer in Maryland. Specify in which tier each staff member would be utilized.

1. Resumes shall include education, field of study, professional registrations/certifications/ accreditations, and appropriate experience. Resumes shall identify years of experience and years with the current firm. When identifying previous experience, indicate the year the design was completed and the scope of the design. Clearly indicate if the experience identified was preformed while working for another firm.
2. The project experience identified in the resume should be reflective of the estimated construction cost of the tier for which employee is being proposed.

**G. Attachments**

Additional items to include with this Submittal:

1. Signature Page
2. Statutory Affidavit and Non-Collusion Certificate Form
3. Certification of Compliance Form
4. Vendor Conflict of Interest Disclosure Form
5. Proprietary Information Identification Form
6. W9
7. SF330 Form.
8. Certificate of Insurance in amounts as listed in Section II, Specific Terms and Conditions, #4., Contractor's Insurance.
9. Certificate of Status (generally called a "good standing" certificate) from the Maryland Department of Assessments and Taxation
10. Copy of State of Maryland business license.



FREDERICK COUNTY PUBLIC SCHOOLS  
FEE PROPOSAL FORM

RFP 24A1, ARCHITECTURAL/ENGINEERING CONSULTANT SERVICES

In compliance with your request for proposal, the undersigned proposes to provide all labor, materials, equipment and incidentals necessary and required to perform various professional design and consulting services on an indefinite quantities basis for the period of one year from the date of contract award in strict accordance with the specifications at the following hourly rates:

I. SERVICE TYPE

Please identify below the specific services for which you have submitted this proposal. Consultants must submit individual and separate price structures for each service they intend to provide in a prime contracting capacity. Unit price contracts will be established with multiple firms for each of these categories.

\_\_\_\_ Architect    \_\_\_\_ Electrical    \_\_\_\_ Mechanical    \_\_\_\_ Civil    \_\_\_\_ Structural  
\_\_\_\_ Environmental    \_\_\_\_ Other (specify)

II. FEE STRUCTURE FOR SERVICE IDENTIFIED IN I. ABOVE

<u>Work Classification</u>	<u>Hourly Rate *</u>
Principal	\$ _____
Project Engineer/Architect	\$ _____
Project Manager	\$ _____
Geotechnical Engineer	\$ _____
CADD/Revit Designer	\$ _____
Clerical/Administrative Assistant	\$ _____
2 Person Survey Crew	\$ _____
3 Person Survey Crew	\$ _____
Other (Specify): _____	\$ _____

**For work classifications not identified above, please include a copy of your firm's standard list of fees.**

**\*NOTE: This hourly rate is all inclusive of overhead, profit, administrative fees, direct and indirect costs.**

## SIGNATURE ACKNOWLEDGING PROPOSAL

**Note: When submitting your bid/proposal, please use this page as a cover sheet for your proposal.**

In compliance with your invitation for bidders, the undersigned proposes to furnish and deliver all labor and materials in accordance with the accompanying specifications and "Instructions and General Conditions" for the price as listed on the enclosed Proposal Sheet(s).

I/We certify that this bid/proposal is made without previous understanding, agreement, or connection with any person, firm, or corporation submitting a bid/proposal for the same goods/services and is, in all respects fair and without collusion or fraud; that none of this company's officers, directors, partners or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of Frederick County, Administrative or Supervisory Personnel or other employees of the Frederick County Public Schools, has any interest in the bidding company except as follows:

COMPANY: \_\_\_\_\_

dba: \_\_\_\_\_

REGISTERED MARYLAND CONTRACTOR NUMBER: \_\_\_\_\_

FEDERAL IDENTIFICATION: \_\_\_\_\_ DATE: \_\_\_\_\_

The undersigned has familiarized themselves with the conditions affecting the work, the specifications, and is legally authorized to make this proposal on behalf of the Contractor listed above.

NAME (please print): \_\_\_\_\_

SIGNATURE OF ABOVE: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE # \_\_\_\_\_ FAX # \_\_\_\_\_

E-MAIL ADDRESS (for correspondence): \_\_\_\_\_

E-MAIL ADDRESS (for receiving Purchase Orders): \_\_\_\_\_

**(DO NOT COMPLETE THIS AREA IF YOUR COMPANY IS UNABLE TO RECEIVE PURCHASE ORDERS ELECTRONICALLY)**

.....

### ACKNOWLEDGMENT OF ADDENDA (if applicable)

The above-signed company/firm acknowledges the receipt of the following addenda for the above-referenced solicitation.

Date Received by Proposer/Bidder:

Addendum #1	_____	Addendum #2	_____
Addendum #3	_____	Addendum #4	_____
Addendum #5	_____	Addendum #6	_____
Addendum #7	_____	Addendum #8	_____

**FREDERICK COUNTY PUBLIC SCHOOLS**

**STATUTORY AFFIDAVIT AND NON-COLLUSION CERTIFICATION**

Special Instructions: An authorized representative of the bidder needs to complete the following affidavit and insert an answer to paragraphs 1 and 3.

BIDDERS: The submission of the following Affidavit at the time of the bid opening is:

☒ requested to be completed but not required to be notarized.

☐ required to be completed and notarized.

I, \_\_\_\_\_, being duly sworn, depose and state:

1. I am the \_\_\_\_\_ (officer) and duly authorized representative of the firm of  
the organization named \_\_\_\_\_ whose address is  
(Name of Corporation)

\_\_\_\_\_ and that I

possess the authority to make this affidavit and certification on behalf of myself and the firm for which I am acting.

2. Except as described in paragraph 3 below, neither I, nor to the best of my knowledge, the above firm, nor any of its officers, directors, or partners, or any of its employees who are directly involved in obtaining or performing contracts with any public bodies has:
- a. been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government;
  - b. been convicted under the laws of the state, another state, or the United States of: a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
  - c. been convicted of criminal violation of an antitrust statute of the State of Maryland, another state, or the United States;
  - d. been convicted of a violation of the Racketeer influenced and Corrupt Organization Act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract;
  - e. been convicted of any felony offenses connected with obtaining, holding, or maintaining a minority business enterprise certification, as prohibited by Section 14-308 of the State Finance & Procurement Article;
  - f. been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described in Paragraph (a) through (e) above; or
  - g. been found civilly liable under an antitrust statute of this State, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

3. The only conviction, plea, or admission by any officer, director, partner, or employee of this firm to involvement in any of the conduct described in Paragraph 2 above is as follows:

If none, write "None" below. If involvement, list<sup>49</sup> the date, count, or charge, official or administrative body,

the individuals involved, their position with the firm, and the sentence or disposition of the charge.

(you may attach an explanation if necessary)

4. I affirm that this firm will not knowingly enter into a contract with a public body under which a person or business debarred or suspended under Maryland State Finance and Procurement Title 16, subtitle 3, Annotated Code of Maryland, as amended, will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.
5. I affirm that this proposal or bid to the Board of Education of Frederick County is genuine and not collusive or a sham; that said bidder has not colluded, conspired, connived and agreed, directly or indirectly, with any bidder or person to put in a sham bid or to refrain from bidding and is not in any manner, directly or indirectly, sought by agreement of collusion or communication or conference, with any person to fix the bid prices of the affidavit or any other bidder, or to fix any overhead, profit or cost element of said bid price, or that if any bidder, or to secure an advantage against the Board of Education of Frederick County or any other person interested in the proposed contract; and that all statements in the proposal or bid are true. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Board of Education of Frederick County may terminate any contract awarded and take any other appropriate action.

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the contents of this affidavit are true and correct, that I am executing this Affidavit in compliance with Section 16-311 of the State Finance and Procurement Article, Annotated Code of Maryland, and in compliance with requirements of the Board of Education of Frederick County, and that I am executing and submitting this Proposal on behalf of and as authorized by the bidder named below.

\_\_\_\_\_  
(Legal Name of Company)

\_\_\_\_\_  
(dba)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Fax)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

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

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

\_\_\_\_\_  
(Title)

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

We are/I am licensed to do business in the State of Maryland as a:

( ) Corporation

( ) Partnership

( ) Individual

( ) Other

If required to be notarized:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Title)

SUBSCRIBED AND SWORN to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

## **FREDERICK COUNTY PUBLIC SCHOOLS**

### **CERTIFICATION OF COMPLIANCE**

1. All Contractors, subcontractors or vendors must abide by FCPS Board policies and regulations while working on FCPS property.
2. Maryland Law requires that any person who enters into a contract with a county board of education may not knowingly employ an individual to work at a school (or FCPS facility) if the individual is a registered sex offender. Please reference §11-113 of the Criminal Procedure Article of Maryland Code for penalty.
3. Be advised that individuals who are registered sex offenders are not eligible to work on any FCPS project. The Contractor must initially check the Maryland Department of Public Safety & Correctional Services' MARYLAND SEX OFFENDER REGISTRY and search for the name of any employee to be assigned to work on this project. This applies to subcontractors and material/equipment suppliers as well.
4. In the event that a registered sex offender is discovered to be working on a FCPS project, whether through employment by the prime Contractor, subcontractor or vendor, the site superintendent will immediately remove the individual from the premises and permanently terminate his work assignment. FCPS may terminate this contract as a result if the Contractor is unable to demonstrate he has exercised care and diligence in the past in checking the Maryland registry.
5. Effective July 1, 2015, amendments to §6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor or vendor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:
  - a. A sexual offense in the third or fourth degree under §3-307 or §3-308 of the Criminal Law Article of the Maryland Code.
  - b. Child sexual abuse under §3-602 of the Criminal Law Article of the Maryland Code or any other State; or
  - c. A crime of violence as defined in §14-101 of the Criminal Law Article of the Maryland Code or any other State
6. With the passing of Maryland Law MD. Code, Educ. 6-113.2, employers of all contracted staff must obtain background information relating to child sexual abuse or sexual misconduct. This means that all contracted staff having direct contact with students must meet all of the FCPS and Maryland State Department of Education (MSDE) requirements before doing business with FCPS. See: [Maryland State Department of Education Website](#); [House Bill 486 Child Sexual Abuse and Sexual Misconduct Prevention](#); [MSDE Guidelines For MD. Code, Educ. 6113.2](#); and [Employment History Review Form for Child Abuse and Sexual Misconduct](#) for additional information.

In addition, there has been no change to the current FCPS requirement, that all contracted staff who have contact with students are required to be fingerprinted in order to obtain a criminal background check. Fingerprints and background check are still an enforced FCPS requirement.

7. Under recent amendments to §5-561 of the Family Law Article of the Maryland Code, each contractor, subcontractor, or vendor shall certify by signing this affidavit that any individuals in its work-force including sub-contractors, have undergone a criminal background check, including fingerprinting, if the individuals will work in a FCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children.

By my signature below, I affirm under penalties of perjury that the contents of this Certification of Compliance are true to the best of my knowledge, information and belief.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print name and title of  
signatory \_\_\_\_\_

Print name of  
company \_\_\_\_\_

# Vendor Conflict of Interest Disclosure Form

All vendors interested in conducting business with Frederick County Public Schools (FCPS) must complete and return the Vendor Conflict of Interest Disclosure Form, in order to be eligible to be awarded a contract with FCPS.

Please note that all vendors must comply with FCPS's conflict of interest certification, as stated below.

If a vendor has a relationship with a FCPS employee or an immediate family member (spouse, child (stepchild or adopted), parent, or sibling) of a FCPS employee, the vendor shall disclose the information required below.

**Certification:** I hereby certify, that to the best of my knowledge, there is no conflict of interest involving the vendor named below:

1. No FCPS employee or the employee's immediate family member has an ownership interest in the vendor's company, or is deriving personal financial gain from this contract.
2. No retired or separated FCPS employee who has been retired or separated from the organization for less than one year has an ownership interest in the vendor's company.
3. No FCPS employee is contemporaneously employed or prospectively to be employed with the vendor.
4. The vendor did not provide any information or criteria in the drafting of the solicitation prior to it being advertised for competitive pricing.
5. Vendor hereby declares it has not, and will not provide gifts or hospitality of any dollar value, or any other gratuities to FCPS employee to maintain a contract.
6. Vendor hereby declares that in the process of preparing a quote/bid/proposal for FCPS, there have been no acts of bribery, extortion, trading, laundering of corrupt practices, and/or nepotism have transpired between FCPS employee and the vendor.
7. Please note any other exceptions below.

Vendor Name & Email	Vendor Address & Phone Number
<b>Conflict of Interest Disclosure</b>	
Name of FCPS employee or immediate family member with whom there may be a potential conflict of interest. <i>If no conflict of interest, write "N/A" and initial.</i>	Disclose the relationship to the employee or the immediate family member, their interest in the vendor's company, and any additional information.

I certify that the information provided is true and correct by my signature below:

\_\_\_\_\_  
Signature of Vendor Authorized Representative/Date

\_\_\_\_\_  
Printed Name of Vendor Authorized Representative

## **PROPRIETARY INFORMATION IDENTIFICATION**

Name of Firm/Offeror: \_\_\_\_\_

All information submitted by an offeror is subject to public disclosure under the Public Information Act, Title 4, General Provisions Article, Annotated Code of Maryland. Unless portions of a solicitation are identified as confidential, all records are considered public. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures or paragraphs that constitute trade secrets or proprietary information. In addition, a summary of proprietary information shall be submitted on this form. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable.

Section Title:	Page #s:	Reason for Withholding from Disclosure
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I certify the accuracy of this information.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_





# AIA® Document B102® – 2017

## **Standard Form of Agreement Between Owner and Architect** without a Predefined Scope of Architect's Services

**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)*

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

for the following (hereinafter referred to as "the Project"):  
*(Insert information related to types of services, location, facilities, or other descriptive information as appropriate.)*

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.

## TABLE OF ARTICLES

1	ARCHITECT'S RESPONSIBILITIES
2	OWNER'S RESPONSIBILITIES
3	COPYRIGHTS AND LICENSES
4	CLAIMS AND DISPUTES
5	TERMINATION OR SUSPENSION
6	COMPENSATION
7	MISCELLANEOUS PROVISIONS
8	SPECIAL TERMS AND CONDITIONS
9	SCOPE OF THE AGREEMENT

### ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall design the Project in conformance with all applicable ordinances, building codes, Frederick County Public Schools (FCPS) Education Specifications, FCPS Design Guidelines, statutes and regulations of all federal, state and local government authorities as interpreted by the relevant government authorities having jurisdiction over the Project. If the Architect determines that adherence to the FCPS Design Guidelines would be inconsistent or inappropriate with the design of the Project, the Architect shall promptly notify the Owner in writing of its determination and proposed resolution. The Owner shall approve or disapprove the Architect's proposed resolution.

1.1.1 The Project is described as follows: A/E firm shall provide professional design and consulting services in accordance with the scope of work as described in each individual purchase order.

1.1.2 The design of the school or facility shall include, as appropriate to the particular Project, playing fields, parking areas, landscaping and civil engineering of the entire site, including on-site surveying and engineering as necessary for design. The Architect shall provide record plats as required by law, including metes and bounds descriptions indicating property lines, easements, right-of-ways, etc.

1.1.3 The school or facility shall be air-conditioned. The school or facility shall be equipped with a computerized energy management system which meets state requirements and which includes manual overrides on all systems.

1.1.4 The Architect shall provide furniture and equipment layouts and note such items in equipment schedules.

1.1.5 Notwithstanding other provisions in this Agreement to the contrary, the Architect shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Architect under this Agreement. The Architect shall promptly, without additional compensation, correct or revise any errors or deficiencies discovered in his design, drawings, specifications and other services. Neither the Owner's review, approval, acceptance of, or payment for the services required under this Agreement shall be construed to be a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Architect shall be and remain liable to the Owner for all damages, including costs, to the Owner caused by the Architect's negligent performance of any of the services furnished under this Agreement. The rights and remedies of the Owner provided for by this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

The Architect shall conform and/or provide services as stipulated in the Board of Education policy manual, a copy of which shall be available to the Architect upon request.

Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect."

§ 1.1.1 The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 1.2 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 in accordance with the schedule agreed to between the Architect and Owner.

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

*(Paragraphs deleted)*

§ 1.4 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.

§ 1.5 *The Architect shall maintain the following insurance for the duration of this Agreement. The Board of Education of Frederick County, Frederick County Government – County Council, and the State of Maryland shall be named additional insured on policies excluding insurance required by statute. All forms of insurance and carriers shall have a Best's rating of "A" or better and are subject to the Owner's approval and Certificates of Insurance shall be provided to the Owner within ten (10) days of award of the Contract. The insurance shall be written on a General Liability policy form, Certificate of Insurance, ACCORD Form 25-S.*

- .1 General Liability Commercial General Liability Insurance paid on occurrence basis and shall include all major divisions of coverage and be on a comprehensive basis not less than the following limits:

Bodily Injury:

\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

(b) Personal Injury:

\$1,000,000 Each Occurrence  
\$2,000,000 Aggregate

(c) Property Damage:

\$1,000,000 Each Occurrence  
\$2,000,000 Aggregate

(d) Products/Completed Operations

\$2,000,000 Aggregate

(e) Fire Damage Legal Liability

\$50,000 Any One Fire

(f) Medical Expense:

\$5,000 Any One Person

(g) Property Damage Liability Insurance shall provide X, C and U coverage.

(h) Broad Form Property Damage Coverage shall include Completed Operations

- .2 Business Automobile Liability (including, owned, non-owned and hired vehicles):

(a) Bodily Injury:

\$1,000,000 Each Person  
\$2,000,000 Each Occurrence

(b) Property Damage:

\$500,000 Each Occurrence

- .3 Workers' Compensation

Init.

- (a) As required by State Statute
- (b) Applicable Federal Statutory (e.g., Longshoremen's):
- (c) Employers' Liability:
  - \$500,000 per Accident
  - \$500,000 per Disease, Policy Limit
  - \$500,000 per Disease, Each Employee
- .4 Professional Liability errors and omissions in the amount of \$2,000,000.00 in aggregate (\$1,000,000.00 Limit per Claim) with deductible not exceeding \$50,000
- .5 Umbrella Excess Liability:
  - \$10,000,000 over primary insurance, or \$25,000 retention for self-insured hazards each occurrence.

Certificates of Insurance acceptable to the Owner shall be filed with the Owner. These Certificates and the policies required by this Agreement shall contain a provision that coverages afforded under the policy will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are not reasonably available, an additional Certificate evidencing continuation of such coverage shall be submitted with the final application for payment.

Information concerning reduction of coverage on account of revised limits or claims paid under any general aggregate, or both, shall be furnished by Architect with reasonable promptness in accordance with Architect's information and belief.

*(Paragraphs deleted)*

## **ARTICLE 2 OWNER'S RESPONSIBILITIES**

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project.

§ 2.2 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

*(Paragraphs deleted)*

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

§ 2.4 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.

§ 2.5 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.

*(Paragraph deleted)*

## **ARTICLE 3 COPYRIGHTS AND LICENSES**

§ 3.1 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.

### **§ 3.2**

*(Paragraphs deleted)*

§ 3.2 Upon execution of this Agreement, the Architect grants to the Owner sole and exclusive ownership of all drawings, specifications and other documents (Instruments of Service) and Owner shall own and retain all common

law, statutory and other rights, including copyright in these documents. The Architect expressly waives all such rights, including copyrights in all Instruments of Service and shall secure similar ownership rights in the Owner in all Instruments of Service produced by Architect's consultants. The Architect shall be permitted to retain copies, including reproducible copies of Instruments of Service for information and reference. The Instruments of Service shall not be used by the Architect or others on other Projects unless agreed to in writing by Owner. The Architect shall not be liable as a result of Owner's use of the Instruments of Service on other projects..

Architect warrants that all Instruments of Service do not infringe upon any copyright or otherwise expose the Owner to any liability to any third persons by reason of their use. Architect agrees to defend and indemnify the Owner against any and all costs and expense by reason of such claims.

## **ARTICLE 4 CLAIMS AND DISPUTES**

### **§ 4.1 General**

**§ 4.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

**§ 4.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 4.1.3** In the event there is a dispute between Owner and Architect, Architect shall proceed diligently with the performance of its obligations under this Agreement, and Owner shall continue to make payments as are required under this Agreement pending final resolution of the dispute.

### **§ 4.2 Mediation**

**§ 4.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

**§ 4.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

*(Paragraphs deleted)*

Litigation in the Circuit Court for Frederick County or, in the event that court is unable to act, any other court of competent jurisdiction as selected by Owner in its sole discretion.

*(Paragraphs deleted)*

## ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 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.

§ 5.2 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.

§ 5.3 If the Owner suspends the Project for more than 180 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.

§ 5.4 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.

§ 5.5 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.

§ 5.6 In the event of termination not the fault of the Architect, the Architect shall be entitled to receive compensation for the portion of his fee then earned and all substantiated reimbursable expenses incurred as of the date of termination. No other or additional sums, whether for lost profits, overhead, consequential costs or damages, or otherwise shall be payable by Owner.

§ 5.7 In the event the Owner terminates this Agreement for

*(Paragraphs deleted)*

cause, and it is adjudged that such cause did not exist, then the termination shall be deemed a termination for convenience and the Architect's compensation will be as set forth in paragraph 5.6.

§ 5.8

*(Paragraphs deleted)*

The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3. In the event of any termination under this Agreement, the Architect consents to Owner's selection of another Architect of Owner's choice to assist the Owner in any way in the completion of the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project that has already been performed by Architect prior to termination. Other than providing information to the Owner with regard to services previously rendered, any additional services provided by Architect which are requested by Owner after termination shall be compensated by Owner at the hourly rate set forth herein for Additional Services.

§ 5.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 5.7.

## ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect/Engineer/Consultant on a monthly basis for percentage of work complete. An individual purchase order identifying the lump sum const of services will be prepared for each project. Hourly rates as identified in Attachment "A" shall be utilized for modification to lump sum prices only. Work associated with Purchase Orders shall be completed at the prices effective on the date the Purchase Order is issued. All modifications to Purchase Orders are to be issued at the rates approved by the current award or renewal.

As a condition precedent to payment to the Architect for services rendered during the Construction Phase, the Architect shall provide to the Owner all of the Project's design calculations including but not limited to structural calculations, mechanical calculations, electrical calculations, water retention pond design calculations, pavement design calculations, storm water management calculations, etc. Electronic copies may be provided in lieu of hard copies provided they are sealed and signed on the electronic version.

The Architect shall not provide any Additional Services without the written authorization of the Owner. At Owner's request, Architect shall provide certified documentation verifying the Direct Personal Expense of any person providing Additional Services on the Project.

## **§ 6.2 Compensation for Reimbursable Expenses**

**§ 6.2.1** Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Authorized out-of-town travel and subsistence;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;
- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

*(Paragraph deleted)*

- .6 Renderings other than listed in AIA B 201;
- .7 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project is the Architects overhead expense, the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants may be billed with verification of the expense acceptable to the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses.

*(Paragraph deleted)*

**§ 6.2.2** All reimbursable expenses shall be submitted to the owner at 10% times the cost of such reimbursable expenses with no additional mark-ups or administrative fees.

*(Paragraphs deleted)*

## **§ 6.3 Payments to the Architect**

### **§ 6.3.1 Initial Payments**

**§ 6.3.1.1** Payments to the architect shall be made within 25 days of the invoice date. Invoice not received timely or invoices for services that exceed the actual progress of the project, as determined by the Owner, will be returned for revision and resubmission. Resubmit replacement invoices with a current date and signature.

### **§ 6.3.2 Progress Payments**

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

*(Paragraphs deleted)*

**§ 6.3.2.2** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

*(Paragraph deleted)*

## **ARTICLE 7 MISCELLANEOUS PROVISIONS**

**§ 7.1** This Agreement shall be governed by the law of the State of Maryland and/or Frederick County Maryland as applicable.

**§ 7.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201™-2017, General Conditions of the Contract for Construction.

**§ 7.3** 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.

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

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

§ 7.5 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 7.6 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.

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

§ 7.8 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 must follow FCPS procedures for such photography. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 7.8 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 5.4.

§ 7.9 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 7.9.1. This Section 7.9 shall survive the termination of this Agreement.

§ 7.9.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 7.9.

§ 7.10 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 8 SPECIAL TERMS AND CONDITIONS

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

8.1 The Architect and its Consultants shall conform to all Frederick County Board of Education policies when they are on Board of Education property, including without limitation, the Board of Education's policies of no

Init.



smoking/vaping, no consumption of alcohol or illegal drugs, compliance with the Maryland Sex Offender Registry and no possession of weapons of any kind. All Frederick County Board of Education policies shall be available to the Architect for inspection upon request.

## ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 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.

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

*(Paragraphs deleted)*

.1 AIA Document 201 – 2017

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

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

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

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

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

# Additions and Deletions Report for AIA® Document B102® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:06:55 ET on 09/06/2023.

## PAGE 2

**§ 1.1** The Architect shall ~~provide the following professional services:~~ design the Project in conformance with all applicable ordinances, building codes, Frederick County Public Schools (FCPS) Education Specifications, FCPS Design Guidelines, statutes and regulations of all federal, state and local government authorities as interpreted by the relevant government authorities having jurisdiction over the Project. If the Architect determines that adherence to the FCPS Design Guidelines would be inconsistent or inappropriate with the design of the Project, the Architect shall promptly notify the Owner in writing of its determination and proposed resolution. The Owner shall approve or disapprove the Architect's proposed resolution.

1.1.1 The Project is described as follows: A/E firm shall provide professional design and consulting services in accordance with the scope of work as described in each individual purchase order.

~~(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2.)~~ 1.1.2 The design of the school or facility shall include, as appropriate to the particular Project, playing fields, parking areas, landscaping and civil engineering of the entire site, including on-site surveying and engineering as necessary for design. The Architect shall provide record plats as required by law, including metes and bounds descriptions indicating property lines, easements, right-of-ways, etc.

1.1.3 The school or facility shall be air-conditioned. The school or facility shall be equipped with a computerized energy management system which meets state requirements and which includes manual overrides on all systems.

1.1.4 The Architect shall provide furniture and equipment layouts and note such items in equipment schedules.

1.1.5 Notwithstanding other provisions in this Agreement to the contrary, the Architect shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Architect under this Agreement. The Architect shall promptly, without additional compensation, correct or revise any errors or deficiencies discovered in his design, drawings, specifications and other services. Neither the Owner's review, approval, acceptance of, or payment for the services required under this Agreement shall be construed to be a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Architect shall be and remain liable to the Owner for all damages, including costs, to the Owner caused by the Architect's negligent performance of any of the services furnished under this Agreement. The rights and remedies of the Owner provided for by this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

The Architect shall conform and/or provide services as stipulated in the Board of Education policy manual, a copy of which shall be available to the Architect upon request.

Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect."

## PAGE 3

**§ 1.2** 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~~ in accordance with the schedule agreed to between the Architect and Owner.

**§ 1.3** The Architect ~~identifies the following~~ shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

~~(List name, address, and other contact information.)~~

...

**§ 1.5** ~~The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 6.2.3 for the duration of this Agreement. The Board of Education of Frederick County, Frederick County Government – County Council, and the State of Maryland shall be named additional insured on policies excluding insurance required by statute. All forms of insurance and carriers shall have a Best's rating of "A" or better and are subject to the Owner's approval and Certificates of Insurance shall be provided to the Owner within ten (10) days of award of the Contract. The insurance shall be written on a General Liability policy form, Certificate of Insurance, ACCORD Form 25-S.~~

- .1** General Liability Commercial General Liability Insurance paid on occurrence basis and shall include all major divisions of coverage and be on a comprehensive basis not less than the following limits:

Bodily Injury:

\$1,000,000 Each Occurrence

\$1,000,000 Aggregate

(b) Personal Injury:

\$1,000,000 Each Occurrence

\$2,000,000 Aggregate

(c) Property Damage:

\$1,000,000 Each Occurrence

\$2,000,000 Aggregate

(d) Products/Completed Operations

\$2,000,000 Aggregate

(e) Fire Damage Legal Liability

\$50,000 Any One Fire

(f) Medical Expense:

\$5,000 Any One Person

(g) Property Damage Liability Insurance shall provide X, C and U coverage.

(h) Broad Form Property Damage Coverage shall include Completed Operations

- .2** Business Automobile Liability (including, owned, non-owned and hired vehicles):

(a) Bodily Injury:

\$1,000,000 Each Person

\$2,000,000 Each Occurrence

(b) Property Damage:

500,000 Each Occurrence

- .3** Workers' Compensation

(a) As required by State Statute

(b) Applicable Federal Statutory (e.g., Longshoremen's):

(c) Employers' Liability:

\$500,000 per Accident

\$500,000 per Disease, Policy Limit

\$500,000 per Disease, Each Employee

- .4 Professional Liability errors and omissions in the amount of \$2,000,000.00 in aggregate (\$1,000,000.00 Limit per Claim) with deductible not exceeding \$50,000
- .5 Umbrella Excess Liability:  
\$10,000,000 over primary insurance, or \$25,000 retention for self-insured hazards each occurrence.

Certificates of Insurance acceptable to the Owner shall be filed with the Owner. These Certificates and the policies required by this Agreement shall contain a provision that coverages afforded under the policy will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are not reasonably available, an additional Certificate evidencing continuation of such coverage shall be submitted with the final application for payment. Information concerning reduction of coverage on account of revised limits or claims paid under any general aggregate, or both, shall be furnished by Architect with reasonable promptness in accordance with Architect's information and belief.

~~§ 1.5.1 Commercial General Liability with policy limits of not less than — (\$ —) for each occurrence and — (\$ —) in the aggregate for bodily injury and property damage.~~

~~§ 1.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than — (\$ —) 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.~~

~~§ 1.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 1.5.1 and 1.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 1.5.4 Workers' Compensation at statutory limits.~~

~~§ 1.5.5 Employers' Liability with policy limits not less than — (\$ —) each accident, — (\$ —) each employee, and — (\$ —) policy limit.~~

~~§ 1.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than — (\$ —) per claim and — (\$ —) in the aggregate.~~

~~§ 1.5.7 Additional Insured Obligations. If requested by the Owner, to the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

~~§ 1.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5.~~

§ 2.1 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.Project.

*(List name, address, and other contact information.)*

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

...

§ 2.6 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.

§ 3.1 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.

§ 3.2 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.

§ 3.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the purposes of evaluating, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 5 and Article 6. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service 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 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1. The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.4.

§ 3.4 Except for the licenses granted in this Article 3, 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.

§ 3.5 Except as otherwise stated in Section 3.3, the provisions of this Article 3 shall survive the termination of this Agreement.

§ 3.2 Upon execution of this Agreement, the Architect grants to the Owner sole and exclusive ownership of all drawings, specifications and other documents (Instruments of Service) and Owner shall own and retain all common law, statutory and other rights, including copyright in these documents. The Architect expressly waives all such rights, including copyrights in all Instruments of Service and shall secure similar ownership rights in the Owner in all Instruments of Service produced by Architect's consultants. The Architect shall be permitted to retain copies, including reproducible copies of Instruments of Service for information and reference. The Instruments of Service shall not be used by the Architect or others on other Projects unless agreed to in writing by Owner. The Architect shall not be liable as a result of Owner's use of the Instruments of Service on other projects..

Architect warrants that all Instruments of Service do not infringe upon any copyright or otherwise expose the Owner to any liability to any third persons by reason of their use. Architect agrees to defend and indemnify the Owner against any and all costs and expense by reason of such claims.

## PAGE 5

§ 4.1.3 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 5.7. In the event there is a dispute between Owner and Architect, Architect shall proceed diligently with the performance of its obligations under this Agreement, and Owner shall continue to make payments as are required under this Agreement pending final resolution of the dispute.

...

*(Check the appropriate box.)*

☐ — Arbitration pursuant to Section 4.3 of this Agreement

☐ — Litigation in a court of competent jurisdiction

☐ — Other *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction. Litigation in the Circuit Court for Frederick County or, in the event that court is unable to act, any other court of competent jurisdiction as selected by Owner in its sole discretion.

### § 4.3 Arbitration

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

§ 4.3.1.1 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.

§ 4.3.2 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.

§ 4.3.3 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.

#### § 4.3.4 Consolidation or Joinder

§ 4.3.4.1 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).

§ 4.3.4.2 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.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

§ 5.1 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.~~

§ 5.2 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.~~

§ 5.3 If the Owner suspends the Project for more than ~~90~~180 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.

PAGE 6

§ 5.6 If the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, ~~the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.~~ In the event of termination not the fault of the Architect, the Architect shall be entitled to receive compensation for the portion of his fee then earned and all substantiated reimbursable expenses incurred as of the date of termination. No other or additional sums, whether for lost profits, overhead, consequential costs or damages, or otherwise shall be payable by Owner.

~~§ 5.7 In addition to any amounts paid under Section 5.6, if the event the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall pay to the Architect the following fees:  
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)~~

~~.1 — Termination Fee:~~

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

~~cause, and it is adjudged that such cause did not exist, then the termination shall be deemed a termination for convenience and the Architect's compensation will be as set forth in paragraph 5.6.~~

~~§ 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate  
(Check the appropriate box.)~~

~~☐ — One year from the date of commencement of the Architect's services~~

~~☐ — One year from the date of Substantial Completion~~

~~☐ — Other  
(Insert another termination date or refer to a termination provision in an attached document or scope of service.)~~

~~If the Owner and Architect do not select a termination date, this Agreement shall terminate one year from the date of commencement of the Architect's services. The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3. In the event of any termination under this Agreement, the Architect consents to Owner's selection of another Architect of Owner's choice to assist the Owner in any way in the completion of the Project. Architect further agrees to cooperate and provide any information requested by Owner in connection with the completion of the Project that has already been performed by Architect prior to termination. Other than providing information to the Owner with regard to services previously rendered, any additional services provided by Architect which are requested by Owner after termination shall be compensated by Owner at the hourly rate set forth herein for Additional Services.~~

~~...~~

~~§ 6.1 The Owner shall compensate the Architect as set forth below for services described in Section 1.1, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2. Architect/Engineer/Consultant on a monthly basis for percentage of work complete. An individual purchase order identifying the lump sum const of services will be prepared for each project. Hourly rates as identified in Attachment "A" shall be utilized for modification to lump sum prices only. Work associated with Purchase Orders shall be completed at the prices effective on the date the Purchase Order is issued. All modifications to Purchase Orders are to be issued at the rates approved by the current award or renewal.~~

~~(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.) As a condition precedent to payment to the Architect for services rendered during the Construction Phase, the Architect shall provide to the Owner all of the Project's design calculations including but not limited to structural calculations, mechanical calculations, electrical calculations, water retention pond design calculations, pavement design calculations, storm water management calculations, etc. Electronic copies may be provided in lieu of hard copies provided they are sealed and signed on the electronic version.~~

~~The Architect shall not provide any Additional Services without the written authorization of the Owner. At Owner's request, Architect shall provide certified documentation verifying the Direct Personal Expense of any person providing Additional Services on the Project.~~



§ 6.2.1 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- ~~.1~~ ~~Transportation and authorized~~ Authorized out-of-town travel and subsistence;
- ~~.2~~ ~~Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- ~~.3~~ ~~Permitting and other fees required by~~ Fees paid for securing approval of authorities having jurisdiction over the Project;
- ~~.4~~ ~~.3~~ Printing, reproductions, plots, and standard form documents;
- ~~.5~~ ~~.4~~ Postage, handling and delivery;
- ~~.6~~ ~~.5~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~.7~~ ~~Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~
- ~~.8~~ ~~If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses.~~ Renderings other than listed in AIA B 201;
- ~~.7~~ Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or Project is the Architects overhead expense, the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants; if the Owner requests such insurance in excess of that normally carried by the Architect's consultants may be billed with verification of the expense acceptable to the Owner;
- ~~.9~~ ~~.8~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ ~~Site office expenses; expenses.~~
- ~~.11~~ ~~Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and~~
- ~~.12~~ ~~Other similar Project-related expenditures.~~

§ 6.2.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~percent (—%)~~ of the expenses incurred. All reimbursable expenses shall be submitted to the owner at 10% times the cost of such reimbursable expenses with no additional mark-ups or administrative fees.

§ 6.2.3 Architect's Insurance. If the types and limits of coverage required in Section 1.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:  
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 1.5, and for which the Owner shall reimburse the Architect.)

...

§ 6.3.1.1 An initial payment of ~~(\$ —)~~ 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. Payments to the architect shall be made with in 25 days of the invoice date. Invoice not received timely or invoices for services that exceed the actual progress of the project, as determined by the Owner, will be returned for revision and resubmission. Resubmit replacement invoices with a current date and signature.

...

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

—%

~~§ 6.3.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.~~

~~§ 6.3.2.3 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.~~

~~§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3. State of Maryland and/or Frederick County Maryland as applicable.~~

~~§ 7.2 Except as separately defined herein, terms Terms in this Agreement shall have the same meaning as those in AIA Document A201™-2017, General Conditions of the Contract for Construction.~~

~~§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment. Agreement.~~

**PAGE 8**

~~§ 7.8 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. materials, however, the Architect must follow FCPS procedures for such photography. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 7.8 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 5.4.~~

...

*(Include other terms and conditions applicable to this Agreement.)*

~~8.1 The Architect and its Consultants shall conform to all Frederick County Board of Education policies when they are on Board of Education property, including without limitation, the Board of Education's policies of no smoking/vaping, no consumption of alcohol or illegal drugs, compliance with the Maryland Sex Offender Registry and no possession of weapons of any kind. All Frederick County Board of Education policies shall be available to the Architect for inspection upon request.~~

**PAGE 9**

~~1 AIA Document B102™-2017, Standard Form Agreement Between Owner and Architect~~

~~2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

~~3 Exhibits:~~

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

~~[ ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:~~

*(Insert the date of the E204-2017 incorporated into this Agreement.)*

[ ] — Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement.)*

.4 — Other documents:  
*(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)*

.1 AIA Document 201 – 2017

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:06:55 ET on 09/06/2023 under Order No. 3104237315 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B102™ – 2017, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*



# AIA<sup>®</sup> Document B201<sup>™</sup> – 2017

## Standard Form of Architect's Services: Design and Construction Contract Administration

for the following PROJECT:

(Name and location or address)

### THE OWNER:

(Name, legal status and address)

### THE ARCHITECT:

(Name, legal status and address)

### THE AGREEMENT

This Standard Form of Architect's Services is part of the accompanying Owner-Architect Agreement (hereinafter, together referred to as the Agreement) dated the     day of     in the year     .

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

### TABLE OF ARTICLES

- |   |                                      |
|---|--------------------------------------|
| 1 | INITIAL INFORMATION                  |
| 2 | SCOPE OF ARCHITECT'S BASIC SERVICES  |
| 3 | SUPPLEMENTAL AND ADDITIONAL SERVICES |
| 4 | OWNER'S RESPONSIBILITIES             |
| 5 | COST OF THE WORK                     |
| 6 | COMPENSATION                         |
| 7 | ATTACHMENTS AND EXHIBITS             |

### ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

### ADDITIONS AND DELETIONS:

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

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

This document provides the Architect's scope of services only and must be used with an owner-architect agreement. It may be used with AIA Document B102<sup>™</sup>–2017, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, to provide the Architect's sole scope of services, or with B102 in conjunction with other standard form services documents. It may also be used with G802<sup>™</sup>–2017, Amendment to the Professional Services Agreement, to create a modification to any owner-architect agreement.

*(Paragraphs deleted)*

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

## **ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 2.1 The Architect's Basic Services consist of those described in this Article 2 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 2 are Supplemental or Additional Services.

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

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

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

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

§ 2.1.5 The Architect shall, at appropriate times, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall follow the design requirements set forth in Article 1 of AIA Document B102 – 2007.

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

## **§ 2.2 SCHEMATIC DESIGN PHASE SERVICES**

§ 2.2.1 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.

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

§ 2.2.3 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.

**§ 2.2.4** 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.

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

**§ 2.2.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 3.1.1.

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

**§ 2.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 5.3.

**§ 2.2.7** The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. The Architect shall submit schematic design documents to the State of Maryland as required as required by the current version of the Interagency Committee on School Construction Procedures Guide here after referenced as IAC. The Architect shall comply with all filing date requirements and provide immediate responses to questions and or comments from any division of the IAC referencing the document submission.

**§ 2.2.8** If the Project includes renovation, the Architect shall provide a survey of all-existing items, which do not conform to applicable federal, state, county and/or local statutes, laws, ordinances or building code requirements. The survey shall include the area to be renovated and any other areas immediately adjacent thereto. The survey shall list each item, reference the applicable statute, law, ordinance, or code requirement and state an estimated cost of revising the items to conform to the applicable statute, law, ordinance, or code requirement. The Contract documents produced by the Architect shall include directions to revise the nonconforming items to conform to the applicable statutes, laws, ordinances, or code requirements.

**§ 2.2.9** During this phase, the Architect shall conduct progress and review meetings with the Owner, the Architect and its Consultants as needed, at the Owner's discretion. The Owner may designate the time and location of such meetings. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.

**§ 2.2.10** Colored renderings of site Plans, floor plans, and building elevations suitable for Public Presentation shall be provided as part of the Architects basic services required by this contract.

## **§ 2.3 DESIGN DEVELOPMENT PHASE SERVICES**

**§ 2.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels. The Architect shall submit design development documents to the State of Maryland as required as required by the current version of the Interagency Committee on School Construction Procedures Guide here after referenced as IAC. The Architect shall comply with all filing date requirements and provide immediate responses to questions and or comments from any division of the

IAC referencing the document submission. Provide all documentation required by The State of Maryland, IAC procedures Guide. The Architect must specifically provide Cost Benefit analysis of the systems incorporated in this submission

§ 2.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 5.3.

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

#### § 2.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 2.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 2.6.4.

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

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

§ 2.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 5.3.

§ 2.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 5.5, and request the Owner's approval.

§ 2.4.6 The Architect, on behalf of the Owner, shall promptly procure all required approvals and permits for the Project, excluding the permits required to be procured by the Contractor under its contract, including the occupancy permit. The Architect's approvals and permits shall include but not be limited to the Building Permit, Grading Permit, Air Quality Permit, Historical Trusts, Soil Conservation, Sediment, Rodent and Erosion Control, Storm Water Management, Water Resources Administration, Corps of Engineers, Frederick County Public Schools Curriculum Department, IAC (Interagency Committee), Maryland State Public School Construction Program, Utility Companies and State Boiler Permits. The Building Permit shall be procured before the Board of Education approves a Contractor. The Owner will reimburse the Architect, the fee charged by the agencies issuing such Permits.

§ 2.4.7 If the Project includes renovation, the Architect shall stipulate in the Contract Documents that as part of the Construction Contract Sum, the Contractor shall be required to provide temporary modifications, including provisions to satisfy all code requirements as interpreted by the relevant government authorities, to allow the usage of the existing facilities during construction of the new facilities. The Architect must provide detailed design and coordination of temporary facilities the Contractor is to provided.

§ 2.4.8 Any revisions to the plans shall be made on the plans and the entire plan re-issued. Plan revisions shall not be issued on sketches. Any revisions to the specifications shall be made in the specifications and the entire specification section or subsection shall be reissued.

§ 2.4.9 If the Contract Documents include any provisions for substitutions or equal equipment, materials or systems, such provisions shall be written in such a manner to preclude bidders from using as a bid basis any equipment, materials or systems that are not specifically pre-approved by the Architect or Engineer and Owner. Any substitutions not considered "equal" by the Owner may be accepted in the Owner's sole discretion, if an appropriate credit is offered with the substituted equipment, materials or systems.



§ 2.4.10 During this phase, the Architect shall conduct progress and review meetings with the Owner, the Architect and its Consultants. The Owner may designate the time and location of such meetings as needed, at the Owner's sole discretion. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.

§ 2.4.11 Colored renderings of site Plans, floor plans, and building elevations suitable for Public Presentation shall be provided as part of the Architects basic services required by this contract.

## **§ 2.5 PROCUREMENT PHASE SERVICES**

### **§ 2.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### **§ 2.5.2 Competitive Bidding**

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

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

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

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

### **§ 2.5.3 Negotiated Proposals**

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

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

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

## **§ 2.6 CONSTRUCTION PHASE SERVICES**

### **§ 2.6.1 General**

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

§ 2.6.1.2 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 the 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. .

Given this understanding the Architect shall however notify the Owner of any means, methods, techniques, sequences or procedures used by the contractor which may be counter productive to the scope, schedule, quality of safety of the existing work or final product. 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.

**§ 2.6.1.3** Subject to Section 3.2 and except as provided in Section 2.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction by the Board of Education of Frederick County and terminates on the date the Architect issues the final Certificate for Payment.

**§ 2.6.1.4** During the construction phase, the Architect shall conduct bi-weekly progress meetings at the job site with the Owner, Architect, Consultants, Contractor and Subcontractors. The Architect shall produce minutes of such meetings and distribute them to the attendees, and such others designed by the Owner, within 48 hours. The minutes shall be in a format acceptable to Owner and include among other things a list of attendees and their principals and the percentage completion of major items of the Work so that progress on these items can be followed during the course of construction.

**§ 2.6.2 Evaluations of the Work**

**§ 2.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 3.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. While full time on-site inspection services are not part of this Agreement, it shall nevertheless be the obligation of the Architect, its Engineers and its Consultants to visit the site often enough and at appropriate intervals and stages of the construction, and inspect the ongoing Work closely enough, so that construction methods, materials and procedures which are not in accordance with the industry standards and practices may be observed with reasonable diligence, and to determine whether the design intent is being carried out. Such observations shall be reported in writing within 48 hours to the Owner, Contractor and Owner's representative if applicable. Such observations shall also be verbally communicated to the Owner, Contractor and Owner's representative immediately. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing on-going construction work. **§ 2.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 2.6.2.3** 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.

**§ 2.6.2.4** 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. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 2.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**§ 2.6.3 Certificates for Payment to Contractor**

**§ 2.6.3.1** 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 2.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has

progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

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

**§ 2.6.4 Submittals**

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

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

**§ 2.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. The Owner retains the right to approve any professional retained by the Contractor. The Architect will ensure that sufficient safeguards are specified in the Contract Documents to require an appropriately licensed, insured, and competent design professional of the appropriate specialty is engaged by Contractor where such services are necessary.

**§ 2.6.4.4** Subject to Section 3.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

## **§ 2.6.5 Changes in the Work**

**§ 2.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 3.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

*(Paragraph deleted)*

**§ 2.6.5.22** During the construction phase, the Architect shall submit to the Owner a monthly log in a format acceptable to the Owner indicating the status of all Project Change Proposal, Construction Change Directives, and Change Orders.

**§ 2.6.5.3** The Architect shall submit to the Owner with each Change Proposal, its recommendation, including a technical and cost analysis review. The Architect or its Consultant, as appropriate, shall be prepared to personally present all Construction Change Orders with a dollar value equal to or exceeding \$100,000.00 to a Board of Education meeting and/or subcommittee meeting as directed by the Owner. **§ 2.6.6 Project Completion**

**§ 2.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.
- .5 The Architect shall also provide to the Owner all executed forms required by Frederick County Public Schools which include but are not limited to in the forms required by ¶2.6.4 as well as the Architect's and Contractor's final invoice and Contractor's Affidavit of Debts and Claims (AIA G-706).

**§ 2.6.6.2** 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.

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

**§ 2.6.6.4** 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.

**§ 2.6.6.5** 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 3 SUPPLEMENTAL AND ADDITIONAL SERVICES**

### **§ 3.1 SUPPLEMENTAL SERVICES**

**§ 3.1.1** The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 6.2. Unless otherwise specifically addressed in the Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 3.1.2 below or attach the description of services as an exhibit to the Agreement.)*

Supplemental Services	Responsibility (Architect, Owner or Not Provided)
§ 3.1.1.1 Programming	
§ 3.1.1.2 Multiple preliminary designs	
§ 3.1.1.3 Measured drawings	
§ 3.1.1.4 Existing facilities surveys	
§ 3.1.1.5 Site evaluation and planning	
§ 3.1.1.6 Building Information Model management responsibilities	
§ 3.1.1.7 Development of Building Information Models for post construction use	
§ 3.1.1.8 Civil engineering	
§ 3.1.1.9 Landscape design	
§ 3.1.1.10 Architectural interior design	
§ 3.1.1.11 Value analysis	
§ 3.1.1.12 Detailed cost estimating beyond that required in Section 5.3	
§ 3.1.1.13 On-site project representation	
§ 3.1.1.14 Conformed documents for construction	
§ 3.1.1.15 As-designed record drawings	
§ 3.1.1.16 As-constructed record drawings	
§ 3.1.1.17 Post occupancy evaluation	
§ 3.1.1.18 Facility support services	
§ 3.1.1.19 Tenant-related services	
§ 3.1.1.20 Architect's coordination of the Owner's consultants	
§ 3.1.1.21 Telecommunications/data design	
§ 3.1.1.22 Security evaluation and planning	
§ 3.1.1.23 Commissioning	
§ 3.1.1.24 Sustainable Project Services pursuant to Section 3.1.3	
§ 3.1.1.25 Fast-track design services	
§ 3.1.1.26 Multiple bid packages	
§ 3.1.1.27 Historic preservation	
§ 3.1.1.28 Furniture, furnishings, and equipment design	
§ 3.1.1.29 Other services provided by specialty Consultants	
§ 3.1.1.30 Other Supplemental Services	

## § 3.1.2 Description of Supplemental Services

§ 3.1.2.1 A description of each Supplemental Service identified in Section 3.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 3.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

§ 3.1.2.2 A description of each Supplemental Service identified in Section 3.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 3.1.1 or, if set forth in an exhibit, identify the exhibit.)*

§ 3.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to the Agreement. The Owner shall compensate the Architect as provided in Section 6.2.

## § 3.2 ARCHITECT'S ADDITIONAL SERVICES

The Architect may provide Additional Services after execution of the Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 3.2 shall entitle the Architect to compensation pursuant to Section 6.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by

*(Paragraphs deleted)*

decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

- .3 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto or where the Architect or its Consultants are alleged to be responsible for the dispute or for the cost and damages flowing there from;
- .4 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

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

*(Paragraphs deleted)*

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

- .1 Three ( 3 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 No less than one visits to the site per week by the Architect over the duration of the project during construction
- .3 Three ( 3 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

§ 3.2.4 Except for services required under Section 2.6.6.5 and those services that do not exceed the limits set forth in Section 3.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

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

## ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 5.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs.

Init.

The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. It should be the responsibility of the Architect to determine physical characteristics, subsurface conditions, or utility locations necessary for the construction of the Project, and the Architect shall make such request in writing to the Owner identifying the information to be provided. All information, surveys and reports required that are not otherwise provided by the Owner and not available as a matter of public record, shall be specified and procured by the Architect and such costs shall be reimbursed by Owner.

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

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

§ 4.5 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.

§ 4.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 3.1.1.

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

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

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

§ 4.10 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.

## ARTICLE 5 COST OF THE WORK

§ 5.1 For purposes of the 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.

§ 5.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 4.1, 5.4 and 5.5. Evaluations of the Owner's budget for the Cost of the Work,

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

§ 5.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 3.1.1, as a Supplemental Service.

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

§ 5.5 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.

§ 5.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 5.5 of AIA Document B102™–2017;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 5.7 If the Owner chooses to proceed under Section 5.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 5.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 6.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 5.

## ARTICLE 6 COMPENSATION

§ 6.1 If not otherwise specifically addressed in the Agreement, the Owner shall compensate the Architect for the Architect's Basic Services as follows:

- .1 Stipulated Sum  
(Insert amount)

- .2 Percentage Basis  
(Insert percentage value)

( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 6.6.

- .3 Other

Init.



*(Describe the method of compensation)*

§ 6.2 For the Architect's Supplemental Services designated in Section 3.1.1 and for any Sustainability Services required pursuant to Section 3.1.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 6.3 For Additional Services that may arise during the course of the Project, including those under Section 3.2, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

§ 6.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 6.2 or 6.3, shall be the amount invoiced to the Architect plus percent ( %), or as follows:

*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

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

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Procurement Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

§ 6.6 When compensation identified in Section 6.1 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.

§ 6.6.1 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 the Agreement for all services performed whether or not the Construction Phase is commenced.

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

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

**Employee or Category**

**Rate (\$0.00)**

Init.

/

#### § 6.8 INITIAL PAYMENT TO THE ARCHITECT FOR SUSTAINABILITY CERTIFICATION

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

#### ARTICLE 7 ATTACHMENTS AND EXHIBITS

The following attachments and exhibits, if any, are incorporated herein by reference:

*(List other documents, if any, including any exhibits relied on in Section 3.1.)*



# Additions and Deletions Report for AIA<sup>®</sup> Document B201<sup>™</sup> – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:07:15 ET on 09/06/2023.

## PAGE 2

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

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

### **§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 5.1:

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

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

**.1** — Design phase milestone dates, if any:

**.2** — Construction commencement date:

**.3** — Substantial Completion date or dates:

**.4** — Other milestone dates:

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

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

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

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

### **§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204<sup>™</sup> 2017, Sustainable Projects Exhibit, into the Agreement to define the terms, conditions and

services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into the Agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

*(List name, address, and other contact information.)*

**§ 1.1.8** The Owner shall retain the following consultants and contractors:

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

**.1** — Geotechnical Engineer:

**.2** — Civil Engineer:

**.3** — Other, if any:

*(List any other consultants and contractors retained by the Owner.)*

**§ 1.1.9** The Architect shall retain the consultants identified in Sections 1.1.9.1 and 1.1.9.2:

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

**§ 1.1.9.1** Consultants retained under Basic Services:

**.1** — Structural Engineer:

**.2** — Mechanical Engineer:

**.3** — Electrical Engineer:

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

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

...

**§ 2.1** The Architect's Basic Services consist of those described in this Article 2 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 2 are Supplemental or Additional Services.

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

...

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

...

**§ 2.1.5** The Architect ~~shall~~ shall, at appropriate times, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall ~~respond to applicable design requirements imposed by those authorities and entities follow the design requirements set forth in~~ Article 1 of AIA Document B102 – 2007.

...

**§ 2.2.3** 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.~~ 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.

**PAGE 3**

**§ 2.2.7** The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. The Architect shall submit schematic design documents to the State of Maryland as required as required by the current version of the Interagency Committee on School Construction Procedures Guide here after referenced as IAC. The Architect shall comply with all filing date requirements and provide immediate responses to questions and or comments from any division of the IAC referencing the document submission.

§ 2.2.8 If the Project includes renovation, the Architect shall provide a survey of all-existing items, which do not conform to applicable federal, state, county and/or local statutes, laws, ordinances or building code requirements. The survey shall include the area to be renovated and any other areas immediately adjacent thereto. The survey shall list each item, reference the applicable statute, law, ordinance, or code requirement and state an estimated cost of revising the items to conform to the applicable statute, law, ordinance, or code requirement. The Contract documents produced by the Architect shall include directions to revise the nonconforming items to conform to the applicable statutes, laws, ordinances, or code requirements.

§ 2.2.9 During this phase, the Architect shall conduct progress and review meetings with the Owner, the Architect and its Consultants as needed, at the Owner's discretion. The Owner may designate the time and location of such meetings. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.

§ 2.2.10 Colored renderings of site Plans, floor plans, and building elevations suitable for Public Presentation shall be provided as part of the Architects basic services required by this contract.

...

§ 2.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels. The Architect shall submit design development documents to the State of Maryland as required as required by the current version of the Interagency Committee on School Construction Procedures Guide here after referenced as IAC. The Architect shall comply with all filing date requirements and provide immediate responses to questions and or comments from any division of the IAC referencing the document submission. Provide all documentation required by The State of Maryland, IAC procedures Guide. The Architect must specifically provide Cost Benefit analysis of the systems incorporated in this submission

#### **PAGE 4**

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

...

§ 2.4.6 The Architect, on behalf of the Owner, shall promptly procure all required approvals and permits for the Project, excluding the permits required to be procured by the Contractor under its contract, including the occupancy permit. The Architect's approvals and permits shall include but not be limited to the Building Permit, Grading Permit, Air Quality Permit, Historical Trusts, Soil Conservation, Sediment, Rodent and Erosion Control, Storm Water Management, Water Resources Administration, Corps of Engineers, Frederick County Public Schools Curriculum Department, IAC (Interagency Committee), Maryland State Public School Construction Program, Utility Companies and State Boiler Permits. The Building Permit shall be procured before the Board of Education approves a Contractor. The Owner will reimburse the Architect, the fee charged by the agencies issuing such Permits.

§ 2.4.7 If the Project includes renovation, the Architect shall stipulate in the Contract Documents that as part of the Construction Contract Sum, the Contractor shall be required to provide temporary modifications, including provisions to satisfy all code requirements as interpreted by the relevant government authorities, to allow the usage of the existing facilities during construction of the new facilities. The Architect must provide detailed design and coordination of temporary facilities the Contractor is to provided.

§ 2.4.8 Any revisions to the plans shall be made on the plans and the entire plan re-issued. Plan revisions shall not be issued on sketches. Any revisions to the specifications shall be made in the specifications and the entire specification section or subsection shall be reissued.

§ 2.4.9 If the Contract Documents include any provisions for substitutions or equal equipment, materials or systems, such provisions shall be written in such a manner to preclude bidders from using as a bid basis any equipment, materials or systems that are not specifically pre-approved by the Architect or Engineer and Owner. Any substitutions not considered "equal" by the Owner may be accepted in the Owner's sole discretion, if an appropriate credit is offered with the substituted equipment, materials or systems.

§ 2.4.10 During this phase, the Architect shall conduct progress and review meetings with the Owner, the Architect and its Consultants. The Owner may designate the time and location of such meetings as needed, at the Owner's sole discretion. The Architect shall take minutes of the meetings and distribute copies to attendees within 48 hours.

§ 2.4.11 Colored renderings of site Plans, floor plans, and building elevations suitable for Public Presentation shall be provided as part of the Architects basic services required by this contract.

#### PAGE 5

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

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

...

- ~~.1 facilitating the distribution~~ procuring the reproduction of Proposal Documents for distribution to prospective contractors ~~contractors~~, and requesting their return upon completion of the negotiation process;
- ~~.2 organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,~~
- ~~.4~~ participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

...

§ 2.6.1.2 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 the 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. Given this understanding the Architect shall however notify the Owner of any means, methods, techniques, sequences or procedures used by the contractor which may be counter productive to the scope, schedule, quality of safety of the existing work or final product. 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.

**§ 2.6.1.3** Subject to Section 3.2 and except as provided in Section 2.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction by the Board of Education of Frederick County and terminates on the date the Architect issues the final Certificate for Payment.

**§ 2.6.1.4** During the construction phase, the Architect shall conduct bi-weekly progress meetings at the job site with the Owner, Architect, Consultants, Contractor and Subcontractors. The Architect shall produce minutes of such meetings and distribute them to the attendees, and such others designed by the Owner, within 48 hours. The minutes shall be in a format acceptable to Owner and include among other things a list of attendees and their principals and the percentage completion of major items of the Work so that progress on these items can be followed during the course of construction.

PAGE 6

**§ 2.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 3.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ~~On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.~~

While full time on-site inspection services are not part of this Agreement, it shall nevertheless be the obligation of the Architect, its Engineers and its Consultants to visit the site often enough and at appropriate intervals and stages of the construction, and inspect the ongoing Work closely enough, so that construction methods, materials and procedures which are not in accordance with the industry standards and practices may be observed with reasonable diligence, and to determine whether the design intent is being carried out. Such observations shall be reported in writing within 48 hours to the Owner, Contractor and Owner's representative if applicable. Such observations shall also be verbally communicated to the Owner, Contractor and Owner's representative immediately. Notwithstanding other provisions in this Agreement to the contrary, for the purpose of effectuating the Architect's duties in this section, the Architect shall be responsible for exercising reasonable care and diligence in observing on-going construction work. **§ 2.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

...

**§ 2.6.2.4** 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 either.~~ The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

PAGE 7

**§ 2.6.4.2** ~~The~~ In accordance with the Architect-approved submittal schedule, the Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples,



but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions ~~or or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.~~ procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Provided, however, the Architect and its Consultants will take reasonable efforts to ensure the structural integrity of all structures and the safety of all systems to be placed in the Project.

**§ 2.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. The Owner retains the right to approve any professional retained by the Contractor. The Architect will ensure that sufficient safeguards are specified in the Contract Documents to require an appropriately licensed, insured, and competent design professional of the appropriate specialty is engaged by Contractor where such services are necessary.

PAGE 8

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

**§ 2.6.5.22** During the construction phase, the Architect shall submit to the Owner a monthly log in a format acceptable to the Owner indicating the status of all Project Change Proposal, Construction Change Directives, and Change Orders.

**§ 2.6.5.3** The Architect shall submit to the Owner with each Change Proposal, its recommendation, including a technical and cost analysis review. The Architect or its Consultant, as appropriate, shall be prepared to personally present all Construction Change Orders with a dollar value equal to or exceeding \$100,000.00 to a Board of Education meeting and/or subcommittee meeting as directed by the Owner. ~~§ 2.6.6 Project Completion~~ **§ 2.6.6 Project Completion**

...

**.5** The Architect shall also provide to the Owner all executed forms required by Frederick County Public Schools which include but are not limited to in the forms required by ¶2.6.4 as well as the Architect's and Contractor's final invoice and Contractor's Affidavit of Debts and Claims (AIA G-706).

PAGE 10

- ~~.1~~ Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project ~~including including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;~~
- ~~.2~~ Services necessitated by ~~the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;~~
- ~~.3~~ ~~Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;~~
- ~~.4~~ ~~Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~
- ~~.5~~ ~~Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~

- ~~.6~~ Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- ~~.7~~ Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~.8~~ Preparation for, and attendance at, a .3 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- ~~.9~~ Evaluation of the qualifications of entities providing bids or proposals; thereto or where the Architect or its Consultants are alleged to be responsible for the dispute or for the cost and damages flowing there from;
- ~~.10~~ .4 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- ~~.11~~ Assistance to the Initial Decision Maker, if other than the Architect.

...

- ~~.1~~ Reviewing a Contractor's submittal out of sequence from the submittal schedule approved 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; or,
- ~~.5~~ Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

...

- .1 Three ( 3 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ~~(—)~~ No less than one visits to the site per week by the Architect over the duration of the project during construction
- .3 Three ( 3 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

## PAGE 11

§ 4.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. It should be the responsibility of the Architect to determine physical characteristics, subsurface conditions, or utility locations necessary for the construction of the Project, and the Architect shall make such request in writing to the Owner identifying the information to be provided. All information, surveys and reports required that are not otherwise provided by the Owner and not available as a matter of public record, shall be specified and procured by the Architect and such costs shall be reimbursed by Owner.

...

§ 5.1 For purposes of the Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work ~~also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work~~ 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.

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:07:15 ET on 09/06/2023 under Order No. 3104237315 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B201™ – 2017, Standard Form of Architect's Services: Design and Construction Contract Administration, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*